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CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 85, No. 68
Wednesday, April 8, 2020

Presidential Documents

Title 3—

The President

Proclamation 10007 of April 3, 2020

Education and Sharing Day, U.S.A., 2020

By the President of the United States of America

A Proclamation

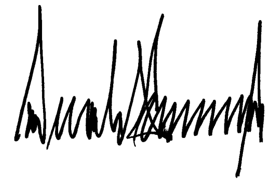
Preparing the next generation to lead lives of purpose and significance is one of our foremost responsibilities. Education is essential to cultivating a spirit of curiosity and learning, developing character and conscience, and strengthening the will to work collaboratively. On Education and Sharing Day, we pay tribute to the family members, educators, mentors, clergy members, and other community leaders who invest in the lives of our Nation's youth through education and fostering kindness and caring for one another.

Today, we celebrate Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, a compassionate and visionary leader whose influence continues unabated since his passing more than a quarter century ago. This year marks 70 years since Rabbi Schneerson assumed leadership of the international Chabad-Lubavitch movement, building the faith-based network into a dynamic force for good which affects millions of people around the world. Although he witnessed the unimaginable tragedies that beset the world during World War II, the Holocaust, and the oppression and violence of the Cold War, the Lubavitcher Rebbe retained his fundamental belief in the potential of all people and the liberating nature of education. Committed to the idea that education must ''pay more attention, indeed the main intention, to the building of character, with emphasis on moral and ethical values,'' he established schools and centers for education, service, and spiritual growth on college campuses and in communities across our Nation and around the world. His legacy and enduring commitment to young people continue as examples of selfless service and devotion for all who know the story of his purposeful life.

Knowledge inspired by unwavering virtue and commitment to faith were central to the Lubavitcher Rebbe's life and mission. When put into practice, these values empower people of all ages to fulfill their unique purpose, and in turn to enhance and enrich our great Nation. On this day, let us acknowledge that each person has a unique purpose that can be unleashed through an individual, whole-of-person approach to education, and let us renew our commitment to supporting education as a means by which individuals may grow their gifts, develop their talents, and fulfill their God-given potential. May we work to shape a brighter future by preserving these foundations of freedom and fellowship for generations to come.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 5, 2020, as ''Education and Sharing Day, U.S.A.'' I call upon all government officials, educators, volunteers, and all the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of April, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2020–07529
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Presidential Documents

Executive Order 13913 of April 4, 2020

Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* The security, integrity, and availability of United States telecommunications networks are vital to United States national security and law enforcement interests.

Sec. 2. *Definitions.* For purposes of this order:

(a) ''License'' means any license, certificate of public interest, or other authorization issued or granted by the Federal Communications Commission (FCC) after referral of an application by the FCC to the Committee established by subsection 3(a) of this order or, if referred before the date of this order, to the group of executive departments and agencies involved in the review process that was previously in place.

(b) ''Application'' means any application, petition, or other request for a license or authorization, or the transfer of a license or authorization, that is referred by the FCC to the Committee established in subsection 3(a) of this order or that was referred by the FCC before the date of this order to the group of executive departments and agencies involved in the review process that was previously in place.

(c) ''Intelligence Community'' shall have the meaning assigned to it in subsection 3.5(h) of Executive Order 12333 of December 4, 1981 (United States Intelligence Activities), as amended.

(d) ''Mitigation measures'' shall mean both standard and non-standard mitigation measures.

(e) ''Standard mitigation measures'' shall be those measures agreed upon by the Committee Members (as defined in subsection 3(b) of this order) and Committee Advisors (as defined in subsection 3(d) of this order).

Sec. 3. *Establishment.* (a) There is hereby established the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), the primary objective of which shall be to assist the FCC in its public interest review of national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector. The function of the Committee shall be:

(i) to review applications and licenses for risks to national security and law enforcement interests posed by such applications or licenses; and

(ii) to respond to any risks presented by applications or licenses by recommending to the FCC, as appropriate and consistent with the provisions of this order, that it dismiss an application, deny an application, condition the grant of an application upon compliance with mitigation measures, modify a license with a condition of compliance with mitigation measures, or revoke a license.

(b) The Committee shall be composed of the following members (Committee Members):

(i) the Secretary of Defense;

(ii) the Attorney General;

(iii) the Secretary of Homeland Security; and

(iv) the head of any other executive department or agency, or any Assistant to the President, as the President determines appropriate.

(c) The Attorney General shall serve as Chair of the Committee (Chair).

(d) The following officials shall be advisors to the Committee (Committee Advisors) with no role in the duties set forth in sections 4 through 11 of this order except as provided in subsections 6(c), 9(f), 9(g), 10(g), and 11(d) of this order:

(i) the Secretary of State;

(ii) the Secretary of the Treasury;

(iii) the Secretary of Commerce;

(iv) the Director of the Office of Management and Budget;

(v) the United States Trade Representative;

(vi) the Director of National Intelligence;

(vii) the Administrator of General Services;

(viii) the Assistant to the President for National Security Affairs;

(ix) the Assistant to the President for Economic Policy;

(x) the Director of the Office of Science and Technology Policy;

(xi) the Chair of the Council of Economic Advisers; and

(xii) any other Assistant to the President, as the President determines appropriate.

(e) The Committee Members and Committee Advisors may, subject to the limitations in this order, designate a senior executive from their entity to perform the functions described in this order on their behalf.

Sec. 4. *Duties of Committee Chair and Members.* (a) The Chair shall designate one or more Committee Members to serve as the lead for executing any function of the Committee (Lead Member). The Chair may assign to a Lead Member any or all of the following responsibilities as appropriate and consistent with their statutory authorities:

(i) submitting to applicants or licensees any questions or requests for information to establish facts about an application or license necessary to conduct the reviews and assessments described in sections 5 and 6 of this order;

(ii) identifying risks to national security or law enforcement interests of the United States raised by an application or license, in consultation, as appropriate, with other Committee Members;

(iii) coordinating with other Committee Members on the reviews and assessments described in sections 5 and 6 of this order;

(iv) proposing, in coordination with the Chair, any mitigation measures necessary to address any risk to national security or law enforcement interests of the United States identified through the risk-based analysis described in subsection 9(c) of this order;

(v) coordinating with other Committee Members and communicating with applicants or licensees regarding any mitigation measures necessary to address risks to national security and law enforcement interests of the United States;

(vi) monitoring compliance with, and coordinating with the Committee regarding, any mitigation measure the Committee recommends be imposed by the FCC as a condition on a license; or

(vii) any related responsibilities as specified by the Chair.

(b) Except as otherwise provided in this order, the Chair shall have the exclusive authority to act, or to authorize other Committee Members to act, on behalf of the Committee, including communicating with the FCC and with applicants or licensees on behalf of the Committee.

(c) In acting on behalf of the Committee, the Chair or a Lead Member, as applicable, shall keep the Committee fully informed of the Chair's or Lead Member's respective activities taken under this order and shall consult with the Committee before taking any material actions under this order.

Sec. 5. *Committee Application Review Process.* (a) The Committee shall review and assess applications to determine whether granting a license or the transfer of a license poses a risk to national security or law enforcement interests of the United States.

(b) Upon referral by the FCC of an application, the Committee shall conduct an initial review of the application to evaluate whether granting the requested license or transfer of license may pose a risk to national security or law enforcement interests of the United States.

(i) During the initial review, the Committee may determine:

(A) that granting an application for a license or the transfer of a license raises no current risk to national security or law enforcement interests;

(B) that any identified risk to national security or law enforcement interests raised by an application may be addressed through standard mitigation measures recommended by the Committee; or

(C) that a secondary assessment of an application is warranted because risk to national security or law enforcement interests cannot be mitigated by standard mitigation measures.

(ii) If the Committee determines that granting the application does not raise a current risk to national security or law enforcement interests or that standard mitigation measures would mitigate any risk to national security or law enforcement interests, such a determination and any recommendations shall be communicated to the FCC in a manner consistent with sections 9 and 10 of this order.

(iii) Except as provided in subsection 5(d) of this order, any initial review shall be completed before the end of the 120-day period beginning on the date the Chair determines that the applicant's responses to any questions and information requests from the Committee are complete.

(c) When the Committee has determined that a secondary assessment of an application is warranted, it shall conduct such an assessment to further evaluate the risk posed to national security and law enforcement interests of the United States and to determine whether to make any recommendations pursuant to section 9 of this order. Any secondary assessment of an application shall be completed no more than 90 days after the Committee's determination that a secondary assessment is warranted. The Chair shall notify the FCC of a determination that a secondary assessment is warranted.

(d) During an initial review under subsection 5(b) of this order or a secondary assessment under subsection 5(c) of this order, if an applicant fails to respond to any additional requests for information after the Chair determines the responses are complete, the Committee may either extend the initial review or secondary assessment period or make a recommendation to the FCC to dismiss the application without prejudice. The Chair shall notify the FCC of a determination that the applicant's responses are complete, of any extensions of the initial review period, or when the Committee recommends dismissal under this subsection.

Sec. 6. *Committee License Review Process.* (a) The Committee may review existing licenses to identify any additional or new risks to national security or law enforcement interests of the United States.

(b) The Committee shall determine whether to review an existing license by majority vote of the Committee Members.

(c) If the Committee conducts such a review, it shall promptly notify the Committee Advisors.

Sec. 7. *Threat Analysis by the Director of National Intelligence.* (a) For each license or application reviewed by the Committee, the Director of National Intelligence shall produce a written assessment of any threat to national security interests of the United States posed by granting the application or maintaining the license. The Director of National Intelligence shall solicit and incorporate the views of the Intelligence Community, as appropriate.

(b) The analysis required under subsection (a) of this section shall be provided to the Committee within the earlier of 30 days from the date on which the Chair determines that an applicant's or licensee's responses to any questions and requests for information from the Committee are complete or 30 days from the date on which the Chair requests such an analysis. Such an analysis may be supplemented or amended as appropriate or upon a request for additional information by the Chair.

(c) The Director of National Intelligence shall ensure that the Intelligence Community continues to analyze and disseminate to the Committee any additional relevant information that may become available during the course of a review or assessment conducted with respect to an application or license.

Sec. 8. *Requests for Information.* In furtherance of its reviews and assessments of applications and licenses as described in this section, the Committee may seek information from applicants, licensees, and any other entity as needed. Information submitted to the Committee pursuant to this subsection and analysis concerning such information shall not be disclosed beyond Committee Member entities and Committee Advisor entities, except as appropriate and consistent with procedures governing the handling of classified or otherwise privileged or protected information, under the following circumstances:

(a) to the extent required by law or for any administrative or judicial action or proceeding, or for law enforcement purposes;

(b) to other governmental entities at the discretion of the Chair, provided that such entities make adequate assurances to the Chair that they will not further disclose the shared information, including to members of the public; or

(c) to the Committee on Foreign Investment in the United States with respect to transactions reviewed by that Committee pursuant to 50 U.S.C. 4565, in which case this information and analysis shall be treated consistent with the disclosure protections of 50 U.S.C. 4565(c).

Sec. 9. *Recommendations by the Committee Pursuant to the Committee Review Process.* (a) With respect to applications that are reviewed or assessed pursuant to section 5 of this order, the Committee shall:

(i) advise the FCC that the Committee has no recommendation for the FCC on the application and no objection to the FCC granting the license or transfer of the license;

(ii) recommend that the FCC deny the application due to the risk to the national security or law enforcement interests of the United States; or

(iii) recommend that the FCC only grant the license or transfer of the license contingent on the applicant's compliance with mitigation measures, consistent with section 10 of this order.

(b) With respect to a license reviewed pursuant to section 6 of this order, the Committee may, when appropriate:

(i) recommend that the FCC modify the license to include a condition of compliance with mitigation measures negotiated by the Committee;

(ii) recommend that the FCC revoke the license due to the risk to national security or law enforcement interests of the United States; or

(iii) take no action with respect to the license.

(c) Any recommendation made by the Committee pursuant to subsections (a) and (b) of this section shall be based on a written risk-based analysis, conducted by the Committee Member entity or entities proposing the denial, mitigation measures, modification, revocation, or no action.

(d) The Committee shall make the recommendations described in subsections (a)(ii), (a)(iii), (b)(i), and (b)(ii) of this section if it determines that there is credible evidence that the application or license poses a risk to the national security or law enforcement interests of the United States.

(e) The Committee shall attempt to reach consensus on any recommendation authorized by this order. If senior executive Committee officials designated pursuant to subsection 3(e) of this order cannot reach consensus on a recommendation, the Chair shall present the issue to the Committee Members, who shall determine the Committee recommendation by majority vote. If the vote results in a tie, the Chair shall determine the recommendation.

(f) If the Committee's determination is a recommendation to deny an application, to grant an application contingent on compliance with non-standard mitigation measures, to modify a license to condition it upon compliance with non-standard mitigation measures, or to revoke a license, the Chair shall notify the Committee Advisors and, to the extent consistent with applicable law, provide them all available assessments, evaluations, or other analyses regarding such determination. Within 21 days of the notification, the Committee Advisors shall advise the Chair whether they oppose the recommendation.

(i) If one or more of the Committee Advisors opposes the recommendation, the senior executives designated by the Committee Members and Committee Advisors shall promptly confer in an effort to reach consensus on a recommendation. If consensus is reached, the recommendation shall be provided to the FCC consistent with subsection 9(h) of this order.

(ii) If the senior executives designated by the Committee Members and Committee Advisors do not reach consensus, the Chair shall present the issue to the Committee Members and the Committee Advisors to seek to resolve any objections within 30 days of the notification by the Chair of a recommendation to deny or to grant an application contingent on compliance with non-standard mitigation, or within 60 days in the case of a recommendation to modify a license to condition it upon compliance with non-standard mitigation measures or to revoke a license. Committee Members and Committee Advisors may consider any submissions by the Committee Advisors (*e.g.,* a countervailing risk assessment), as appropriate.

(iii) If the Committee Members and Committee Advisors are unable to reach consensus through the foregoing process, the Committee Members identified in subsection 3(b) of this order shall determine a recommendation by majority vote. If the vote results in a tie, the Chair shall determine the recommendation.

(g) The Chair shall notify the President of any intended recommendation, and any opposition thereto by a Committee Member or Committee Advisor, within 7 days of a majority or tie vote held under subsection 9(e) or 9(f)(iii) of this order if either the recommendation or any opposition thereto by a Committee Member or Committee Advisor involves the denial of an application, granting an application contingent on non-standard mitigation measures, modifying a license to condition it upon compliance with non-standard mitigation measures, or revoking a license. The FCC will receive notice of the recommendation, consistent with subsection 9(h) of this order, not earlier than 15 days after the date on which the President is notified of the intended action.

(h) Except as provided in subsection (b)(iii) of this section, the Chair, on behalf of the Committee, shall notify the FCC through the Administrator of the National Telecommunications and Information Administration (NTIA) of a final recommendation made pursuant to this section. The Administrator of NTIA shall notify the FCC of the recommendation within 7 days of the notification from the Chair.

(i) As necessary and in accordance with applicable law and policy, including procedures governing the handling of classified or otherwise privileged or protected information, the Committee may consider classified information and otherwise privileged or protected information in determining what recommendation to make to the FCC through the Administrator of NTIA under this section, and may provide such information to the FCC as necessary on an ex parte basis.

Sec. 10. *Mitigation of Risk and Monitoring.* (a) The Committee may recommend to the FCC, consistent with section 9 of this order, that the FCC condition the granting of a license or transfer of a license on compliance with any mitigation measures in order to mitigate a risk to the national security or law enforcement interests of the United States arising from the application.

(b) The Committee may recommend to the FCC, consistent with section 9 of this order, that the FCC modify a license to condition it upon compliance with any mitigation measures in order to mitigate a risk to national security or law enforcement interests of the United States arising from the license.

(c) Consistent with subsection 4(a)(v) of this order, the Chair or assigned Lead Member shall communicate any mitigation measures proposed by the Committee to the applicant or licensee.

(d) Any mitigation measures negotiated pursuant to this section shall be based on a written risk-based analysis.

(e) The Committee shall monitor any mitigation measures imposed by the FCC as a condition on a license.

(i) Committee Member entities, as appropriate, shall report to the Committee regarding any material noncompliance with any mitigation measures imposed by the FCC as a condition on a license as a result of the Committee's recommendation under subsections (a) through (d) of this section.

(ii) The Committee, in consultation with the FCC, as appropriate, and in a manner that does not unduly constrain Committee resources, shall develop methods for monitoring compliance with any mitigation measures imposed by the FCC as a condition on a license as a result of the Committee's recommendation under subsections (a) through (d) of this section.

(f) If the Committee determines that a licensee has not complied with a mitigation measure and has not cured any such noncompliance in a satisfactory manner, the Committee may recommend actions consistent with subsection 9(b) of this order.

(g) When requested by the Chair, the Director of National Intelligence shall provide analyses assessing threats related to risk mitigation, compliance monitoring, and enforcement to Committee Member entities and Committee Advisor entities that are monitoring compliance with mitigation measures imposed by the FCC as conditions on licenses as a result of Committee recommendations under subsections (a) through (d) of this section.

(h) This order does not constrain the discretion of executive departments or agencies, pursuant to any relevant authority not described in this order, to:

(i) conduct inquiries with respect to an application or license;

(ii) communicate with any applicant, licensee, or other necessary party; or

(iii) negotiate, enter into, impose, or enforce contractual provisions with an applicant or licensee.

Sec. 11. *Implementation.* (a) Executive departments and agencies shall take all appropriate measures within their authority to implement the provisions of this order.

(b) The Department of Justice shall provide such funding and administrative support for the Committee as the Committee may require. The heads of executive departments and agencies shall provide, as appropriate and to the extent permitted by law, such resources, information, and assistance as required to implement this order within their respective agencies, including the assignment of staff to perform the duties described in this order. An Intelligence Community liaison designated by the Director of National Intelligence shall support the Committee, consistent with applicable law.

(c) Within 90 days from the date of this order, the Committee Members shall enter into a Memorandum of Understanding among themselves and with the Director of National Intelligence (or the Director's designee) describing their plan to implement and execute this order. The Memorandum of Understanding shall, among other things, delineate questions and requests for applicants and licensees that may be needed to acquire information necessary to conduct the reviews and assessments described in sections 5 and 6 of this order, define the standard mitigation measures developed in accordance with section 2(e) of this order, and outline the process for designating a Lead Member as described in section 4 of this order.

(d) The Chair, in coordination with the Committee Members and the Committee Advisors, shall review the implementation of this order and provide a report to the President on an annual basis that identifies recommendations for relevant policy, administrative, or legislative proposals.

Sec. 12. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

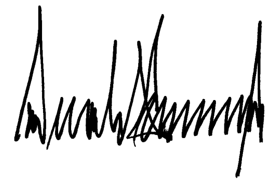
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals;

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) If any provision of this order, or the application of any provision to any person or circumstances, is held to be invalid, the remainder of this order and the application of any of its other provisions to any other persons or circumstances shall not be affected thereby.



THE WHITE HOUSE,
April 4, 2020.

[FR Doc. 2020–07530
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Rules and Regulations

Federal Register

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Wednesday, April 8, 2020

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 986

[Doc. No. AMS–SC19–0029, SC19–986–2 FR]

Pecans Grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas; Changes to Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the reporting requirements prescribed under the Federal marketing order regulating the handling of pecans. This action reduces the number of monthly reporting requirements, revises the requirements for inter-handler transfers, and makes other conforming changes to the reporting requirements.

DATES: Effective May 8, 2020.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or email: *Jennie.Varela@usda.gov* or *Christian.Nissen@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Agreement and Order No. 986, (7 CFR part 986), regulating the handling of pecans grown in the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas. Part 986 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The American Pecan Council (Council) locally administers the Order and is comprised of growers and handlers of pecans operating within the production area, and one accumulator and one public member.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this final 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).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the reporting requirements under the Order by reducing the number of monthly reports from six to three and revising the inter-handler report from a monthly to an annual report. This action also makes other conforming and clarifying changes to the reporting requirements. These changes will help reduce the regulatory burden on handlers by reducing reporting requirements. This action was unanimously recommended by the Council at its December 18, 2018, meeting.

Sections 986.75, 986.76, and 986.77 of the Order provide authority to the Council to require handlers to submit reports of inventory, merchantable pecans handled, and pecans received by handlers, respectively, on such dates as the Council may prescribe. Section 986.78 further provides, with the approval of the Secretary, authority for the Council to collect other reports and information from handlers needed to perform its duties.

Section 986.162 outlines the reporting requirements for inter-handler transfers, and § 986.175 establishes the requirements for the annual year-end inventory report. Section 986.177 prescribes the monthly reporting requirements for pecans received by handlers and for pecans purchased outside the United States. Section 986.178 includes requirements for a monthly report of shipments and inventory, a monthly report of exports, and a monthly report of pecans exported to Mexico for shelling to be returned to the United States.

During the promulgation of the Order, the data collection component was considered one of the most important aspects of the Order. Consequently, when discussing establishing reporting requirements, the Council wanted to ensure the data needed was being collected so valuable reports could be provided to the industry. The Council recommended the initial reporting requirements in 2017, which required handlers to submit six different reports each month and an annual report including pecans received, shipped, held in inventory, transferred, exported for sale or shelling, and purchased from outside the United States. To facilitate this information collection, the Council held handler information sessions throughout 2018 to explain the reporting process and gather feedback on which, if any, reports were difficult to complete.

At its December 18, 2018, meeting, the Council revisited the reporting requirements, reviewing feedback from the handler sessions. During the handler sessions, some industry members stated it was expensive and time consuming to submit accurate reports each month. Council staff also indicated that handlers were submitting incomplete and inaccurate reports, making it difficult to summarize the data and distribute accurate, timely statistical reports. It was also reported that Council staff were fielding calls daily regarding reporting requirements and the burden placed on handlers. The monthly inter-handler transfer report was also cited specifically as needing to be changed.

To address these concerns, the Council discussed ways to reduce the number of reporting requirements and to address the concerns surrounding the inter-handler transfer report. To accomplish this, the Council recommended combining four of the monthly reporting requirements into two, and converting the inter-handler transfer report from a monthly report into an annual report to reduce and simplify the reporting process. These changes would reduce the number of monthly reports from six to three.

The Council recommended combining the monthly report of pecans received and the report of shipments and inventory into one summary report. The report of pecans received currently includes handler information, the month covered by the report, the total weight and type of inshell pecans received, and the weight by variety of improved pecans received. The report also includes information regarding total assessments owed and total pounds reported to date. The report of shipments and inventory includes handler information, the month covered by the report, shipments of shelled and inshell pecans, current inventory, and pecans in inventory already committed for shipment.

In addition to combining the reports, the Council also recommended eliminating reporting pecans received by variety. Many handlers submit information on mixed loads, and found it burdensome, and in some cases impossible, to identify the variety of pecans received. Further, Council staff estimated over 76 percent of all pecans received cannot be identified by variety. Some varieties are also limited in use, so disclosing their tonnage would not be possible without potentially revealing proprietary information.

Handlers also expressed difficulty in understanding which reports applied to them and whether they needed to submit additional reports throughout the fiscal year. Consequently, the Council revised the summary report to include guidance that assists handlers in determining whether any other reports are necessary.

The Council agreed the information on pecans received could easily be combined with the report of shipments and inventory to create one monthly summary report. The Council believes this consolidated report will be easier for handlers to complete and still provide the necessary information.

Two other reports the Council agreed could be combined are the report of pecans purchased outside the United States and the report of pecans shipped to Mexico for shelling and then returned to the United States. The monthly report of pecans purchased outside the United States includes the name of the handler importing pecans, the month covered by the report, the date imported, country of origin, volume, and variety of pecans imported. The report of inshell pecans exported to Mexico for shelling includes handler information, the month covered by the report, dates of shipments, the total weight of inshell pecans shipped for shelling, and the weight of shelled pecans returned to the United States.

Initially, the Council recommended separate reports to ensure the import data collected was accurate. The industry was concerned import data available at the time was not accounting for domestic product sent to Mexico for processing then returned to the United States. Hence, it was difficult to estimate current supply. However, feedback from the industry indicated handlers could provide the necessary data to account for both foreign purchases and domestic product being shelled then returned from Mexico in a consolidated report rather than submitting two separate reports. Thus, the Council recommended combining these two reports.

The current inter-handler transfer report is submitted monthly. The report includes information on the month of transfer, type of pecans transferred, the volume transferred, the amount of assessments owed on the pecans transferred, handler information, and signatures of the two handlers involved. It also indicates if the transferring handler or receiving handler would be responsible for reporting and paying the assessments.

When established, the inter-handler transfer form was intended to relieve small handlers of the burden of reporting and submitting assessments by allowing them to transfer those requirements to a second handler purchasing the pecans. In practice, handlers have struggled to track the volume of all the shipments within a month, and often the forms submitted were incomplete or did not include both handler signatures.

Inter-handler transfers usually occur between the same two handlers throughout the year. Consequently, the Council recommended to simplify the process of meeting the inter-handler transfer requirements by establishing one report that would cover the transfers between the same two handlers for the whole fiscal year. Agreements between new handlers require submission of a new form with the Council.

The changes will require handlers to submit a report following the first transfer of the fiscal year. By filing the Inter-Handler Transfer Form with the Council, the receiving and transferring handlers establish an agreement that remains in effect for the entire fiscal year. The receiving and transferring handlers need to complete their portions of the form and file it annually with the Council. It also removes the requirement for the report to include the associated volume transferred. Instead, the volume associated with the inter-handler transfer will be reported by the receiving handler. Handlers will still maintain the option of designating who is responsible for paying the assessments on the pecans transferred, as currently authorized in § 986.162(a)(5). The Council expects the change to provide some reporting relief to small handlers and create a more efficient method of tracking transferred pecans.

Along with these changes, the Council recommended conforming and clarifying adjustments to the remaining two reporting forms in §§ 986.175 and 986.178. These changes include renumbering the forms to remain in sequential order, removing past dates that no longer apply, and updating terms to be consistent with the Order. The Council believes these revised reporting requirements are necessary to maintain compliance with the assessment requirements of the Order and provide accurate reports to the industry on the production and total supply of pecans.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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 or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 2,500 growers of pecans in the production area and approximately 250 handlers subject to the Order. Small agricultural growers are defined by the Small Business Administration as those having annual receipts less than $1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to information from the National Agricultural Statistics Service (NASS), the average grower price for pecans during the 2016–2017 season was $2.59 per pound and 269 million pounds were utilized. The value for pecans that year totaled $697 million ($2.59 per pound multiplied by 269 million pounds). Taking the total value of production of pecans and dividing it by the total number of pecan growers provides an average return per grower of $278,684. Using the average price and utilization information, and assuming a normal distribution among growers, the majority of growers receive less than $1,000,000 annually.

Evidence presented at the formal rulemaking hearing, held in 2015, indicated an average handler margin of $0.58 per pound. Adding this margin to the average grower price of $2.59 per pound of inshell pecans results in an estimated handler price of $3.17 per pound. With a total 2017 production of 269 million pounds, the total value of production in 2017 was $853 million ($3.17 per pound multiplied by 269 million pounds). Taking the total value of production of pecans and dividing it by the total number of pecan handlers provides an average return per handler of $3.4 million. Using this estimated price, the utilization volume, number of handlers, and assuming a normal distribution among handlers, the majority of handlers have annual receipts of less than $30,000,000. Thus, the majority of growers and handlers regulated by the Order may be classified as small entities.

This final rule revises the reporting requirements in the Order by reducing the number of monthly reports from six to three and revising the inter-handler report from a monthly to an annual report. This rule also makes other conforming changes to the reporting requirements. This final rule revises §§ 986.162, 986.175, 986.177, and 986.178. The authority for these actions is provided in §§ 986.75, 986.76, 986.77, and 986.78 of the Order.

It is not anticipated that this action will impose additional costs on handlers or growers, regardless of size. Handlers should see a savings in time and labor cost due to the reduced number of forms submitted each month. The change to an annual inter-handler transfer report in place of a monthly report will provide additional time savings to both handlers involved in the transaction. Council members, including those representing small businesses, recommended these changes in order to ease the reporting and regulatory burden on industry handlers. The benefits of this rule are expected to be equally available to all pecan growers and handlers, regardless of their size.

The Council discussed other alternatives to this action, including eliminating the inter-handler transfer option. However, removing the inter-handler transfer option from the Order could involve a lengthy process. Also, the inter-handler transfer was supported during promulgation of the marketing order as a way to ease reporting burdens on small businesses.

Another alternative considered was leaving the current reporting requirements unchanged. When the current requirements were established, the Council was eager to collect as much data as possible. Despite considerable industry outreach, many handlers had difficulty meeting the reporting requirements. The Council believed it must respond to the issues raised by handlers and address the extensive resources being used by its staff to help handlers comply with the reporting requirements in the Order. Therefore, the alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0291 Federal Marketing Order for Pecans. This final rule will require changes to the Council's existing forms by combining forms and shifting one form from a monthly report to an annual report. Modifying the forms as indicated will decrease the burden on pecan handlers required to complete the forms and enhance Board efficiencies related to information collection. The revised forms have been submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS 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.

Further, the Council's meetings were widely publicized throughout the pecan industry and all interested persons were invited to attend the meetings and participate in Council deliberations on all issues. Additionally, the Council's meeting held on December 18, 2018, was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on November 20, 2019, (84 FR 64028). Copies of the rule were sent via email to Council members and known pecan handlers. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending December 20, 2019, was provided to allow interested persons to respond to the proposal.

During the comment period, five comments were received in response to the proposal. Of the comments received, two fully supported the regulation as proposed, one was in support but requested changes to the proposal, one was opposed, and one questioned the need to make the proposed changes.

The three commenters supporting the regulation stated that the recommended changes would simplify the reporting process for handlers. One comment mentioned the changes would support industry compliance and the long-term management of pecans. Another mentioned the consolidation of the reports would increase accurate reporting and efficiency.

One comment received expressed opposition to all the changes in the proposed action. The comment recommended that the Council maintain their current reporting requirements because consolidating the forms would cause a compromise of important data. In 2017, the Council initially recommended the reporting requirements to collect valuable industry data. Once the forms were implemented, both staff and industry members realized handlers were having trouble keeping up with multiple reports each month. As previously stated, the Council reviewed the feedback from handlers and staff and determined the necessary information could be collected in fewer reports.

The only data points being eliminated by this action are volumes by variety, which handlers indicated were nearly impossible to accurately report due to the prevalence of mixed loads; and inter-handler transfer volumes, which the industry expressed were not valuable in decision-making. As such, this action will allow the Council to continue collecting relevant information by converting four of the monthly reporting requirements into two, and converting the inter-handler transfer report form a monthly report into an annual report. This action will simplify the reporting process by reducing the number of monthly reports from six to three, which will benefit handlers.

Two of the comments submitted, one with partial support and one in opposition, raised concerns regarding the proposed changes to the inter-handler transfer report. One commenter stated the proposed action would lead to inaccurate information and records. The other added that reducing the frequency of the inter-handler report was insufficient to accurately track and collect necessary data for industry members. Both comments recommended the Council consider quarterly or bi-annual reporting as an alternative to the proposal.

The Council considered all of these alternatives when reviewing the reporting requirements. The inter-handler transfer form was initially intended to relieve the reporting burden on small handlers. Industry members suggested, and the Council agreed, the annual report will still achieve this goal. Industry feedback indicated that transfers normally occur between the same two handlers throughout the year. This action requires handlers to submit a report following the first transfer of the fiscal year and will remain in effect for the entire fiscal year. Agreements between new handlers will require submission of a new form with the Council. Reporting transferred volume was intended to aid in the collection of assessments, not for its value in reporting to the industry. The new report eliminates the need to track multiple transfers between the same parties. As such, this action will provide reporting relief to small handlers and create administrative efficiencies in collecting assessments.

One last commenter took no position on the proposed changes, but rather questioned if changing the reporting requirements would result in a significant enough change to justify the process. The benefits of this action will help reduce the regulatory burden on all handlers by reducing the number of reports submitted and eliminating details that were burdensome to track and not highly valuable to the industry. This action reduces the number of monthly reports from six to three and revises the inter-handler report from a monthly to an annual report. This action will also make other conforming and clarifying changes to the reporting requirements so the requirements and the corresponding information provided meets the needs of the industry.

Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Council and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 986

Marketing agreements, Nuts, Pecans, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 986 is amended as follows:

PART 986—PECANS GROWN IN THE STATES OF ALABAMA, ARKANSAS, ARIZONA, CALIFORNIA, FLORIDA, GEORGIA, KANSAS, LOUISIANA, MISSOURI, MISSISSIPPI, NORTH CAROLINA, NEW MEXICO, OKLAHOMA, SOUTH CAROLINA, AND TEXAS

■ 1. The authority citation for 7 CFR part 986 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 986.162 to read as follows:

§ 986.162 Inter-handler transfers.

(a) Inter-handler transfers of inshell pecans, pursuant to § 986.62, shall be reported to the Council on APC Form 4. Handlers shall file reports by the tenth day of the month following the first transfer between two handlers. Should the tenth day of the month fall on a weekend or holiday, reports are due by the first business day following the tenth day of the month. This report must be renewed each fiscal year. The report shall contain the following information:

(1) The fiscal year covered by the report;

(2) The names and signatures for both the transferring and receiving handler; and

(3) Handler assuming the reporting and assessment obligations on the pecans transferred.

(b) [Reserved]

■ 3. Amend § 986.175 by revising paragraph (a) introductory text to read as follows:

§ 986.175 Handler inventory.

(a) Handlers shall submit to the Council a year-end inventory report following August 31 each fiscal year. Handlers shall file such reports by September 10. Should September 10 fall on a weekend, reports are due by the first business day following September 10. Such reports shall be reported to the Council on APC Form 5 and include:

* * * * *

§ 986.177 [Amended]

■ 4. Amend § 986.177 by:

■ a. Revising paragraphs (a) introductory text and (a)(3) and (4);

■ b. Removing the period at the end of paragraph (a)(5) and adding a semicolon in its place;

■ c. Adding paragraphs (a)(6) through (10);

■ d. Revising paragraph (b) introductory text;

■ e. Removing ''and,'' from the end of paragraph (b)(4);

■ f. Removing the period at the end of paragraph (b)(5) and adding a semicolon in its place; and

■ g. Adding paragraphs (b)(6) through (9).

The revisions and additions read as follows:

§ 986.177 Reports of pecans received by handlers.

(a) *Summary report.* Handlers shall submit to the Council, by the tenth day of the month, a summary report of inshell domestic pecans received, and all shipments, inventory, and committed inventory for pecans following the month of activity. Should the tenth day of the month fall on a weekend or holiday, reports are due by the first business day following the tenth day of the month. The report shall be submitted to the Council on APC

Form 1 and contain the following information:

* * * * *

(3) The total weight and type of inshell pecans received during the reporting period;

(4) The total weight and type of inshell pecans received year to date;

* * * * *

(6) The weight of all shipments of pecans, inshell and shelled, and inter-handler transfers shipped and received during the reporting period;

(7) The weight of all shipments of pecans, inshell and shelled, and inter-handler transfers shipped and received in the previous month and year to date;

(8) Total inventory held by handler;

(9) All the inventory committed (pecans not shipped, but sold or otherwise obligated) whether for domestic sale or export; and,

(10) The weight of all shelled or inshell pecans under contract for purchase from other handlers.

(b) *Pecans purchased outside the United States and inshell pecans exported to Mexico for shelling and returned to the United States as shelled meats.* Handlers shall submit to the Council, by the tenth day of the month following the month of activity, a summary report of shelled and inshell pecans imported during the preceding month. Should the tenth day of the month fall on a weekend or holiday, reports are due by the first business day following the tenth day of the month. The report shall be submitted to the Council on APC Form 2 and contain the following information:

* * * * *

(6) The weight of inshell pecans exported to Mexico for shelling;

(7) The date shelled pecans returned to the United States after shelling in Mexico;

(8) The weight of shelled pecans returned to the United States after shelling in Mexico; and

(9) The total weight of inshell pecans exported to Mexico for shelling, and shelled pecans returned from Mexico, year to date.

■ 5. Amend § 986.178 by revising paragraph (a) to read as follows:

§ 986.178 Other reports.

(a) *Exports by country of destination.* Handlers shall submit to the Council, by the tenth day of the month following the month of shipment, a report of exports. Should the tenth day of the month fall on a weekend or holiday, reports are due by the first business day following the tenth day of the month. The report shall be reported to the Council on APC Form 3 and contain the following information:

(1) The name and address of the handler;

(2) The month covered by the report;

(3) The total weight of pecans shipped for export, whether inshell, shelled, or substandard during the reporting period;

(4) The total weight of pecans shipped for export, whether inshell, shelled, or substandard during the previous period and year to date; and,

(5) The destination(s) of such exports.

* * * * *

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–06619 Filed 4–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1779

Rural Housing Service

7 CFR Part 3575

Rural Business-Cooperative Service

7 CFR Part 4287

Rural Development Guarantee Loan Servicing Flexibilities To Address Coronavirus 2019 Impacts

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, USDA.

ACTION: Notification.

SUMMARY: The Rural-Business Cooperative Service (RBCS), Rural Housing Service (RHS), and Rural Utilities Service (RUS) agencies of the Rural Development mission area, hereinafter referred to as Agency, issued a notification in the **Federal Register** on March 31, 2020, that allows lenders with guaranteed loans with the Agency to unilaterally offer payment deferrals for the period specified in the notice to their customers who may be experiencing temporary cash flow issues due to the Coronavirus (COVID–19) pandemic. This notification supplements the prior notification and includes additional servicing flexibilities regarding Agency guaranteed loan requirements as they relate to the new loans that are covered by Section 1102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

DATES: The policies included in this notification are effective as of March 31, 2020, and the temporary authorization expires on September 30, 2020.

FOR FURTHER INFORMATION CONTACT:

• Guarantee Lenders may contact the following Rural Development points of contact: RBCS, Aaron Morris, Director, Program Processing Division, 202–720–1501, *Aaron.Morris@usda.gov*; for RHS, Deborah Jackson, Director, Guaranteed Loan Processing and Servicing Division, 202–720–8454, *Deborah.Jackson2@usda.gov*; for RUS, Darrel Lipscomb, Water and Environmental Programs, 202–617–0857, *Darrel.Lipscomb@usda.gov.*

• Borrowers with a loan guaranteed by Rural Development must contact their servicing Guarantee Lender for further information.

SUPPLEMENTARY INFORMATION: Through this notification Rural Development expands servicing flexibilities on four guaranteed loan programs to enable lenders to better assist rural business, water, and community facility borrowers in responding to the economic impacts of the COVID–19 pandemic.

Lender Deferrals on Loan With USDA Guarantees

On March 31, 2020, the Agency announced in the **Federal Register** at 85 FR 17721 that beginning March 31, 2020, and through September 30, 2020, the USDA Business and Industry (B&I) Guaranteed Loan Program, Rural Energy for America Program (REAP), Community Facilities Guaranteed Loan Program, and Water and Waste Guaranteed Program lenders may assist borrowers experiencing temporary cash flow issues resulting from the COVID–19 pandemic, by deferring payments for a period no longer than 180 days from the date the original payment is due. In accordance with 7 CFR 4287.107 (RBCS),7 CFR 3575.69 (RHS), and 7 CFR 1779.69 (RUS), the lender is responsible for servicing the entire loan and for taking all servicing actions that a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed.

The lender must notify the Agency in writing of any payment deferments. Written notification to the Agency will meet the standard for concurrence until September 30, 2020. After September 30, 2020, lenders must resume obtaining Agency approval in accordance with all applicable program regulations, forms, and existing authorities. This guidance applies to all borrowers that had a current repayment status as of January 31, 2020.

If the loan has been sold on the secondary market, the secondary market holder and lender must agree to the deferment actions being taken. The Agency will expect a written deferral agreement signed by both parties in these instances prior to executing any payment deferral action. A copy of the deferral agreement must be provided to the Agency.

The Agency does not consider a loan that is under a deferral or forbearance agreement to be a delinquent loan. Unpaid interest accruing during a deferral or forbearance agreement is not subject to the limitation of the guarantee of accrued interest under 7 CFR 4287.145(d) (RBCS),7 CFR 3575.3 (RHS), nor 7 CFR 1779.3 (RUS).

Lender Notification of Loans Under the CARES Act (Pub. L. 116–136)

This notification expands upon the deferral flexibilities announced in the March 31, 2020, **Federal Register** notification by providing that lenders may also approve and make covered loans under the provisions of Section 1102 of the CARES Act.

The lender must notify the Agency in writing of any covered loans made under Section 1102 of the CARES Act. Written notification to the Agency will meet the standard for concurrence until September 30, 2020. After September 30, 2020, lenders must resume obtaining Agency approval in accordance with all applicable program regulations, forms, and existing authorities.

Bette B. Brand,

Deputy Under Secretary, Rural Development.

[FR Doc. 2020–07487 Filed 4–6–20; 4:15 pm]

BILLING CODE 3410–XY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0207; Product Identifier 2020–NM–008–AD; Amendment 39–19884; AD 2020–06–15]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Fokker Services B.V. Model F28 Mark 0100 airplanes. This AD was prompted by a report of a crack found in the inboard boom of the left-hand frame at fuselage station (STA) 17011. This AD requires a detailed inspection of the fuselage at STA 17011 for any cracking, repair if necessary, and a reporting requirement, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective April 23, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 23, 2020.

The FAA must receive comments on this AD by May 26, 2020.

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 *https://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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material 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 in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0207.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0207; 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 AD, 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: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *Tom.Rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0002, dated January 8, 2020 (''EASA AD 2020–0002'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Fokker Services B.V. Model F28 Mark 0100 airplanes.

This AD was prompted by a report of a crack found in the inboard boom of the left-hand frame at fuselage STA 17011. The FAA is issuing this AD to address cracking at the fuselage station, which could reduce resistance to fatigue and possibly affect the structural integrity of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0002 describes procedures for a detailed inspection and repair for cracking of the fuselage at STA 17011. This material 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 referenced above. The FAA is issuing this AD because the FAA evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in the service information described previously, as incorporated by reference. This AD also requires sending the inspection results to Fokker.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0002 is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA AD 2020–0002 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2020–0002 that is required for compliance with EASA AD 2020–0002 is available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0207.

FAA's Justification and Determination of the Effective Date

Since there are currently no domestic operators of these products, notice and opportunity for public comment before issuing this AD are unnecessary. In addition, for the reason stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not precede it by notice and opportunity for public comment. The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0207; Product Identifier 2020–NM–008–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this AD. The FAA will consider all comments received by the closing date and may amend this AD based on those comments.

The FAA will post all comments, without change, to *https://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 AD.

Differences Between This AD and the MCAI

Where paragraph (2) of EASA AD 2020–0002 requires accomplishing the corrective action ''before next flight, or before exceeding the fly-on time (if any) provided by Fokker Services, as applicable,'' this AD requires that cracking must be repaired before further flight. The FAA has determined that, because of the safety implications and consequences associated with that cracking, any cracked fuselage frame must be repaired or modified before further flight.

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA may consider further rulemaking at that time.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product
3 work-hours × $85 per hour = $255	$0	$255

* Table does not include estimated costs for reporting.

The FAA estimates that it takes about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $85 per product.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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.

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–06–15 Fokker Services B.V.: Amendment 39–19884; Docket No. FAA–2020–0207; Product Identifier 2020–NM–008–AD.

(a) Effective Date

This AD becomes effective April 23, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F28 Mark 0100 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0002, dated January 8, 2020 ("EASA AD 2020–0002").

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report of a crack found in the inboard boom of the left-hand frame at fuselage station (STA) 17011. The FAA is issuing this AD to address cracking at the fuselage station, which could reduce resistance to fatigue and possibly affect the structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0002.

(h) Exceptions to EASA AD 2020–0002

(1) Where EASA AD 2020–0002 refers to its effective date, this AD requires using the effective date of this AD.

(2) The "Remarks" section of EASA AD 2020–0002 does not apply to this AD.

(3) Where paragraph (2) of EASA AD 2020–0002 requires accomplishing the corrective action "before next flight, or before exceeding the fly-on time (if any) provided by Fokker Services, as applicable," this AD requires that the corrective action be accomplished before further flight.

(4) Paragraph (3) of EASA AD 2020–0002 specifies to report inspection results to Fokker Services B.V. within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(4)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *Tom.Rodriguez@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0002, dated January 8, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2020–0002, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material 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. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0207.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on March 22, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–07343 Filed 4–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2020–0033]

Drawbridge Operation Regulation; Rainy River, Rainy Lake and Their Tributaries, Ranier, MN

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard authorizes the Canadian National Railroad Bridge, mile 85.0, across the Rainy River to operate remotely. The bridge owner made the request. This temporary deviation will test the remote operations with tenders onsite, and will not change the operating schedule of the bridge.

DATES:

Effective date: This deviation is effective from midnight on May 1, 2020 to midnight on October 15, 2020.

Comment date: Comments and relate material must reach the Coast Guard on or before October 16, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0033 using Federal eRulemaking Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

Rainy River and Rainy Lake serve as the border between the United States of America and Canada. The Canadian National bridge is a single leaf bascule type railroad bridge that provides a horizontal clearance of 125 feet. The water level on Rainey Lake and under the bridge is controlled by a hydro-electric dam facility at International Falls, Minnesota. Charted datum is based on the water level surface of Rainy Lake. When the gauge at Fort Frances, Canada reads 1107.0 feet, it results in a variable vertical clearance of 6 to 10 feet in the closed position. The railroad bridge carries significant train traffic across the international border and is the customs port of entry. The drawbridge currently operates under title 33 of the Code of Federal Regulation (CFR), § 117.664.

Prior to March 2011, the Canadian National Bridge was remotely operated without authorization from the District Commander and the railroad failed to operate the bridge in a manner that supported good stewardship of the waterway. After review of the complaints, meetings with the town mayor, and after inquiries from the office of the Honorable Senator James Oberstar, the District Commander ordered the bridge owner to reinstate drawtenders at the bridge by March 2011.

The bridge owner has requested to resume remote operations at the bridge after operating the bridge without complaint for seven boating seasons.

Several trains cross the bridge daily traveling from a Canadian train control district to a United States train control district and must stop at the United States port of entry to debark Canadian train crews and embark United States train crews and vice versa, depending on direction of travel. The train is also inspected prior to entering the United States.

Most of the vessels in the area are Customs and Border Protection patrol boats, houseboats, and other runabouts. Unpowered sail and paddle craft will pass through the bridge if the current is slow. Eight vessels on average request bridge openings each year.

The test schedule will run from midnight on May 1, 2020 to midnight on October 15, 2020. During this test schedule, the bridge will operate remotely with tenders at the bridge to monitor the effectiveness of the remote equipment. The length of the test deviation is necessary to allow all seasonal residents the opportunity to comment on the operations of the bridge. The bridge operates several cameras, a 2-way public address system, and a VHF–FM Marine Radio that monitors channel 16. The bridge owner will continue to maintain a drawtender's log and provide those logs at the end of the test deviation. Vessels able to safely pass under the bridge without an opening may do so at any time.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. 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 *https://www.regulations.gov.* If your material cannot be submitted using *https://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 submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018). All public comments will be in our online docket at *https://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.

D.L. Cottrell,

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

[FR Doc. 2020–06822 Filed 4–7–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2020–0034]

Drawbridge Operation Regulation; Chicago River, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard authorizes the Amtrak Railroad Bridge, mile 3.77, across the South Branch of the Chicago River, to be operated remotely and establish an intermediate opening position. The request was made by the bridge owner. This test deviation will test if the intermediate position improves vessel flow through the river. The bridge will continue to open on signal for commercial and recreational vessels.

DATES:

Effective date: This deviation is effective from midnight on June 1, 2020 to midnight on September 1, 2020.

Comment date: Comments and relate material must reach the Coast Guard on or before September 2, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0034 using Federal eRulemaking Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background, Purpose, and Legal Basis

The Amtrak Railroad Bridge, mile 3.77, over the South Branch of the Chicago River provides a vertical clearance of 10 feet in the closed position and 65 feet in the open position based on International Great Lakes Datum of 1985 (IGLD85). The bridge opens an average of twelve times a day for vessels. An average of 150,000 rail commuters cross the bridge daily along with freight and other passenger trains. The South Branch of the Chicago River is part of a network of waterways that allows vessels to travel from Chicago, IL to New Orleans, LA. Cook County, IL, described the Chicago River as the fifth largest port in the United States, hosting commercial vessels over 300 tons, recreational power and sailing vessels, several passenger vessels, water taxies, paddle boats, and various paddle craft. With the exception of the Amtrak Bridge, vessels can pass under all the bridges in the Chicago metropolitan area without an opening.

In accordance with general bridge regulations found in 33 CFR 117.5, a drawbridge must open promptly and fully when signaled to open. Not every vessel needs the Amtrak Bridge to open to the full 65 feet and we believe the test deviation will show the Amtrak Bridge can open half way and allow most vessels to pass. Vessels that need a full opening can request it without advance notice. We believe that opening to an intermediary position will increase the bridge availability by 50% to both rail and vessels. It was recently discovered the remote operations of the Amtrak Bridge has not been included in the current regulation; but has been operating without concerns from the maritime community. The drawbridge currently operates under title 33 of the Code of Federal Regulation (CFR), § 117.391.

The test deviation is necessary to allow the public to observe the bridge in operation and allow the permanent and seasonal residents of the area the opportunity to comment on the operation of the bridge in the intermediate position. The test schedule will run from midnight on June 1, 2020 to midnight on September 1, 2020.

The bridge owner will continue to maintain a drawtender's log and provide those logs at the end of the test deviation. Vessels able to safely pass under the bridge without an opening may do so at any time and vessels may request a full opening without advance notice.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. 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 comments 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 *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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.

D.L. Cottrell,

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

[FR Doc. 2020–06823 Filed 4–7–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AD38

Land Uses; Special Uses; Streamlining Processing of Communications Use Applications

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture is issuing this final rule to implement the Agriculture Improvement Act of 2018, providing for streamlining the Agency's procedures for evaluating applications to locate or modify communications facilities on National Forest System (NFS) lands.

DATES: This rule is effective April 8, 2020.

ADDRESSES: Information on this final rule may be obtained via written request addressed to the Director, Lands and Realty Management, USDA Forest Service, 201 14th Street, Washington, DC 20250–1124 or by email to *SM.FS.WO_LandStaff@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Joey Perry, Lands Staff, 707–441–3569 or *joey.perry@usda.gov.* Individuals who use telecommunication devices for the deaf may call the Federal Relay Service at 800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2018, the President signed the Agriculture Improvement Act of 2018 (the Farm Bill). Title VIII, Subtitle G, section 8705, of the Farm Bill requires the Forest Service to issue regulations that streamline the Agency's procedures for evaluating applications to locate or modify communications facilities on NFS lands.

The Forest Service is responsible for managing NFS lands that are adjacent to rural and urban areas. The Forest Service authorizes the occupancy and use of NFS lands for communications facilities (buildings, towers and ancillary improvements) and fiber optic lines, which provide critical communications services, including television, radio, cellular services, emergency services and broadband, to these areas. The Forest Service administers over 3,700 special use authorizations for communications uses at 1,530 communications sites and more than 400 communications use authorizations for fiber optic lines on NFS lands.

The Secretary of Agriculture's Rural Prosperity Task Force Report of 2017 identified connecting rural communities across the United States as a strategic priority for USDA because ''[i]n today's information-driven global economy, e-connectivity is not simply an amenity—it has become essential.''

On January 8, 2018, the President signed Executive Order 13821, *Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America,* which states that ''Americans need access to reliable, affordable broadband internet service to succeed in today's information-driven, global economy'' (83 FR 1507). The Executive Order directs Federal agencies ''to use all viable tools to accelerate the deployment and adoption of affordable, reliable, modern high-speed broadband connectivity to rural America. . . .'' *Id.* Agencies are encouraged to reduce barriers to capital investments, remove obstacles to broadband services, and more efficiently employ Government resources. *Id.*

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, as amended by section 606(a), division P, Consolidated Appropriations Act, 2018, also known as the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (MOBILE NOW Act), codified at 47 U.S.C. 1455(b)(3), requires the Forest Service within 270 days of receipt of an application for a communications facility or a communications use to grant or deny the application and to notify the applicant of the grant or denial.

Summary of Public Comments and Responses

Overview

On September 25, 2019, the Forest Service published a proposed rule implementing part of section 8705 in the **Federal Register** (84 FR 50703) with a 60-day comment period ending November 25, 2019. The Agency sought public comment on amending its regulations to implement the part of section 8705 providing for streamlining the Agency's procedures for evaluating applications to locate or modify communications facilities on NFS lands.

As discussed in the **Federal Register** notice for the proposed rule, existing Forest Service regulations at 36 CFR 251.54(g) and existing Forest Service directives in Forest Service Handbook (FSH) 2709.11, Chapter 10, already implement the provisions in sections 8705(b)(1) through (b)(3) and (c)(4) regarding procedures for evaluating and granting applications for communications uses in a uniform, standardized manner that is competitively and technologically neutral and non-discriminatory and regarding streamlining evaluation of applications for communications uses on previously disturbed NFS lands. Proposed revisions to the Forest Service's NEPA regulations at 36 CFR part 220 (84 FR 27544) would further streamline evaluation of communications use applications. In addition, the Forest Service will be publishing proposed revisions to its directives at FSH 2709.11, Chapter 90, to further implement the streamlining provisions in section 8705. The Forest Service will publish a subsequent notice in the **Federal Register** for a proposed rule to implement section 8705(c)(3)(B), which requires regulations to implement a new programmatic administrative fee for communications use authorizations to cover the costs of administering the Forest Service's communications site program.

The Forest Service received 8 written comments on the proposed rule providing for streamlining the Agency's procedures for evaluating applications to locate or modify communications facilities on NFS lands. With one exception, all respondents supported the proposed rule. One respondent provided comments that were outside the scope of the proposed rule. Comments within the scope of the proposed rule addressed a range of topics primarily in the following areas: the communications site mapping tool, communications use application tracking system, compliance with the National Environmental Policy Act and MOBILE NOW Act, communications use application and authorization process and co-location requirements, 30-year term for communications use authorizations, processing fees, and technical requirements for communications uses.

General Comments

Respondents generally supported the Forest Service's efforts to amend its regulations to streamline the application and authorization process for locating communications facilities on NFS lands.

Comment: One respondent expressed appreciation of ongoing efforts by the Forest Service to develop an online mapping tool for communications sites on NFS lands.

Response: The Department believes the online mapping tool is an important component of the Forest Service's communications site program and will provide existing authorization holders and future applicants with important information about areas of NFS lands that are developed and available for wireless communications uses. The map viewer was launched in October 2019 and is available at *https://www.fs.usda.gov/managing-land/special-uses/commsitemapviewer.*

Comment: Several respondents recommended that the Forest Service implement a transparent, web-based filing, tracking, monitoring, and reporting platform for applications to locate or modify communications facilities on NFS lands. One respondent suggested that this type of system would further partnerships and collaboration with the Forest Service and would establish clear expectations regarding meeting the timeframe for granting or denying a communications use application under the MOBILE NOW Act.

Response: The Department agrees that a web-based filing, tracking, monitoring, and reporting tool would help the Forest Service deliver the level of customer service that the Agency strives to provide. The Forest Service has undertaken modernization efforts of its entire special uses program, which includes communications uses. The Forest Service has implemented an e-permitting pilot for two of the less complex types of special uses. Implementation of e-permitting for communications uses is under consideration. The e-permitting portal would allow for a proponent to file a proposal and track its progress through acceptance as an application. The Forest Service is committed to developing a more robust web-based system. However, with its current program funding levels and staffing shortage, the Agency is constrained by the limited ability of its existing internal database. The Forest Service has developed an internal report for tracking the status of communications use applications and will utilize the report at all levels of the Agency to ensure the requirements of section 8705 of the Farm Bill are met.

Comment: One respondent commented on the difference between the phrase, ''receipt of a duly filed application,'' in the MOBILE NOW Act versus the phrase, ''acceptance of a proposal as an application for a new communications facility,'' in the proposed rule. The respondent expressed concern that adding the phrase, ''acceptance of a proposal,'' to the regulation could delay the start of processing and frustrate the congressional purpose for the processing timeline. Additionally, the respondent raised concerns about some national forests having an ''open season'' during which they allow special use proposals to be submitted and then determine which proposals to accept as applications. This respondent stated that in order to prevent this practice from being applied to communications use applications, the phrase ''acceptance of a proposal'' should be replaced with the phrase ''receipt of an application.'' The respondent further stated that it was unclear what is required for a proposal to be accepted as an application. The respondent stated that if the ''acceptance of a proposal'' language is included in the final rule, the rule should provide guidance regarding the requirements for acceptance of a proposal and the requirements for the content of an application. Another respondent suggested that the Forest Service adopt an initial timeframe for reviewing an application and advise the applicant if additional information is necessary. The respondent recommended a 30-day timeframe for that purpose.

Response: The MOBILE NOW Act requires Federal agencies within 270 days of receipt of an application for a communications facility or a communications use to grant or deny the application and notify the applicant of the grant or denial. The Department is integrating the 270-day timeframe for responding to applications for communications facilities and communications uses with the requirements in the Forest Service's regulations and directives governing special use proposals and applications. In accordance with Forest Service regulations and directives at 36 CFR 251.54(g) and Forest Service Handbook (FSH) 2709.11, Chapter 10, section 11.22, paragraph 1, and section 11.24, a special use proposal is not accepted as an application until it passes initial and second-level screening. The initial and second-level screening criteria are found at 36 CFR 251.54(e)(1) and (5) and FSH 2709.11, Chapter 10, sections 12.21 and 12.32. The 270-day timeframe will begin upon acceptance of an application for a proposed communications facility or proposed communications use in accordance with 36 CFR 251.54(g)(1). The 270-day timeframe is also triggered upon receipt of proposals for modifications to existing communications facilities under 36 CFR 251.61 and applications for a new authorization for existing communications facilities under 36 CFR 251.64(b). These proposals are not subject to initial and second-level screening and are immediately accepted as applications upon submission. However, these proposals must meet the requirements in FSH 2709.11, Chapter 10, section 11.2, paragraph 2.

Existing Forest Service directives at FSH 2709.11, Chapter 10, section 12.12, state that the authorized officer must, within 60 calendar days of receipt of a proposal, review the proposal and advise the proponent as to whether the Forest Service will accept the proposal as a formal application or deny the proposal based on initial or second-level screening criteria. The 60-day review period does not include periods in which the authorized officer is waiting for additional information from the proponent or a governmental entity that is needed to complete review of a proposal. The 60-day period may be extended in rare situations involving complex proposals. The Forest Service's existing regulations and directives comply with congressional intent by providing a uniform and standard process for reviewing proposals, accepting applications, and authorizing the use and occupancy of NFS lands. With certain exceptions, such as when an opportunity is competitively offered through issuance of a prospectus, the Forest Service does not condone restricting acceptance of proposals for use and occupancy of NFS lands to specified time periods. Unless subject to these exceptions, a proposal for use and occupancy of NFS lands may be submitted at any time.

Existing Forest Service regulations at 36 CFR 251.54(a) require those proposing a use or occupancy of NFS lands, including proposed communications uses, to contact the Forest Service office responsible for management of the affected lands as early as possible. This pre-proposal meeting gives the Forest Service an opportunity to discuss the proposed use or occupancy with the proponent and any initial concerns the Agency may have or requirements the proponent should be aware of. Existing Forest Service regulations at 36 CFR 251.54(d) specify requirements and procedures for special use proposals, such as the proponent's technical and financial capability and a project description. In addition, existing Forest Service regulations at 36 CFR 251.54(e)(3) specify that for proposed uses that meet the minimum requirements, the authorized officer is required, to the extent practicable, to provide further guidance and information, such as possible land use conflicts, application procedures, applicable processing and monitoring fees, other permit or clearance requirements, environmental and management considerations, and other special conditions. Furthermore, existing Forest Service regulations at 36 CFR 251.54(g) provide direction for acceptance and processing of special use applications, including applications for communications uses.

Forest Service regulations at 36 CFR 251.58(c)(7) and Forest Service directives at FSH 2709.11, Chapter 20, section 21.11d, establish customer service standards for processing special use applications, including applications for communications facilities and uses, that are subject to processing fees. Specifically, for applications that take 50 hours or less to process and that are subject to a categorical exclusion from documentation in an environmental assessment (EA) or environmental impact statement (EIS), the Forest Service endeavors to process the application within 60 calendar days of the date of receipt of the processing fee. If the application cannot be processed within that 60-day period, the authorized officer must notify the applicant in writing prior to the 30th calendar day of that period of the reasons for the delay and a projected date for completion of processing. For all other applications, including those that require an EA or an EIS, the authorized officer must, within 60 calendar days of acceptance of the application, notify the applicant in writing of the anticipated steps that will be needed to process the application.

Comment: Several respondents supported the standard 30-year term for communications use authorizations. Multiple respondents stressed the importance of the standard 30-year term for providing greater long-term certainty and greater incentive to invest at communications sites. One respondent requested more information on when a shorter term would be warranted. Additionally, one respondent recommended that the Forest Service also provide for automatic renewal of communications use authorizations every 10 years.

Response: The Department agrees that the standard 30-year term for communications use authorizations will provide greater long-term certainty for those constructing, operating, and maintaining communications facilities on NFS lands; may provide greater incentive to invest at communications sites on NFS lands; and may facilitate lending for improvements at communications sites on NFS lands. The standard 30-year term for communications use authorizations will also reduce the backlog of expired authorizations and workload on Forest Service personnel, since communications use authorizations will be issued less frequently.

Forest Service authorized officers will retain the authority to issue a communications use authorization for less than 30 years. These situations should be infrequent and should be based on documented case-specific circumstances that warrant a shorter term, such as when a decision has been made to convert the area where a communications facility is located to a higher public purpose or when a communications facility or use is needed only for a limited period.

Forest Service communications use authorizations expire at the end of their term and are not renewable. To replace an expiring authorization, an application for a new authorization must be submitted in accordance with the terms and conditions of the existing authorization. Requiring submission of an application for a new authorization upon expiration provides an opportunity for the authorized officer to make a determination as to whether the use and occupancy to be authorized by the new authorization are still consistent with the standards and guidelines in the applicable land management plan, are still being utilized as originally authorized, and are being operated and maintained in accordance with all the provisions of the authorization, per existing Forest Service regulations at 36 CFR 251.64. Additionally, the authorized officer may prescribe new terms and conditions when the new authorization is issued, per 36 CFR 251.64. Having the ability to make these assessments and include new terms and conditions as needed are critical management tools for the Forest Service that strengthen the Agency's ability to effectively manage NFS lands.

Comment: One respondent requested clarification on the amount of processing fees a governmental agency must pay when applying for a special use authorization for a communications facility or a communications use.

Response: Section 8705(c)(3) of the Farm Bill requires the Department to issue regulations that include a structure of fees for submitting a communications use application based on the cost to the Forest Service of considering that type of application and issuing communications use authorizations based on the cost to the Forest Service of any maintenance or other activities required to be performed by the Forest Service as a result of the location or modification of the communications facility.

The statutory requirements in section 8705(c)(3) are reflected in § 251.58(c) of the Forest Service's existing regulations and FSH 2709.11, Chapter 20, of the Agency's existing directives, which establish procedures for assessing processing fees to recover the Agency's costs incurred in evaluating special use applications and issuing special use authorizations, including communications use applications and authorizations. State, local, and tribal governmental entities are not exempt from paying processing and monitoring fees. As noted in 36 CFR 251.58(g), Federal agencies are exempt from cost recovery fees only if they are applying for or conducting a use or activity that is not authorized by the Federal Land Policy and Management Act (FLPMA) or the Mineral Leasing Act (MLA). Federal agency applications and authorizations for uses and activities authorized by FLMPA or the MLA are subject to processing and monitoring fees. Communications uses are authorized under FLPMA. Therefore, Federal agencies are not exempt from processing fees for communications uses.

The Forest Service will publish a subsequent notice of a proposed rule in the **Federal Register** to implement the programmatic administrative fee as required by section 8705(c)(3)(A) of the Farm Bill.

Comment: One respondent suggested that the Forest Service consider implementing a reasonable timeframe for completing documentation of a categorical exclusion for special use authorizations. Another respondent believed there were citation errors in the proposed rule for communications facilities and uses, specifically, in the citations to the expanded and new categorical exclusions for special use authorizations.

Response: The Forest Service is committed to the goals of making project decisions in a timely manner and improving or eliminating inefficient processes. The proposed new categorical exclusion for special use authorizations, to be codified at 36 CFR 220.5(d)(11), would not require a project or case file and decision memo, so the Forest Service anticipates that its review for this categorical exclusion would be conducted expeditiously to the extent permitted by the circumstances of the proposed use. Although a project or case file and decision memo are required for the proposed expanded categorical exclusion for special use authorizations, to be codified at 36 CFR 220.5(e)(3), the Agency anticipates that reviews for this categorical exclusion also typically could be conducted expeditiously to the extent permitted by the circumstances of the proposed use.

The proposed NEPA regulations would re-codify the existing categorical exclusion sections at 36 CFR 220.6(d) and (e) as 36 CFR 220.5(d) and (e). Therefore, under the proposed NEPA regulations, the new categorical exclusion under paragraph (d) would be codified at 36 CFR 220.5(d)(11), and the existing categorical exclusion at 36 CFR 220.6(e)(3) would be re-codified at 36 CFR 220.5(e)(3). The proposed rule on streamlining processing of communications use applications incorrectly cited the existing categorical exclusion for special use authorizations as 36 CFR 220.5(e)(3). The correct citation to the existing categorical exclusion is 36 CFR 220.6(e)(3).

Comment: Several respondents commented on the timeframe in the MOBILE NOW Act for the Forest Service to grant or deny an application for a communications facility or a communications use and to notify the applicant of the grant or denial. One respondent stated that the Forest Service should ensure the MOBILE NOW Act requirements are applied to applications that are pending as of the effective date of the final rule, as well as to applications that are submitted after the effective date of the final rule. The same respondent recommended that the final rule provide that failure to meet the 270-day timeframe would result in the application being deemed granted. Additionally, the respondent suggested that the Department evaluate internal procedures to determine if a timeframe shorter than 270 days could be implemented.

Response: The Forest Service implemented the requirements of the MOBILE NOW Act on August 13, 2018, shortly after enactment of the act on March 22, 2018. Therefore, the requirements of the act have been implemented during this entire rulemaking. The Forest Service is reinforcing its directives by incorporating the MOBILE NOW Act requirements into the Agency's regulations. In implementing the MOBILE NOW Act, the Forest Service evaluated its internal procedures and determined that the full 270-day timeframe provided for in the act is reasonable and necessary to complete the requisite environmental analysis. The Forest Service anticipates meeting the 270-day timeframe. Therefore, there is no need for the final rule to specify a consequence for not meeting the timeframe.

Comment: One respondent recommended an expedited process for evaluating requests to co-locate new communications uses on or in existing communications facilities. The respondent specifically identified the Federal Communications Commission (FCC)'s 60-day requirement for processing co-location applications. One respondent opposed requiring co-location of new communications uses on or in existing communications facilities.

Response: The Forest Service defines co-location as the installation of telecommunications equipment in or on an existing communications facility or other structure. FSH 2709.11, Ch. 90, sec. 90.5. Co-location in or on an existing communications facility does not require a separate communications use authorization from the Forest Service, provided the proposed use is consistent with the communications site management plan and compatible with all existing uses at the communications site. FSH 2709.11, Ch. 90, sec. 94.1, para. 1. Existing Forest Service directives at FSH 2709.11, Chapter 90, section 94.1, paragraph 4, give authorization holders at a communications site 30 days to provide the authorized officer with documentation that the proposed use would cause harmful interference with their communications uses. Upon completion of coordination with the Forest Service and existing authorization holders and mitigation of any concerns, the proponent may proceed with installation of equipment. The Forest Service will be publishing proposed directives for public comment that would expedite requests to co-locate communications uses in or on existing communications facilities.

The Forest Service has no plans to modify its existing directives governing when co-location is appropriate. The Forest Service's existing directives encourage, rather than require, co-location of new communications uses on or in existing communications facilities. Regardless, the Department notes that proponents should be prepared to justify the need for new communications facilities. With the advent of recent technological advancements, especially digital transition switchover, many communications facilities on NFS lands are underutilized. Existing authorization holders should make excess space on or in their communications facilities available at a competitive rate for new communications uses if they can reasonably be accommodated.

Comment: One respondent stated that the Forest Service should avoid imposing new requirements regarding intermodulation analysis and other technical issues on communications use authorization holders; should continue to rely on the FCC's and National Telecommunications and Information Administration (NTIA)'s technical rules related to interference and other issues, as appropriate, as these agencies are best positioned to take the lead in the development and enforcement of technical rules for communications facilities; and should not create duplicative requirements that could create uncertainty for communications providers deploying services on NFS lands.

Response: The Department agrees that the FCC and NTIA have statutory and regulatory authority for spectrum management and enforcement of spectrum license or authorization requirements. However, the Forest Service has statutory and regulatory authority for managing use and occupancy of NFS lands and is responsible for ensuring compliance with laws, regulations, and directives applicable to management of those lands. For wireless communications uses, it is the Forest Service's responsibility to facilitate orderly development of communications sites in a high-quality communications environment while addressing safety and environmental concerns. These goals are accomplished by establishing management requirements in the communications use authorization and applicable communications site management plan and ensuring that all authorization holders comply with the requirements. The Forest Service will continue to exercise its authority to manage use and occupancy of NFS lands for communications uses.

Comment: A respondent recommended that the proposed rule address beam paths, specifically, how owners of communications facilities obtain authorization to keep beam paths on NFS lands clear of vegetation or structures, including when the communications use is not on NFS lands, but the beam path crosses NFS lands.

Response: The Department recognizes the importance of maintaining beam paths. Routine trimming or minimal vegetation removal for beam path maintenance associated with communications uses on NFS lands is considered routine maintenance, which may be authorized under the corresponding communications use authorization. Routine vegetation management to maintain beam paths that cross NFS lands for communications uses off NFS lands would require a separate special use authorization.

Comment: One respondent suggested that the Forest Service engage with all stakeholders at a communications site before implementing a new or modified communications site management plan for the site. The respondent also recommended that the Agency implement a 30-day period for stakeholders to review a new or modified communications site management plan for the site.

Response: The Department does not believe that the Forest Service should engage with all users at a communications site before implementing a new or modified communications site management plan for the site. It is the responsibility of authorization holders at a communications site to ensure their occupants' comments or concerns are brought to the attention of the Forest Service. The Forest Service has no legal relationship with the occupants co-located in or on communications facilities that are owned by private or other governmental entities. The Department believes that the Forest Service should engage with existing authorization holders at a communications site when developing a new communications site management plan or modifying an existing communications site management plan that would change how the site is managed. The Forest Service will consider comments and concerns from users co-located in or on communications facilities that are owned by private or other governmental entities that are submitted through an authorization holder at the site regarding development of a new communications site management plan or modification of an existing communications site management plan that would change how the site is managed. The Department agrees that the Forest Service should provide for a 30-day period for authorization holders at a communications site to review a new communications site management plan or modified communications site management plan that would change how the site is managed. Communications site management plans are an important component of a communications use authorization. They promote effective administration of the communications site by delineating the types of uses that are appropriate for the site and the technical and administrative requirements for management of the site. In addition, communications site management plans provide direction for day-to-day operations, including requirements for new construction, modification of existing facilities, equipment standards, special environmental considerations, and access. Although it has been standard Forest Service practice to coordinate the development of new communications site management plans with existing authorization holders at the site, Forest Service directives do not address this practice. The Forest Service will be publishing proposed directives for public comment that would require the authorized officer to give existing authorization holders at a communications site 30 days to review new communications site management plans and modifications to existing communications site management plans that would change how the site is managed. Communications use authorization holders remain responsible for coordinating the requirements of the applicable communications site management plan with occupants in or on their communications facilities.

Regulatory Certifications

Executive Order 12866

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this final rule is not significant.

Executive Order 13771

This final rule has been reviewed in accordance with E.O. 13771 on reducing regulation and controlling regulatory costs and has been designated as an ''other action'' for purposes of the E.O.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has designated this final rule as not a major rule as defined by 5 U.S.C. 804(2).

National Environmental Policy Act

The final rule will establish procedures for streamlining the Forest Service's evaluation of applications to locate or modify communications facilities on NFS lands. Agency regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The Department has concluded that this final rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an EA or EIS.

Regulatory Flexibility Act Analysis

The Department has considered the final rule under the requirements of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule will not have any direct effect on small entities as defined by the Regulatory Flexibility Act. The final rule will not impose recordkeeping requirements on small entities; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism

The Department has considered the final rule under the requirements of E.O. 13132, *Federalism.* The Department has determined that the final rule conforms with the federalism principles set out in this executive order; will not impose any compliance costs on the states; and will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has concluded that the final rule does not have Federalism implications.

Consultation With Tribal Governments

The Department has determined that national tribal consultation is not necessary for the final rule. The final rule, which updates the Forest Service's administrative procedures for reviewing applications and issuing authorizations for communications uses, is programmatic and does not have any direct effects on tribes. Tribal consultation will occur as appropriate in connection with specific applications for communications facilities and communications uses on NFS lands.

No Takings Implications

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protect Property Rights.* The Department has determined that the final rule will not pose the risk of a taking of private property.

Energy Effects

The Department has reviewed the final rule under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* The Department has determined that the final rule will not constitute a significant energy action as defined in E.O. 13211.

Civil Justice Reform

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform.* Upon publication of the final rule, (1) all state and local laws and regulations that conflict with the final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), signed into law on March 22, 1995, the Department has assessed the effects of the final rule on state, local, and tribal governments and the private sector. The final rule will not compel the expenditure of $100 million or more by any state, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Controlling Paperwork Burdens on the Public

The final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, and Water resources.

Therefore, for the reasons set forth in the preamble, the Forest Service is amending part 251, subpart B, of title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

Subpart B—Special Uses

■ 1. The authority citation for part 251, subpart B, continues to read:

Authority: 16 U.S.C. 460*l*–6a, 460*l*–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

■ 2. In § 251.54, revise paragraphs (g)(4) and (5) to read as follows:

§ 251.54 Proposal and application requirements and procedures.

* * * * *

(g) * * *

(4) *Response to all other applications*—(i) *General.* Based on evaluation of the information provided

by the applicant and other relevant information such as environmental findings, the authorized officer shall decide whether to approve the proposed use, approve the proposed use with modifications, or deny the proposed use. A group of applications for similar uses may be evaluated with one analysis and approved in one decision.

(ii) *Communications use applications.* Within 270 days of acceptance of a proposal as an application for a new communications facility or co-location of a new communications use in or on a facility managed by the Forest Service, or within 270 days of receipt of an application for modification of an existing communications facility or co-located communications use on a facility managed by the Forest Service, the authorized officer shall grant or deny the application and notify the applicant in writing of the grant or denial.

(iii) *Tracking of communications use applications.* The Forest Service shall establish a process in its directive system (36 CFR 200.4) for tracking applications for communications uses that provides for:

(A) Identifying the number of applications received, approved, and denied;

(B) For applications that are denied, describing the reasons for denial; and

(C) Describing the amount of time between receipt of an application and grant or denial of the application.

(5) *Authorization of a special use*—(i) *General.* Upon a decision to approve a special use or a group of similar uses, the authorized officer may issue one or more special use authorizations as defined in § 251.51 of this subpart.

(ii) *Minimum term for communications use authorizations.* The term for a communications use authorization shall be 30 years, unless case-specific circumstances warrant a shorter term.

James E. Hubbard,

Under Secretary, Natural Resources and Environment.

[FR Doc. 2020–07280 Filed 4–7–20; 8:45 am]

BILLING CODE 3411–15–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2020–4]

Technical Amendments Regarding Electronic Submissions to the Copyright Office

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is adopting technical amendments to allow electronic submission of materials in connection with certain Office services, and to allow the Office to respond to submitters electronically. These amendments are intended to facilitate the public's ability to access Office services during the COVID–19 pandemic.

DATES: Effective April 8, 2020.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov;* Kevin R. Amer, Deputy General Counsel, by email at *kamer@copyright.gov;* or Nicholas R. Bartelt, Attorney-Advisor, by email at *niba@copyright.gov.* They can be reached by telephone at 202–707–3000.

SUPPLEMENTARY INFORMATION: In response to the COVID–19 pandemic, the President has declared a national emergency and executive branch and state governments have adopted guidelines recommending, among other restrictions, that members of the public avoid discretionary travel.[1] Consequently, users of the Copyright Office's services currently may be limited in their ability to physically deliver materials to the U.S. Postal Service or other carrier for shipment to the Office. In addition, the Office has implemented an extended telework policy, resulting in a substantially reduced number of onsite staff available to process deliveries to and from the Office. Further, because the Office is currently closed to the public, it cannot receive in-person deliveries.[2]

While much of the Office's services, including applications for copyright registration submitted through the electronic Copyright Office (''eCO'') system, are already largely digital, in some cases users are required to submit materials through physical mailing services. To help ensure both that members of the public can continue to access Office services and that Office staff can respond to inquiries in a timely manner, the Office is updating various regulations to allow certain types of submissions and responses to be made electronically, for example, through dedicated email addresses that the Office is establishing. Previously, these regulations permitted delivery only by mail or other physical means. The updates pertain to the following Office services: (1) Submitting notices of termination for recordation,[3] (2) requests for removal of personally identifiable information from the online public catalog or other public records,[4] (3) cancellation of completed registrations,[5] (4) filing of satellite carrier statements of account,[6] (5) recordation of certain contracts by cable systems located outside of the forty-eight contiguous states,[7] (6) filing of statements of account for digital audio recording devices or media,[8] (7) filing of a Notice of Intent to Enforce a Restored Copyright,[9] (8) filing of a Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price,[10] (9) group registration of automated databases,[11] (10) requests for reconsideration for refusals to register,[12] (11) supplementary registrations for restored works, non-photographic databases, and renewal registrations,[13] (12) registration of restored copyrights,[14] (13) renewal registrations,[15] and (14) requests for full-term retention of copyright deposits.[16]

The final rule also updates several of these regulations to remove the requirement that submissions to the Office contain a handwritten signature. The rule instead adopts a more flexible requirement that submissions contain ''a

[1] *See* Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak (Mar. 13, 2020), *https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.*

[2] The Copyright Office continues to receive mail sent through the postal delivery system. All mail is being redirected and stored at a storage facility until the building resumes normal operations. As with prior closures, such as due to a government shutdown, the Office will process that mail upon reopening of the Library of Congress.

[3] *Id.* at § 201.1(c)(2).

[4] 37 CFR 201.1(c)(7), 201.2(e) and (f).

[5] *Id.* at §§ 201.1(c)(3), 201.7.

[6] *Id.* at § 201.11.

[7] *Id.* at § 201.12.

[8] *Id.* at § 201.28.

[9] *Id.* at § 201.33.

[10] *Id.* at § 201.39.

[11] *Id.* at § 202.3

[12] *Id.* at §§ 201.1(c)(3), 202.5.

[13] *Id.* at § 202.6(e)(4).

[14] *Id.* at § 202.12.

[15] *Id.* at § 202.17.

[16] *Id.* at § 202.23.

legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006.'' The Office previously adopted a rule permitting electronic signatures on statements of account filed with the Office under the statutory license for secondary transmissions by cable systems,[17] and the same rationale is applicable here. These changes apply to regulations governing statements of account for satellite carriers and digital audio recording technology products, recordation of certain cable contracts, and full-term retention requests.

As new electronic submission options are implemented, the Office will provide instructions on its website and on any relevant Office forms. The Office also will provide electronic submission options for other services where such delivery methods are already permitted under existing regulations, including filing recorded documents and notices of termination.[18] For information about these options and other Office operations during the COVID–19 pandemic, members of the public should visit *https://www.copyright.gov/coronavirus,* which will be updated regularly.

In light of the ongoing national emergency, the Copyright Office finds good cause to publish these amendments as a final rule effective immediately, and without first publishing a notice of proposed rulemaking, ''because of the demonstrable urgency of the conditions they are designed to correct.'' [19] Further, these updates constitute a change to a ''rule[ ] of agency . . . procedure, or practice'' [20] which do not ''alter the rights or interests of parties,'' but merely ''alter[s] the manner in which the parties present themselves or their viewpoints to the agency.'' [21]

List of Subjects

37 CFR Part 201

Cable television, Copyright, Recordings, Satellites.

37 CFR Part 202

Claims, Copyright.

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 202 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Amend § 201.1 by:
■ a. In paragraph (b)(1), adding '', or as otherwise indicated in instructions on the Copyright Office's website or forms provided by the Office'' after the word ''20559–6000''.
■ b. In paragraph (c)(2), adding the words ''and submitted either electronically in the form and manner prescribed in instructions on the Office's website or by mail to'' after ''Notices of Termination,''.
■ c. In paragraph (c)(3), adding the words ''and submitted either electronically in the form and manner prescribed in instructions on the Office's website or by mail to'' after ''RAC Division,''.
■ d. In paragraph (c)(4), adding the words ''and submitted either electronically in the form and manner prescribed in instructions on the Office's website or by mail to'' after ''Records Research and Certification Section,''.
■ e. In paragraph (c)(5), adding a sentence at the beginning of the paragraph and removing the word ''Notices'' and adding in its place ''If sending by mail, notices''.
■ f. In paragraph (c)(7):
■ i. Removing '', P.O. Box 70400, Washington, DC 20024–0400'' in the first sentence.
■ ii. Removing the words ''should be'' in the second sentence and in their place adding ''may be submitted either electronically in the form and manner prescribed in instructions on the Office's website or by mail to P.O. Box 70400, Washington, DC 20024–0400, and''.

The addition reads as follows:

§ 201.1 Communication with the Copyright Office.

* * * * *

(c) * * *

(5) * * * Filings or inquiries to the Licensing Division may be submitted either electronically in the form and manner prescribed in instructions on the Office's website or by mail. * * *

* * * * *

§ 201.2 [Amended]

■ 3. Amend § 201.2 by:

■ a. In paragraph (e)(4), removing ''mailed to the address listed'' and in its place adding the words ''sent to the Office as prescribed''.

■ b. In paragraph (e)(5), removing the word ''mail'' and in its place adding the word ''send'' and adding ''physical mail address or email'' before the word ''address''.

■ c. In paragraph (e)(7), removing the words ''mailed to the address listed'' and in their place adding the words ''sent to the Office as prescribed''.

§ 201.7 [Amended]

■ 4. Amend § 201.7 by:

■ a. In paragraph (c)(1), removing the word ''mailed'' and in its place adding the word ''sent''.

■ b. In paragraph (c)(4), removing the word ''mailed'' and in its place adding the word ''sent''.

§ 201.11 [Amended]

■ 5. Amend § 201.11(e)(9) introductory text by removing the words ''The handwritten signature'' and adding in their place ''A legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006,''.

§ 201.12 [Amended]

■ 6. Amend § 201.12(a)(1) by:

■ a. Removing the words ''legible photocopy or other full-size facsimile reproduction'' and adding in their place the word ''copy''.

■ b. Removing the words ''signed by'' and adding in their place ''that shall include a legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006, of''.

§ 201.28 [Amended]

■ 7. Amend § 201.28(e)(7) by removing the words ''the handwritten signature'' and adding in their place ''a legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006,''.

§ 201.33 [Amended]

■ 8. Amend § 201.33(c) by removing ''and should be typed or printed by hand legibly in dark, preferably black, ink, on 8½ by 11 inch white paper of good quality, with at least a one inch (or three cm) margin'' and adding in its place '', legible, and submitted in a letter-sized document format''.

§ 201.39 [Amended]

■ 9. Amend § 201.39(g) by removing ''at the address specified'' and adding in its place ''in the manner prescribed''.

[17] Authentication of Electronic Signatures on Electronically Filed Statements of Account, 82 FR 22,884 (May 19, 2017).

[18] For example, on March 18, 2020, the Office modified its processes to allow for receipt of requests for special handling of registration applications via electronic application. *See* U.S. Copyright Office, Registration Special Handling Arrangements, NewsNet No. 807 (Mar. 18, 2020), *https://www.copyright.gov/newsnet/2020/807.html.*

[19] H.R. Rep. No. 1980, 79th Cong., 2d Sess. 26 (1946). *See* 5 U.S.C. 553(d)(3); *id.* at 553(b)(3)(B) (notice and comment is not necessary upon agency determination that it would be ''impracticable, unnecessary, or contrary to the public interest'').

[20] 5 U.S.C. 553(b)(A).

[21] *JEM Broad. Co.* v. *F.C.C.,* 22 F.3d 320, 326 (DC Cir. 1994).

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 10. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

■ 11. Amend § 202.3 by revising paragraph (b)(5)(ii)(A) to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(5) * * *

(ii) * * *

(A) A form that best reflects the subject matter of the material in the database as set forth in paragraph (b)(2)(ii)(A) of this section, completed in accordance with the instructions provided by the Copyright Office on its website or in materials published by the Office. Applications for group registration of an automated database consisting predominantly of photographs may be submitted electronically only after consultation and with the permission and under the direction of the Visual Arts Division.

* * * * *

§ 202.5 [Amended]

■ 12. Amend § 202.5 by:

■ a. In paragraph (b)(3), removing ''or'' after the word ''postmarked'' and adding a comma in its place and adding '', or otherwise received by the Office,'' after the word ''messenger''.

■ b. In paragraph (c)(3), removing ''or'' after the word ''postmarked'' and adding a comma in its place and adding '', or otherwise received by the Office,'' after the word ''messenger''.

§ 202.6 [Amended]

■ 13. Amend § 202.6(e)(4) by removing the words ''a paper'' and adding in their place the word ''an''.

§ 202.12 [Amended]

■ 14. Amend § 202.12(c)(1) by adding ''or electronically, in accordance with instructions for submission and payment provided on the Office's website or Form GATT itself'' after ''by mail''.

§ 202.17 [Amended]

■ 15. Amend § 202.17(g)(1) by removing ''mailed to the address specified'' and adding in its place ''sent in the manner prescribed''.

§ 202.23 [Amended]

■ 16. Amend § 202.23(b)(2) by:

■ a. Removing the words ''at the address specified'' and adding in their place the words ''in the manner prescribed''.

■ b. Removing the words ''be signed by'' and adding in their place ''include a legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006, of''.

Dated: April 2, 2020.

Maria Strong,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2020–07353 Filed 4–7–20; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0483; FRL–10005–16–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County Administrative Revisions to Definitions, Remedies, and Enforcement Orders Sections and Incorporation by Reference of National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania on behalf of Allegheny County. These revisions include administrative amendments made to the Allegheny County Health Department (ACHD) Rules and Regulations, Article XXI, Air Pollution Control. Specifically, the revisions added a definition for ''County Council;'' deleted its current listing of ambient air quality standards and added, through incorporation by reference, all national ambient air quality standards (NAAQS) promulgated by EPA; revised references to the ''Board of County Commissioners'' to ''County Executive'' or ''County Council;'' added the ''Manager of the Air Quality Program or their respective designee'' as a signatory for enforcement orders; and revised a reference from the ''Bureau of Environmental Quality Division of Air Quality'' to ''Air Quality Program of the Department.'' This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on May 8, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0483. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Erin Malone, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2190. Ms. Malone can also be reached via electronic mail at *Malone.Erin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 13, 2019 (84 FR 61592), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of administrative and definition amendments, as well as incorporation by reference of the NAAQS, to ACHD Rules and Regulations, Article XXI, Air Pollution Control. The formal SIP revision was submitted by Pennsylvania, on behalf of Allegheny County, on February 15, 2019.[1]

II. Summary of SIP Revision and EPA Analysis

The February 15, 2019 submittal includes amended versions of ACHD Rules and Regulations, Article XXI, Air Pollution Control, sections 2101.10 Ambient Air Quality Standards, 2101.20 Definitions, 2109.02 Remedies, and 2109.03 Enforcement Orders. The amendment to section 2101.10 removed ACHD's existing SIP approved list of NAAQS and added, through incorporation by reference, all NAAQS promulgated by the EPA under the CAA at 40 CFR part 50. The amendment to section 2101.20 added the following definition for County Council, '' 'County Council' means the Council of Allegheny County, Pennsylvania.'' The

[1] On April 28, 2017, ACHD submitted Revision 73 to the Pennsylvania Department of Environmental Protection (PADEP). PADEP, on behalf of Allegheny County, also submitted a clarification letter dated June 24, 2019 to EPA to further clarify the revisions to sections 2101.10 and 2101.20 of Article XXI of ACHD's Rules and Regulations.

amendments to section 2109.02 revised the reference to ''Board of County Commissioners'' to ''County Executive'' in paragraphs (a)(5) and (6).

Other specific requirements and the rationale for EPA's proposed action are explained in the NPRM and Technical Support Document (TSD) and will not be restated here. No adverse comments were received on the NPRM.

III. Final Action

EPA is approving the February 15, 2019 submittal, which includes administrative deletions, additions, and revisions to ACHD Rules and Regulations, Article XXI, Air Pollution Control, sections 2101.10 Ambient Air Quality Standards, 2101.20 Definitions, 2109.02 Remedies, and 2109.03 Enforcement Orders, as a revision to the Pennsylvania SIP.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the ACHD Rules and Regulations, Article XXI, sections 2101.10 Ambient Air Quality Standards, 2101.20 Definitions, 2109.02 Remedies, and 2109.03 Enforcement Orders described in the amendments to 40 CFR part 52 set forth below.

EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[2]

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 8, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action revising the Pennsylvania SIP to reflect amendments to ACHD Rules and Regulations, Article XXI, Air Pollution Control, sections 2101.10 Ambient Air Quality Standards, 2101.20 Definitions, 2109.02 Remedies, and 2109.03 Enforcement Orders may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 10, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(2) is amended by:

■ a. Under ''Part A—General'':

[2] 62 FR 27968 (May 22, 1997).

■ i. Removing the entry for ''2101.10'' and adding in its place an entry for ''2101.10(except paragraph b)'';

■ ii. Adding an eleventh entry for ''2120.20;

■ b. Under ''Part I—Enforcement'':

■ i. Revising the entry for ''2109.02 (except paragraph.02.a.7)''; and

■ ii. Removing the entry ''2109.03a. (introductory sentence), b. through f'', and adding in its place an entry for ''2109.03 (except under a. subsections 1, 2, 3)''.

The revision and additions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(2) * * *

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Part A—General				
* * *	*	*	*	* *
2101.10 (except paragraph b).	Ambient Air Quality Standards.	9/25/13	4/8/20, [Insert **Federal Register** citation].	This action is only approving the ACHD incorporations of EPA NAAQS under 40 CFR part 50 cited under this section.
* * *	*	*	*	* *
2101.20	Definitions	9/25/13	4/8/20, [Insert **Federal Register** citation].	Addition of definition for "County Council."
* * *	*	*	*	* *
Part I—Enforcement				
* * *	*	*	*	* *
2109.02 (except paragraph.02.a.7).	Remedies	9/25/13	4/8/20, [Insert **Federal Register** citation].	Changed references of "Board of County Commissioners" to "County Executive." (c)(192).
2109.03 (except under a. subsections 1, 2, 3).	Enforcement Orders	9/25/13	4/8/20, [Insert **Federal Register** citation].	Paragraph (b) was revised to add "or the Manager of the Air Quality Program, or their respective designee" as an additional signatory option on enforcement orders. In paragraph (d) "Board of County Commissioners" was changed to "County Council." In paragraph (d)(1), "Bureau of Environmental Quality Division of Air Quality" was changed to "Air Quality Program of the Department." (c)(192).
* * *	*	*	*	* *

* * * * *

[FR Doc. 2020–06588 Filed 4–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2019–0522; FRL–10007–21–Region 5]

Air Plan Approval; Ohio; Revisions to NO_X SIP Call Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving under the Clean Air Act (CAA) a request from the Ohio Environmental Protection Agency (Ohio EPA) to revise the Ohio State Implementation Plan (SIP) to incorporate revisions to Ohio Administrative Code (OAC) Chapter 3745–14 regarding the Nitrogen Oxides (NO_X) SIP Call. This SIP revision approves additional monitoring options for certain covered sources for NO_X SIP Call purposes.

DATES: This final rule is effective on April 8, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2019–0522. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance

Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. What is the background for this final rule?

On October 27, 1998, EPA published the NO_X SIP Call, which required eastern states, including Ohio, to submit SIPs that prohibit excessive emissions of ozone season NO_X by implementing statewide emissions budgets (63 FR 57356). Under the NO_X SIP Call regulations as originally promulgated, where a state's SIP relies on control measures for Electric Generating Units (EGUs) and large non-EGUs to achieve the required emissions reductions, the SIP must also require these sources to monitor emissions according to the provisions of 40 CFR part 75, which generally entails the use of continuous emission monitoring systems (CEMS). Ohio triggered this requirement by including control measures in their SIP for these types of sources, and the requirement has remained in effect despite the discontinuation of the NO_X Budget Trading Program under the NO_X SIP Call after the 2008 ozone season.

On March 8, 2019, EPA finalized updates to the NO_X SIP Call regulations that make the inclusion of 40 CFR part 75 monitoring requirements for these sources in SIPs optional rather than mandatory for NO_X SIP Call purposes (84 FR 8422). Under the updated provision, a state's SIP would still need to include some form of emissions monitoring requirements for these types of sources, consistent with the NO_X SIP Call's general enforceability and monitoring requirements, but states would no longer be required to satisfy these general NO_X SIP Call requirements specifically through the adoption of 40 CFR part 75 monitoring requirements. In Ohio, the sources potentially affected by this amendment include large non-EGUs covered by the NO_X SIP Call that are not required to monitor according to 40 CFR part 75 under other programs such as the Acid Rain Program or a Cross-State Air Pollution Rule (CSAPR) trading program.

On August 26, 2019, Ohio EPA submitted a request that EPA update Ohio's SIP to reflect revised rules at OAC Chapter 3745–14. The revised rules expand the set of allowed monitoring methodologies available to Ohio's large non-EGUs for NO_X SIP Call purposes and set forth the process by which an affected source's designated representative may apply to the Ohio EPA director for an installation or operating permit authorizing the source to switch to one of the newly allowed methodologies. The new methodologies include one based on 40 CFR part 60 monitoring procedures and another based on monitoring of heat input combined with the use of an approved source-specific emission factor. On November 4, 2019, EPA published a rulemaking proposing to approve Ohio's request to update the Ohio SIP to reflect these revised rules (84 FR 59327). Public comments on the proposal were due by December 4, 2019. EPA's rationale for approving Ohio's request, including EPA's basis for finding that approval of the request is not prohibited by section 110(l) of the CAA, is set forth in the proposal and is not repeated here except as necessary to respond to comments.

II. What are EPA's responses to comments?

During the comment period, EPA received two comments, both of which are available in the docket for this action. One comment is supportive of EPA's proposed action. The second comment, which was submitted in two parts, questions whether approval of the revised rules into the Ohio SIP would be consistent with certain EPA guidance documents and requests that the monitoring requirements for individual sources be approved into the SIP. A summary of the second comment and EPA's response is provided below.

Comment: The commenter first cites an EPA guidance document, referred to here as the Blue Book, which discusses SIP approvability considerations for state rules establishing reasonably available control technology (RACT) requirements for volatile organic compounds (VOC).[1] The comment quotes from a section headed "Exemptions, Variances, and Alternative Means of Control" addressing state rules that include what the document calls "generic" provisions. The commenter asks how EPA is "meeting the requirements that pertain to generic regulations" in the Blue Book.

Next, the commenter cites a different EPA guidance document, referred to here as the Generic RACT Rule Guidance, which discusses SIP approvability considerations for state rules that do not currently have specific RACT requirements established for sources, but where there is a general regulatory requirement that certain sources meet RACT and that those RACT limits be submitted to EPA for approval.[2] The commenter quotes from the document's definition of a "generic" rule and asks EPA to "explain how Ohio's generic process-setting rule is allowed when no specific monitoring requirements are being established at this time."

Finally, the commenter asks EPA to "affirmatively state that sources wishing to use alternative monitoring methods under [Ohio's monitoring rule] must be approved by EPA into the Ohio SIP" and that "without this approval the sources must still comply with the normal monitoring methods even if the source is granted approval at the state level."

Response: EPA does not agree that approval of Ohio's rule revisions into the SIP would be inconsistent with the cited EPA guidance documents or that individual sources' specific monitoring requirements for NO_X SIP Call purposes must be approved into the SIP.

With respect to the suggestions of inconsistencies with the cited guidance documents, EPA disagrees that the documents apply to this action, for two principal reasons. The first reason is that the focus of both documents is the approvability of state rules establishing emission control requirements to meet certain provisions of the CAA requiring SIPs to include provisions to implement RACT at certain sources in nonattainment areas, *see* CAA section 182(b)(2), not monitoring requirements. This action does not concern such RACT emission control requirements. The control measure that Ohio's affected non-EGUs are using to meet the underlying emissions reduction

[1] "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**," May 25, 1988, revised January 11, 1990 (the "Blue Book"). Though the commenter did not submit a copy of the cited document with its comment, the document is available in the docket for this action and online at *https://www.epa.gov/sites/production/files/2016-08/documents/voc_bluebook_25may1988.pdf.* The commenter cites to page 238 of a compilation that includes most of the original 1988 version of the Blue Book along with over 40 other EPA guidance documents. EPA has docketed the revised 1990 version of the Blue Book but has not docketed the other documents in the compilation because the comment does not address them. The changes between the 1988 and 1990 versions of the Blue Book are not germane to the comment. The Blue Book section containing the quoted language appears on pages 1–3 to 1–4 of both versions.

[2] "Approval Options for Generic RACT Rules Submitted to Meet the Non-CTG VOC RACT Requirement and Certain NO_X RACT Requirements," November 7, 1996 (the "Generic RACT Rule Guidance"). Though the commenter did not submit a copy of the cited document with its comment, the document is available in the docket for this action and online at *https://www.epa.gov/sites/production/files/2016-08/documents/shavermemogenericract_7nov1996.pdf.*

requirements under the NO_X SIP Call for purposes of addressing the provisions of CAA section 110(a)(2)(D)(i)(I)—specifically, a collective cap on the sources' seasonal NO_X mass emissions—has already been approved into the Ohio SIP, *see* 84 FR 48789 (September 17, 2019), and Ohio has not sought to modify those requirements in this SIP revision. The Ohio rule revisions at issue in this action address only the monitoring methodologies that will be available for use by the affected sources to demonstrate compliance with the approved section 110(a)(2)(D)(i)(I) control measure.

The second reason EPA disagrees that the cited guidance documents apply to this action is that—even assuming that in some situations the considerations raised in the documents with regard to a ''generic'' emission control provision might also be relevant to a ''generic'' monitoring rule—the revised Ohio monitoring rule at issue in this action is not a ''generic'' rule as defined in either document. Those guidance documents generally define a ''generic'' rule as one that commits sources to comply with an underlying Federal obligation in the future while deferring establishment of the actual requirements that sources must meet. The commenter does not identify what aspect of the State's monitoring rule would indicate that it is ''generic,'' and EPA believes that the revised Ohio monitoring rule is not ''generic'' under the definition provided in these guidance documents. Rather, the rule in fact does prescribe the actual monitoring requirements that sources must meet and it does not authorize deviations from these requirements.[3] The fact that the rule provides flexibility by allowing sources to choose from a menu of several alternative approved monitoring methodologies does not render the rule ''generic.'' Other monitoring regulations, including the provisions at 40 CFR part 75 which the State's SIP currently applies for purposes of meeting the NO_X SIP Call requirements, similarly offer at least some sources a choice among multiple approved monitoring methodologies. *See, e.g.,* appendices D and E to 40 CFR part 75 and 40 CFR 75.19. Consistent with EPA's 2019 amendments to the NO_X SIP Call regulations, Ohio's revised monitoring rule merely expands the menu of approved monitoring methodologies available to its large non-EGUs for NO_X SIP Call purposes to include certain additional alternatives (beyond the previously allowed 40 CFR part 75 monitoring methodologies) and sets forth the permit modification process that sources must follow when switching from one approved methodology to another.

With respect to the commenter's request that EPA require the NO_X SIP Call monitoring requirements for individual sources to be approved into the SIP (in addition to approval by the State under the rule at issue in this action), EPA does not agree that this is a necessary condition of approving the SIP revision under the NO_X SIP Call regulations. In the proposal for this action, EPA explained the proposed rationale for approval of the SIP revision—namely, that the emissions data monitored and reported under Ohio's revised rules using the expanded menu of allowed monitoring approaches would be sufficient to determine whether the State's large non-EGUs are in compliance with their collective emissions cap for NO_X SIP Call purposes. *See* 84 FR at 59330. The commenter has provided no information suggesting either that the emissions data obtained under Ohio's revised rules as submitted would be insufficient to determine compliance with the collective emissions cap or that approval of individual sources' monitoring requirements into the SIP is needed to ensure that the data would be sufficient. Accordingly, EPA is approving Ohio's revised rules into the SIP for the reasons discussed in the proposal and does not find it necessary for the State to seek SIP approval of the individual sources' monitoring requirements for NO_X SIP Call purposes.

III. What action is EPA taking?

EPA is approving Ohio EPA's request to modify its SIP to include the revisions at OAC rules 3745–14–01, 3745–14–04, and 3745–14–08.

This action is effective immediately upon publication in the **Federal Register**. Section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), which applies to this action, generally requires that actions covered by the section become effective not less than 30 days after publication but also provides several exceptions. Under section 553(d)(1), a rulemaking action may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction.'' This action falls within the exception under section 553(d)(1) because the nature of the rule changes being approved is to relieve a restriction by allowing certain additional types of monitoring instead of allowing only monitoring in accordance with 40 CFR part 75. Additionally, section 553(d)(3) allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period generally prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This action, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this action allows Ohio to authorize the use of approved monitoring methodologies from a menu of alternatives that would be expanded to include options beyond the previously allowed 40 CFR part 75 monitoring methodologies, following a request by the source. Any changes in the specific requirements applicable to a particular affected source will be authorized through state permitting processes that provide additional notice to the source. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication in the **Federal Register**.

In addition to approving the State rule revisions discussed above into the Ohio SIP, in this action EPA is also revising the table entry in the regulations at 40 CFR 52.1870(c) for OAC rule 3745–14–03, which was approved into the SIP in a previous action (84 FR 48789, September 17, 2019). The revisions to the table entry have no substantive effect but clarify EPA's regulations by correcting the title and State-effective date shown for Ohio's rule.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been

[3] EPA acknowledges that under the revised Ohio monitoring rule, the State rather than EPA is responsible for approving the source-specific ''emission factors'' that sources would use to calculate reported NO_X mass emissions under one of the allowed monitoring methodologies. However, the rule includes criteria to guide the State's determination for each source and requires periodic verification of the approved emission factors through stack testing. EPA does not view the rule as providing the State a degree of discretion sufficient for the rule to be considered ''generic'' in the sense discussed in either guidance document, should such documents even apply to such provisions.

approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[4]

V. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 8, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 27, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870, the table in paragraph (c) is amended by revising the section entitled ''Chapter 3745–14 Nitrogen Oxides—Reasonably Available Control Technology'' to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED OHIO REGULATIONS

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
	Chapter 3745–14 Nitrogen Oxides—Reasonably Available Control Technology			
3745–14–01	Definitions and General Provisions	8/22/2019	4/8/2020, [Insert **Federal Register** citation].	
3745–14–03	Permit Requirements	1/29/2018	9/17/2019, 84 FR 48789.	
3745–14–04	Compliance Certification	8/22/2019	4/8/2020, [Insert **Federal Register** citation].	
3745–14–08	Monitoring and Reporting	8/22/2019	4/8/2020, [Insert **Federal Register** citation].	
3745–14–11	Portland Cement Kilns	7/18/2002	8/5/2003, 68 FR 46089.	
3745–14–12	Stationary Internal Combustion Engines.	5/7/2005	2/4/2008, 73 FR 6427.	

[4] 62 FR 27968 (May 22, 1997).

EPA—APPROVED OHIO REGULATIONS—Continued

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
*	*	*	*	* * *

* * * * *

[FR Doc. 2020–06819 Filed 4–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0024; FRL–10007–12–Region 7]

Air Plan Approval; Missouri; Control of Emissions From Aerospace Manufacture and Rework Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Missouri for two rules related to emissions from aerospace manufacture and rework facilities in the Kansas City and St. Louis areas. This final action will amend the SIP to include adding incorporations by reference, revising unnecessarily restrictive language, and making other administrative wording changes. The EPA's approval of these rule revisions is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on May 8, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2020–0024. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Will Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7714; email address *stone.william@epa.gov.*

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

Table of Contents

I. What is being addressed in this document?

The EPA is approving revisions to 10 Code of State Regulation (CSR) 10–2.205, *Control of Emissions from Aerospace Manufacture and Rework Facilities* and 10 CSR 10–5.295, *Control of Emissions from Aerospace Manufacture and Rework Facilities* in the Missouri SIP. Missouri made several revisions to the rules. These revisions are described in detail in the technical support document (TSD) included in the docket for this action. The EPA is finalizing this action because the revisions to these rules will not have a negative impact on air quality.

II. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from August 1, 2018 to September 30, 2018 and received fourteen comments on the two rules. Missouri responded to all comments. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule opened February 4, 2020, the date of its publication in the **Federal Register** and closed on March 4, 2020 (85 FR 6121). During this period, EPA received one comment that was supportive of the revisions to the rule. The comment can be found in the docket for this action.

IV. What action is the EPA taking?

The EPA is taking final action to amend 10 CSR 10–2.205 and 10 CSR 10–5.295, Control of Emissions from Aerospace Manufacture and Rework Facilities, which apply in the Kansas City and St. Louis areas, respectively.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under

[1] 62 FR 27968 (May 22, 1997).

Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 8, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 24, 2020.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entries ''10–2.205'' and ''10–5.295'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * * * *				
Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
* * * * * * *				
10–2.205	Control of Emissions from Aerospace Manufacturing and Rework Facilities.	3/30/2019	4/8/2020, [insert **Federal Register** citation].	
* * * * * * *				
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
* * * * * * *				
10–5.295	Control of Emissions from Aerospace Manufacturing and Rework Facilities.	3/30/2019	4/8/2020, [insert **Federal Register** citation].	
* * * * * * *				

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[FR Doc. 2020–06464 Filed 4–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R10–RCRA–2018–0662; FRL–10006–64–Region 10]

Hazardous Waste Management System; Final Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) (also, ''the Agency ''or ''we'' in this preamble) is taking final action to grant three petitions submitted jointly by Emerald Kalama Chemical, LLC (Emerald) and Fire Mountain Farms, Inc (FMF) (Petitioners), in Lewis County, Washington to exclude (or ''delist'') a one-time amount up to 20,100 cubic yards of U019 (benzene) and U220 (toluene) mixed material from the list of federal hazardous wastes as proposed on November 12, 2019. The EPA has decided to grant these petitions as proposed and under the same conditions based on an evaluation of waste-specific information provided by the Petitioners and a consideration of public comments received.

DATES: This final rule is effective on April 8, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. [EPA–R10–RCRA–2018–0662]. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *www.regulations.gov* or in hard copy at the RCRA Records Center, 16th Floor, U.S. EPA, Region 10, 1200 6th Avenue, Suite 155, OAW–150, Seattle, Washington 98101. This facility is open from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The EPA recommends you telephone Dr. David Bartus at (206) 553–2804 before visiting the Region 10 office. The public may copy material from the regulatory docket at 15 cents per page.

FOR FURTHER INFORMATION CONTACT: Dr. David Bartus, EPA, Region 10, 1200 6th Avenue, Suite 155, OAW–150, Seattle, Washington 98070; telephone number: (206) 553–2804; email address: *bartus.dave@epa.gov.*

As discussed below, Ecology is evaluating the petitions submitted by Emerald and FMF under state authority. Information on Ecology's action may be found at *https://fortress.wa.gov/ecy/publications/SummaryPages/1804023.html.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See 40 CFR 260.22, Section 3001(f) of RCRA, 42 U.S.C. 6921(f) and the background document for a listed waste.

A generator of a waste excluded from the hazardous waste lists of 40 CFR part 261 subpart D remains obligated under RCRA to confirm that its waste remains nonhazardous based on the hazardous waste characteristics in order to continue to manage the waste as non-hazardous.

B. What regulations allow a waste to be delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their wastes from otherwise applicable hazardous waste storage, treatment and disposal requirements by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 266, 268, and 273. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste from the lists of hazardous wastes on a ''generator specific'' basis.

II. Emerald Kalama's and FMF's Petitions

A. What wastes did petitioners petition EPA to delist?

Emerald manufactures various organic chemicals used as artificial flavors and fragrances, food preservatives, plasticizers, and intermediates at their facility in Kalama, Washington. Most of the chemicals produced are derived from toluene or from the oxidation products of toluene, including benzoic acid and benzaldehyde. Additional products are produced as derivatives of benzoic acid and benzaldehyde. Products are typically purified by continuous or batch distillation. In conjunction with its manufacturing processes, Emerald operates an industrial wastewater treatment system, consisting of an anaerobic digestion process and an aerobic oxidation system, both of which are biological treatment systems very similar to municipal wastewater treatment systems. This treatment system produces industrial wastewater treatment plant biological solids (IWBS). As documented in the Petitioners' delisting petitions, the IWBS designates as U019 (benzene) and U220 (toluene).

FMF operates receiving, storage, treatment, and land application facilities in Lewis County, Washington for wastewater treatment plant treatment solids received from municipal, industrial, and private wastewater treatment plants. FMF is not permitted or otherwise authorized to manage, treat, or dispose of hazardous or dangerous wastes. Emerald contracted with FMF to land apply Emerald's IWBS beginning in October 1995. FMF mixed Emerald's IWBS with treatment solids from other facilities and land applied or stored the mixed IWBS/treatment solids wastes at several FMF facilities. The RCRA rules require that listed hazardous wastes, when mixed with other materials, continue to be regulated as listed hazardous wastes (40 CFR 261.3). The mixed IWBS/treatment solids wastes are currently stored at three FMF facilities: Burnt Ridge located at 856 Burnt Ridge Road, Onalaska, Washington; Newaukum Prairie located at 349 State Route 508, Chehalis, Washington; and Big Hanaford located at 307 Big Hanaford Road, Centralia, Washington. Under a separate action,[1] Ecology is requiring that Emerald and FMF remove these wastes from the three units according to closure plans approved pursuant to WAC 173–303–610.

The Petitioners have requested that up to 4,700 cubic yards at the Burnt Ridge facility, 10,400 cubic yards at the Newaukum Prairie facility, and 5,000 cubic yards at the Big Hanaford facility of IWBS/treatment solids be excluded from the list of hazardous wastes.

B. What information was submitted in support of these petitions?

FMF conducted an investigation of the wastes at each of the three storage units in September 2014.[2] Three composite samples of the mixed IWBS/treatment solids wastes were collected from each storage unit. At Burnt Ridge and Newaukum Prairie, each composite sample consisted of nine grab samples collected from various depths. Each composite sample collected at Big Hanaford consisted of six grab samples collected from various depths.

Each composite sample was analyzed for the following constituents or constituent groups: Volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), total metals, total cyanide, and total solids. The specific analytes included in the analysis are defined by the analytical method used for each group.

In addition, two composite samples from the Newaukum Prairie storage unit and one composite sample each from the Burnt Ridge and Big Hanaford storage units were analyzed for the following parameters or constituent groups: Pesticides; polychlorinated biphenyl (PCB) Aroclors; dioxins and furans, reported as 2,3,7,8-tetrachlorodibenzodioxin toxicity equivalence quotient; ammonia; Total Kjeldahl Nitrogen (TKN); pH, nitrite; and nitrate + nitrite (the concentration of nitrate was calculated by the analytical laboratory). Fourteen grab samples from the Newaukum Prairie storage unit and seven grab samples each from the Burnt Ridge and Big Hanaford storage units were analyzed for total fecal coliform.

Emerald conducted additional sampling of the mixed IWBS/treatment solids wastes at each of the three storage units in August and October 2017.[3] Emerald performed the additional sampling based on the preliminary delisting levels and the September 2014 investigation. Samples from the storage units at Burnt Ridge, Newaukum Prairie, and Big Hanaford were analyzed for selected volatile organic compounds (acetone, benzene, methanol, and toluene), total solids, and pH. Samples from Big Hanaford were analyzed for total acrylonitrile; cobalt; 4-methylphenol; 2,4-dinitrotoluene; 2,6-dinitrotoluene; and naphthalene.

III. EPA's Evaluation and Public Comments

A. What decision is EPA finalizing and why?

The EPA is finalizing an exclusion for a one-time amount up to 20,100 cubic yards of U019 (benzene) and U220 (toluene) mixed material from the list of federal hazardous wastes currently located at three FMF facilities, as proposed in our notice of proposed rulemaking 84 FR 60975 (November 12, 2019). The wastes covered by this delisting are limited to 4,700 cubic yards of mixed materials at the Burnt Ridge facility, 10,400 cubic yards at the Newaukum Prairie facility, and 5,000 cubic yards at the Big Hanaford facility, present at each facility as of the effective date of this exclusion and that are associated with closure of hazardous waste management units at three facilities owned and operated by FMF in accordance with closure plans approved by Ecology. The Petitioners petitioned EPA to exclude, or delist, these wastes because they believed that the petitioned wastes do not meet the criteria for which they were listed and that there are no additional constituents or factors which could cause the wastes to be hazardous waste. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4).

The EPA proposed on November 12, 2019 (84 FR 60975) to exclude or delist the petitioned wastes at the three FMF facilities from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rulemaking. The EPA considered all comments received, and for reasons discussed in both the proposal and this final action, has determined that the petitioned wastes should be excluded from regulation as hazardous waste under the specified conditions, as originally proposed.

B. Public Comments Received and EPA's Response

The EPA received comments from seven individuals on the proposed rulemaking. Some commenters expressed support for the proposed exclusion while still raising some adverse comments. A brief summary of the adverse comments and EPA's responses to them are as follows.

Commenter 1 (Docket entry Comment 0025). This commenter disagreed with the proposed rule on the basis that ''there is already enough hazardous waste being expelled into our environment, and that this one-time amount of hazardous waste still pollutes our environment.'' The commenter also asserted that the proposed action ''goes against the hazardous waste regulations under [RCRA].'' EPA disagrees that the proposed delisting action will result in hazardous waste being expelled into the environment. The scope of this rulemaking is limited to a determination of whether the covered wastes may be appropriately managed as solid wastes and not hazardous wastes. In fact, this delisting, in conjunction with closure of the units under Ecology's dangerous waste program is expected to address commenter's concerns regarding releases from these units by ensuring that the wastes are placed in a secure, monitored landfill. Further, the proposed action is not in conflict with RCRA, but is an exercise of authority specifically provided for the delisting of hazardous wastes found in the implementing regulations at 40 CFR 260.20 and 22.

Commenter 2 (Docket entry Comment 0026). This commenter questioned ''[w]hat is to be gained for the environment by allowing these [two] companies to dump these chemicals in an improved landfill instead of cleaning up the land''. The commenter appears to misunderstand how the action that EPA

[1] The Washington State Department of Ecology has entered into a litigation settlement (Docket Entry 3) with Fire Mountain Farms and Emerald-Kalama that, in part, requires closure of the units managing dangerous waste considered in this final exclusion. In this context, this final exclusion is a ''one-time'' delisting that will allow the fixed volume of wastes to be generated pursuant to closure of these three units as non-hazardous.

[2] This investigation is documented in the first report in Appendix C of the three delisting petitions (Docket Entries 7–9).

[3] Results of these sampling activities are documented in the third report in Appendix C of the three delisting petitions (Docket Entries 7–9).

is finalizing relates to the obligation of the Petitioners to clean up the three sites where the waste is currently stored. As noted in Footnote 4 in the notice of proposed rulemaking, Ecology has determined that the units managing the candidate wastes at the three FMF facilities are illegally storing listed hazardous waste, and that in order to return to compliance with the state dangerous waste regulation and to protect the environment, each of the facilities must be closed under an approved dangerous waste closure plan. Based on the analysis presented in the proposed rule, EPA has determined that it is protective of human health and the environment to allow wastes from closure of these units to be disposed of in a monitored solid waste landfill. EPA acknowledges the commenter's concern regarding cleaning up the land affected by past management of these wastes, but notes that clean up obligations at these sites is beyond the scope of this rulemaking.

This commenter also provided adverse comments on EPA's proposed ''Strengthening Transparency in Regulatory Science'' regulation. This matter is outside of the scope of this final rulemaking.

Commenter 3 (Docket entry Comment 0027). This commenter questioned the ethics and legitimacy of the exemption of the Petitioners' wastes from regulation as hazardous wastes and stressed the importance of laws being applied evenly to all parties. The commenter seems to assert that allowing for a delisting process offers some parties an unfair advantage and questioned whether ulterior motives were at play that ''pose a greater risk to public safety than initially understood.'' EPA disagrees with the commenter's contention that this action is inconsistent with regulatory requirements. As explained in detail in the notice of proposed rulemaking, EPA is exercising regulatory authority that is potentially available to any petitioner whose wastes meet the criteria for delisting provided under the law. Additionally, as explained elsewhere in this final action, EPA believes that this delisting action, will provide a timely and protective pathway to closure of the three FMF facilities under the state dangerous waste program. Finally, the commenter noted that wastes in the three FMF facilities may pose ''a greater risk to public safety than initially understood.'' As discussed in detail in the notice of proposed rulemaking, EPA has carefully considered the risks of the waste using established risk evaluation methodology. Based on this analysis EPA has determined that excluding these wastes from the hazardous waste management system, subject to the conditions of this final rule, is fully protective of human health and the environment.

Commenter 4 (Docket entry Comment 0028). This commenter identified hazards associated with toluene, as described in a safety data sheet for the chemical and questioned what benefit delisting over 20,000 cubic yards of a mixture containing this chemical would have for the general public. As discussed in the notice of proposed rulemaking, characterization sampling and analysis as well as the risk analysis of the wastes using the Delisting Risk Assessment Software (DRAS) explicitly considered toluene and concluded that it was not present at levels that warranted retention of the mixed material as a listed waste. Whether or not a delisting benefits the public at large is not a criterion for consideration under the procedures set out at 40 CFR 260.20 for delisting a listed hazardous waste. However, as explained in the proposed rulemaking, this action will provide a timely and protective pathway to closure of the three FMF facilities under the state dangerous waste program. Timely and protective closure of these facilities and responsible management of the wastes at issue in an appropriately regulated landfill is in the public interest.

Commenter 5 (Docket entry Comment 0029). The commenter was supportive of the proposed delisting but expressed a preference that the Petitioners analyze five (as opposed to three) samples of the mixed IWBS/treatment solids wastes before the start of closure activities. EPA continues to believe that three samples of the materials in question will provide a reasonable demonstration of compliance with the delisting conditions. EPA proposed the sampling requirement as a condition of the exclusion in order to ensure analytical data are available for all delisting verification constituents, including a small number of constituents considered in the delisting analysis but not included in the original waste characterization database. Should results of the analysis of these additional samples demonstrate other than full compliance with the delisting conditions, the terms of the exclusion enable EPA to require the Petitioners to take appropriate action or to suspend the effectiveness of the delisting.

Commenter 6 (Docket entry Comment 0030a). This commenter expressed concern regarding testing of groundwater or drinking water wells in the area north of the Newaukum Prarie site and raised several concerns about monitoring results and the extent of contamination at the three sites and made recommendations for future monitoring. These comments are beyond the scope of this rulemaking and are best addressed by Ecology. This commenter also stated that cobalt was considered only in the analysis of wastes at the Big Hanaford site—in fact, EPA considered cobalt at all three sites, as documented in Tables 3, 4 and 5 in the notice of proposed rulemaking. This commenter also requested that only state or EPA supervised site workers should be used to gather material for compliance. EPA disagrees that such direct supervision of sample collection is necessary to assure compliance with the requirements of the delisting. EPA generally requires hazardous waste facilities to conduct their own delisting verification sampling and analysis, with agency oversight and review. EPA will carefully review the results of sampling and analysis required under the delisting rule to ensure the resulting data are appropriate for use in demonstrating compliance with requirements of the delisting exclusion.

Commenter 7 (Docket entries Comment 0031 and 0032). This commenter submitted two sets of comments that are substantially similar. The commenter described what he believes to be environmental damage to plants in areas surrounding the Newaukum Prairie site, and groundwater contamination near the Newaukum and Burnt Ridge sites that the commenter attributes to Petitioner FMF's activities. The commenter urges additional and more current testing of groundwater to be performed in the area. The commenter also describes health impacts and nuisance issues that he believes are attributable to Petitioner FMF's activities at the Newaukum site. This commenter raised concerns about the operations and aeration of lagoons at Newaukum site. Finally, the commenter urges that the material at Newaukum should be disposed of at a landfill that is qualified and licensed to handle this material, and states that Petitioner FMF would prefer to land apply the materials in Lewis county, Washington. In taking this final action, Petitioners will be required to dispose of materials from the sites identified by this commenter in a RCRA Subtitle D landfill. Under the terms of this final exclusion, land application of the materials subject to this delisting is prohibited. However, other matters concerning ongoing operations at the Petitioner FMF's sites and groundwater or other sampling activities beyond sampling of the delisted materials are outside of the scope of this rulemaking.

IV. Final Rule

A. What are the terms of this exclusion?

EPA is finalizing this exclusion as proposed, including all of the associated conditions. As a key condition of this exclusion, the Petitioners must dispose of this waste in a subtitle D landfill licensed, permitted or otherwise authorized by a state, and will remain obligated to verify that the waste meets the allowable concentrations set forth here. This exclusion applies only to a maximum volume of waste and is effective only if all conditions contained in this rule are satisfied. Wastes in excess of these quantities or that otherwise do not meet the conditions of this exclusion must be managed as hazardous waste.

B. When is the delisting effective?

This rule is effective April 8, 2020. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA, 42 U.S.C. 6930(b)(1), to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

C. How does this action affect the states?

This exclusion is being issued under the federal RCRA delisting program. Therefore, only states subject to federal RCRA delisting provisions would be affected. This exclusion is not effective in states that have received authorization to make their own delisting decisions. Also, the exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements. The EPA allows states to impose their own regulatory requirements that are more stringent than EPA's, under Section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. As noted in the notice of proposed rulemaking, Ecology is expected to make a parallel delisting decision under their separate state authority. The EPA also notes that if the Petitioners transport the petitioned waste to or manage the waste in any state with delisting authorization or their own state-only delisting requirements, they must obtain a delisting from that state before they can manage the waste as nonhazardous in that state. The EPA urges the Petitioners to contact the state regulatory authority in each state to or through which they may wish to ship their waste to determine the status of their waste under that state's laws.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is exempt from review by the Office of Management and Budget because it is a rule of particular applicability, not general applicability. The action approves a delisting petition under RCRA for the petitioned waste at a particular facility.

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

This action is considered an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction by allowing the Petitioners to manage a one-time amount of up to 20,100 cubic yards of material under RCRA Subtitle D management standards rather than the more stringent RCRA Subtitle C standards. This action will significantly reduce the costs associated with the on-site management, transportation and disposal of this waste stream by shifting its management from RCRA Subtitle C hazardous waste management to RCRA Subtitle D nonhazardous waste management.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it only applies to a particular facility.

D. Regulatory Flexibility Act

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

F. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. The action imposes no new enforceable duty on any state, local, or tribal governments or the private sector.

G. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This action applies only to a particular facility on non-tribal land. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The health and safety risks of the petitioned waste were evaluated using the EPA's Delisting Risk Assessment Software (DRAS), which considers health and safety risks to children. Use of the DRAS was described in section III.E of the proposed delisting. The technical support document and the user's guide for DRAS are available at *https://www.epa.gov/hw/hazardous-waste-delisting-risk-assessment-software-dras.*

J. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

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

K. National Technology Transfer and Advancement Act

This action does not involve technical standards as described by the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The EPA's risk assessment, as described in section III.E in the proposed delisting, did not identify unacceptable risks from management of this material in an authorized or permitted RCRA Subtitle D solid waste landfill (*e.g.,* municipal solid waste landfill or commercial/industrial solid waste landfill). Therefore, the EPA believes that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

M. Congressional Review Act

This action is exempt from the Congressional Review Act (5 U.S.C. 801 *et seq.*) because it is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: February 28, 2020.

Timothy Hamlin,

Director, Land, Chemicals and Redevelopment Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX to Part 261 add an entry for ''Emerald Kalama Chemical, LLC and Fire Mountain Farms, Inc.'' in alphabetical order to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Emerald Kalama Chemical, LLC and Fire Mountain Farms, Inc.	Lewis County, Washington.	Mixtures of hazardous wastewater treatment sludges, U019 (benzene) and U220 (toluene) and other non-hazardous solid wastes to be removed by Emerald Kalama Chemical, LLC and Fire Mountain Farms, Inc (Petitioners) pursuant to closure plans approved by the Washington State Department of Ecology and currently in storage in Fire Mountain Farm's Burnt Ridge, Newaukum Prarie and Big Hanaford facilities in Lewis County, Washington. The maximum amount of wastes that may be managed pursuant to this exclusion is 4,700 cubic yards at the Burnt Ridge facility, 10,400 cubic yards at the Newaukum Prairie facility, and 5,000 cubic yards at the Big Hanaford facility, present at each facility as of the effective date of this exclusion, subject to the conditions below. Wastes managed under this exclusion must be disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted mixed material. The exclusion becomes effective as of April 8, 2020. 1. *Delisting Levels:* The constituent concentrations in a representative sample of the waste must not exceed the following levels. For each constituent, the delisting verification level is provided for Burnt Ridge, Newaukum Prarie and Big Hanaford, respectively. Total concentrations (mg/kg): Cobalt—94,400, 49,100, 89,900; TCLP Concentrations (mg/l in the waste extract): Barium—1,090, 498, 1,030; Cobalt—6.28, 2.92, 5.92; Copper—716, 332, 674; Nickel—408, 184, 384; Zinc—6,170, 2,820, 5,800; Benzaldehyde—1,760, 809, 1,660; Benzene—2.35, 1.08, 2.21; Benzoic Acid—70,400, 32,400, 66,300; Formic Acid—1,130, 519, 1,060; Benzyl Alcohol—8,800, 4,040, 8,290; Methanol—8,800, 4,040, 8,290; Phenol—5,280, 2,430, 4,970; Toluene—460, 211, 433. 2. *Verification Testing:* To verify that the waste does not exceed the delisting concentrations specified in Condition 1, the Petitioners must collect and analyze an extract using EPA SW–846 Method 1311 (TCLP extraction) from three representative composite samples for barium, benzaldehyde, benzoic acid, formic acid, and benzyl alcohol of the mixed IWBS/treatment solids wastes from each FMF facility prior to the start of closure activities to demonstrate that the constituents of concern in the petitioned waste do not exceed the concentrations of concern in Condition 1. If results from analysis of any composite sample do not reflect compliance with delisting exclusion limits, the EPA may require the Petitioners to conduct additional verification sampling to better define the volume of waste with waste constituent concentrations exceeding the delisting exclusion limits. The Petitioners must conduct all verification sampling according to a written sampling plan and associated quality assurance project plan which is approved in advance by the EPA that ensures analytical data are suitable for their intended use. Sampling data must be submitted to the EPA no later than 10 days after receiving the final results from the laboratory, or such later date as the EPA may agree to in writing. Any waste volume for which representative composite sampling does not reflect full compliance with the exclusion criteria in Condition 1 must continue to be managed as hazardous. The Petitioners must also submit to EPA a certification that all wastes satisfying the delisting concentrations in Condition 1 have been disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted mixed material of wastewater treatment sludge, and the quantity of waste disposed from each facility. This submission must be submitted to EPA within 60 days of completion of closure according to the approved closure plan. 3. *Data Submittals:* The Petitioners must submit the data obtained through verification testing and as required by other conditions of this rule, to the Director, Land, Chemical, & Redevelopment Division, U.S. EPA Region 10, 1200 6th Avenue Suite 155, M/S 15–H04, Seattle, Washington, 98070 or his or her equivalent. Electronic submission via electronic mail, physical electronic media (e.g., USB flash drive), or an electronic file transfer system is acceptable. The Petitioners must compile, summarize, and maintain for a minimum of five years, records of analytical data and waste disposal required by this rule. The Petitioners must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). If the Petitioners fail to submit the required data within the specified time or maintain the required records for the specified time, the EPA may, at its discretion, consider such failure a sufficient basis to reopen the exclusion as described in Condition 4.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		4. Reopener Language: (A) If, any time after disposal of the delisted waste, the Petitioners possess or are otherwise made aware of any data, including but not limited to leachate data or groundwater monitoring data from the final land disposal facility, relevant to the delisted waste indicating that any constituent is at a higher than the specified delisting concentration, then the Petitioners must report such data, in writing, to the Director, Land, Chemical, & Redevelopment Division, EPA Region 10 at the address above, or his or her equivalent, within 10 days of first possessing or being made aware of those data. (B) Based on the information described in Condition 4(A) and any other information received from any source, the EPA will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the EPA determines that the reported information does require Agency action, the EPA will notify the Petitioners in writing of the actions it believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the Petitioners with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. The Petitioners shall have 30 days from the date of the EPA's notice to present the information. (D) If after 30 days the Petitioners present no further information or after a review of any submitted information, the EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the EPA's determination shall become effective immediately unless the EPA provides otherwise.

* * * * * * *

[FR Doc. 2020–05910 Filed 4–7–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201 and 252

[Docket DARS–2020–0001]

Defense Federal Acquisition Regulation Supplement: Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making needed technical amendments to update the Defense Federal Acquisition Regulation Supplement (DFARS).

DATES: Effective April 8, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(A&S)DPC(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

1. In section 202.101, the definition of ''Departments and agencies'' is revised to update the list.

2. In section 252.225–7013, Duty-Free Entry, the address for notification of the Government customs team is updated.

List of Subjects in 48 CFR Parts 202 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 202 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. In section 202.101, revise the definition of ''Departments and agencies'' to read as follows:

202.101 Definitions.

* * * * *

Departments and agencies, as used in DFARS, means the military departments and the defense agencies. The military departments are the Departments of the Army, Navy, and Air Force (the Marine Corps is a part of the Department of the Navy). The defense agencies are the Defense Advanced Research Projects Agency, the Defense Commissary Agency, the Defense Contract Management Agency, the Defense Counterintelligence and Security Agency, the Defense Finance and Accounting Service, the Defense Health Agency, the Defense Information Systems Agency, the Defense Intelligence Agency, the Defense Logistics Agency, the Defense Threat Reduction Agency, the Missile Defense Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the Space Development Agency, the United States Cyber Command, the United States Special Operations Command, the United States Transportation Command, and the Washington Headquarters Service.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7013 [Amended]

■ 3. Amend section 252.225–7013 by—

■ a. Removing clause date ''(MAY 2016)'' and adding ''(MAR 2020)'' in its place; and

■ b. In paragraph (e)(2)(iv)(A) removing ''207 New York Avenue, Staten Island, New York, 10305–5013'' and adding ''201 Varick Street, Room 905C, New York, New York 10014'' in its place.

[FR Doc. 2020–06734 Filed 4–7–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 204, 212, 232, and 252

[Docket DARS–2019–0019]

RIN 0750–AK37

Defense Federal Acquisition Regulation Supplement: Performance-Based Payments (DFARS Case 2019–D002)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement

(DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2017 that amends 10 U.S.C. 2307 to address the use of performance-based payments.

DATES: Effective April 8, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, DPC/DARS, at 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 18221 on April 30, 2019, to implement section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, which amends 10 U.S.C. 2307 to address the use of performance-based payments (PBPs).

Eleven respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. There was widespread support for the proposed implementation of 10 U.S.C. 2307(b)(2) requirement that PBPs shall not be conditioned upon costs incurred in contract performance, but on achievement of performance outcomes (232.1001(a)). A number of changes are made in the final rule, which are expected to increase support for the rule, such as permitting alternate forms of security for performance-based payments and clarifying that an acceptable accounting system is not required for incurred costs under the performance-based payments clause. A discussion of the comments and the changes made to the rule as a result of the comments received is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

1. The requirement for compliance with Generally Accepted Accounting Principles (GAAP) in order to receive performance-based payments at DFARS 232.1003–70 and in the representation at 252.232–7015 has been modified to apply to the contractor's financial statements, rather than the ''output'' of the contractor's accounting system, and the requirement that compliance with GAAP must be evidenced by audited financial statements has been removed.

2. The procedures at DFARS 232.1004 are modified to eliminate the requirement to first agree on price using customary progress payments and then require consideration if performance-based payments are subsequently negotiated. In addition, contracting officers are encouraged to use both the progress payments and performance based payments clauses and provisions, when considering both types of financing methods.

3. The DFARS clauses 252.232–7012, Performance-Based Payments—Whole-Contract Basis, and 252.232–7013, Performance-Based Payments—Deliverable Items, are modified to specifically state that it is not necessary to have a Government-unique cost accounting system in order to report incurred costs under the clause.

4. A new paragraph (d) is added in DFARS 252.232–7012 and 252.232–7013 that provides some flexibility with regard to acceptable security, although title to the property described in paragraph (f) of the clause at FAR 52.232–32, Performance-Based Payments, is still the preferred security for receipt of performance-based payments.

5. A new provision is added at DFARS 252.232–7016, Notice of Progress Payments or Performance-Based Payments, to be used in lieu of FAR 52.232–13, Notice of Progress Payments, when the solicitation contains clauses for progress payments and performance-based payments, to explain that only one type of financing will be included in the resultant contract, except as may be authorized on separate orders subject to FAR 32.1003(c).

B. Analysis of Public Comments

1. General Support for the Rule

a. Generally support the rule.

Comment: Various respondents expressed general support for the rule, particularly the removal of the requirement to limit PBP financing to costs incurred. One respondent stated that the proposed rule is a significant improvement over the current DFARS, creating a more inviting marketplace for private sector entities and nontraditional defense contractors. Another respondent wholeheartedly supported amending the DFARS to implement section 831 of the NDAA for FY 2017.

Response: Noted.

b. Generally oppose the rule.

Comment: One respondent stated that this rule is worse than the previous rule (DFARS Case 2017–D019, published 8/24/2018, withdrawn 10/4/2018), and against the original genuine intent of simplification to motivate the performance of the supplier. Another respondent recommended adopting the revisions to the DFARS proposed in DFARS Case 2017–D019 that implement section 831, while disregarding those changes that were outside the scope of section 831.

One respondent stated that when DoD issued the proposed rule under DFARS case 2017–D019, DoD explained that the proposed rule would ''relieve the administrative burden on contractors'' by deleting the current regulations relating to performance-based payments at DFARS subpart 232.10 and the associated clauses at DFARS 252.232–7012 and 252.232–7013. This respondent recommended that DoD should repeal in their entirety the current DFARS regulations related to PBPs and the associated clauses, and any associated Procedures, Guidance, and Information (PGI), because existing FAR regulations are sufficient.

Response: It is the intent of this rule to implement section 831 of the NDAA for FY 2017. The prior DFARS Case 2017–D019 presented a cohesive approach to contract financing, in order to increase DoD's business effectiveness and efficiency as well as to provide an opportunity for both small and other than small entities to qualify for increased customary progress payment rates and maximum performance-based payment rates, based on whether the offeror/contractor has met certain performance criteria. The provisions of that rule were interdependent upon each other, and DoD cannot segregate out specific aspects of that rule in the absence of the criteria that were intended to motivate performance.

In response to the comment that DoD should repeal in their entirety the current DFARS regulations relating to performance-based payments, DoD does not consider this to be in the best interest of DoD or of contractors. DFARS coverage, as modified by this final rule, provides needed clarification and also provides flexibility with regard to security for performance-based payments. The following discussion will address more specific concerns about the proposed rule.

2. Make PBPs the Preferred Method of Contract Finance

Many respondents stated that DoD should clearly establish PBPs as the default choice for contract financing.

a. Benefits of performance-based payments.

Comment: Several respondents particularly emphasized the benefits of PBPs. These respondents stated that PBPs better align the interests of the Government and the contractors. According to these respondents, by effectively attributing the payments to the work performance, rather than just costs incurred, the Government receives tangible product deliverables and the contractor receives cash payment tied to performance, which encourages the timely execution of the contract. One respondent stated that PBPs may reduce costs for Government oversight and compliance, encourage nontraditional and small business entities to enter the Federal marketplace, and facilitate contractor financing and performance of contracts.

Response: DoD agrees that appropriate use of PBPs has benefits. This rule is consistent with the statutory preference for PBP; however, the Government reserves the right to determine the best option for contract financing based on the individual contract action. Due to the evaluation criteria required to determine whether PBP is the best method of contract financing, DoD will not direct that PBP is the default choice for contracts.

b. Eliminate the requirement for two-step negotiation and consideration.

Comment: Although not addressed in the proposed rule, many respondents were concerned that the existing procedures at DFARS 232.1004 pose hindrances to the preference for PBPs. Specifically, many respondents were concerned about retention of the procedures at DFARS 232.1004, which require initial agreement on price using customary progress payments before negotiations begin on the usage of performance-based payments. One respondent stated that the two-step negotiation process is unjustifiably unique to DoD.

Furthermore, the DFARS currently requires negotiation of consideration to be received by the Government if the performance-based payments payment schedule will be more favorable to the contractor than customary progress payments. Two respondents stated that this process is counter to the system outlined in FAR 32.005(a). One of these respondents stated that performance-based payments are a program management tool, whereas progress payments simply reimburse contractors for costs incurred. Therefore, according to the respondent, comparing the payments schedule of one to the other is not an ''apples-to-apples'' comparison. Performance goals required by PBPs serve as additional requirements placed on the contractor that offset the payment schedule difference offered by PBPs compared to progress payments. Requiring additional consideration erodes the potential benefits of PBPs relative to the increased risk accepted by contractors, and undermines the policy objective to incentivize performance. Several respondents stated that DoD added this policy specifically to reverse the preference for PBPs.

Response: DoD has removed this requirement in the final rule (see DFARS 232.1004).

c. Eliminate or completely overhaul the PBP analysis tool.

Comment: Several respondents specifically recommended eliminating or completely overhauling the PBP analysis tool, which DoD developed to allow the contracting officer and industry to compare the financial cost and benefits of using PBPs versus customary progress payments. While one respondent acknowledged that slight changes have been made to improve the tool, the respondent still finds the ''conceptual shortcomings'' of DoD's policy unchanged. One respondent offered the following detailed criticisms of the PBP Tool:

- The tool assumes if there are costs in the first month of the program there will be a Progress Based Payment in the first month of the program. Invoices for PBP's are submitted after the end of the month and thus cannot be paid before about the middle of the 2nd month of the program. This flaw skews the results by assuming the contractor receives payment nearly a month before it is possible. The tool does not provide a mechanism for adjusting calculations based on specific contract requirements when such requirements impact payment lag time either positively or negatively.
- The PBP tool is intentionally structured to keep a contractor cash flow negative regardless of how well the contractor performs.

Response: The DoD tool takes into account a 22-day lag time between when expenditures occur and when progress payments are made. This accounts for the fact that all expenditures do not occur on the first day of a month or the last day. This is an industry average, and does not accommodate unique lag times by contract.

Contractors are supposed to have a positive investment in the effort. FAR 32.1004(b)(3)(ii) states that the contracting officer must ensure that PBPs are not expected to result in an unreasonably low or negative level of contractor investment in the contract.

Therefore, contracting officers are still required to use the PBP analysis tool to objectively measure both the benefits and risks of the PBP financing arrangement, and negotiate a mutually beneficial settlement position that reflects adequate consideration to the Government for the improved contractor cash flow. However, the PBP Tool has been revised to remove the cost limitation in accordance with this final rule.

3. Compliance With Generally Accepted Accounting Principles

a. Audited financial statement.

Comment: One respondent found the requirement to evidence compliance with Generally Accepted Accounting Principles (GAAP) through audited financial statements burdensome to the contractor.

Response: The requirement that the contractors compliance with GAAP must be evidenced through audited financial statements has been removed from the final rule.

b. Make language of rule mirror the statute.

Comment: One respondent was concerned that the proposed DFARS rule does not exactly mirror the statute when it requires that ''the output of a contractor's accounting system'' shall be in compliance with GAAP, whereas the statute requires ''a contractor's accounting system'' to be in compliance (or noncompliance) with GAAP.

Response: The wording of the statute is imprecise, because an accounting system cannot be in compliance with GAAP. Compliance with GAAP means that the financial statements are fairly presented, *i.e.,* that the information contained within the financial statements complies with GAAP in all material respects. Therefore, in order to improve the clarity of the final rule, the requirement for compliance with GAAP in order to receive PBPs is now applied to ''the contractor's financial statements'' rather than ''the output of the contractor's accounting system'' (see 232.1003–70 and 252.232–7015).

c. Representation is unnecessary.

Comment: One respondent stated that the proposed representation at DFARS 252.232–7015 with regard to compliance with GAAP is unnecessary, since costs incurred have no bearing on the amounts billed under PBPs.

Response: The fact that incurred costs no longer have bearing on the amounts billed under PBPs has no relevance to the requirement for representation by the offeror that its financial statements are, or are not, in compliance with GAAP. Section 831, as codified at 10 U.S.C. 2307(b)(4), requires compliance with GAAP in order to receive performance-based payments. Providing a representation is one of the least burdensome ways to demonstrate compliance with GAAP.

4. Reporting of Incurred Costs

Most respondents had objections to the continued requirement for reporting of incurred costs in the clauses at

DFARS 252.232–7012 and 252.232–7013.

a. Requirement for Government-unique accounting system.

Comment: One respondent noted that 10 U.S.C. 2307 expressly states that the Secretary of Defense shall ensure that nontraditional defense contractors and other private sector companies are eligible for performance-based payments and that there shall be no requirements for a contractor to develop Government-unique accounting systems or practice as a prerequisite for agreeing to receive PBPs. Some respondents believed that retention of the requirement to report cumulative contract costs incurred to date, as a condition of receiving PBPs, imposes a requirement to develop a Government-unique accounting system, and therefore is inconsistent with 10 U.S.C. 2307(b)(4)(A), as amended by section 831. For example, one respondent stated that the cost reporting in the proposed rule would require a Government-unique job order cost accounting system to generate FAR- and DFARS-compliant cost reports.

Response: The reporting of incurred costs does not require a Government-unique cost accounting system. Systems that identify costs with the projects for which they are incurred (''job costing,'' as a broad term) are not at all unique to Government requirements. It would be highly unlikely for a fiscally sound company to have no means of identifying the costs of performing a contract. Furthermore, the rule does not require any particular accounting system; rather, the rule states that ''incurred cost is determined by the Contractor's accounting books and records.''

Comment: One respondent while expressing concern that the reporting requirement could be interpreted to require the submission of FAR part 31 compliant costs, stated that costs generated by a GAAP-compliant system should be sufficient to provide DoD with data necessary for negotiation of PBPs in future contracts. This respondent recommended clarification that a contractor may report costs from its GAAP-compliant system, adjusted by a decrement factor to reflect estimated unallowable costs as appropriate.

Response: The clauses in the final rule have been revised to specify that if the Contractor's accounting system is not capable of tracking costs on a job order basis, the Contractor shall provide a realistic approximation of the allocation of incurred costs attributable to this contract in accordance with the Contractor's accounting system.

DoD considers that it would constitute excessive risk to the Government and would be an impediment to issuing financing payments to a company if that company is unable to comply with this requirement, even when it is properly understood that this clause does not require a ''Government-unique'' accounting system. To the extent that a company is unable to report the costs of performance at all, relying on its own accounting books and records, this will make it impossible for the Government to have any confidence that complete performance of the contract is assured, or that the negotiated events ''reflect prudent contract financing'' (FAR 32.1004(b)(2)(i)) and do not ''result in an unreasonably low or negative level of contractor investment in the contract'' (FAR 32.1004(b)(3)(ii)).

b. Disincentive to use of PBPs, rather than a preference.

Comment: One respondent stated that nontraditional entities may be disinterested in expending time and resources to implement business systems to collect and report costs on a contract basis, which are beyond the system necessary to comply with GAAP. Similarly, another respondent stated that the requirement to report incurred costs undermines the stated preference for PBPs, could deter contractors from pursuing PBPs because contractors with only fixed-price contracts are unlikely to track costs on a contract-by-contract basis, and effectively would require many contractors to add business and compliance systems if they were to pursue PBPs. They suggest that this is therefore contrary to the statutory preference at 10 U.S.C. 2307 for PBPs as a means of financing.

Response: If the contractor's financial statements are in compliance with GAAP, it is likely that the contractor, even a nontraditional defense contractor, will have some means of providing a realistic approximation of the allocation of incurred costs. While it is possible that some contractors will have no such system at all, rather than only no ''Government-unique'' system, DoD does not believe it is reasonable, necessary, or the intent of Congress, to issue Government financing when the recipient has no such visibility over its costs.

c. Unnecessary and irrelevant.

Comment: Most respondents contended that the requirement to report incurred costs was unnecessary. For example, one respondent stated that the Government should recognize the limits of the cost data collected when using it to inform negotiations on future contracts utilizing PBPs. This respondent contended that collecting costs incurred at each milestone payment represents an incomplete picture of total costs incurred by a contractor to complete a project. According to the respondent, at least 10 percent of the contract costs are incurred between the last PBP milestone payment and the end of the program. Additionally, there are other factors such as rate adjustments which later affect the total costs incurred.

Another respondent stated that there is no need to use a comparison of a prior contract's PBP values and incurred costs in the negotiation of future contracts' PBP values.

Many respondents stated that what happened on the prior contract is simply not relevant to negotiation of the current contract's PBP event values. One respondent noted that a requirement to use information on incurred costs is not found in the DoD User's Guide to performance-Based Payments, nor is it found in the current (or proposed) DFARS language, nor is it found in the current PGI associated with PBPs. Several respondents also pointed out that because these are firm-fixed-price contracts, neither the contractor nor the Government have a need to track contract costs or report them in the manner required by the proposed rule.

Response: It would not be appropriate to collect this information on incurred costs as a means to condition payment of the current PBP events on incurred costs. The events are negotiated in advance of performance, and will not be changed merely on the basis of incurred costs. However, aside from the value to Government negotiators of being able to evaluate current proposals for PBP milestone values against past experience, it remains important for the Government to know the risk it is incurring when it makes payments that may be disproportionate to the contractor's investment in contract performance. That is why the amounts assigned to PBP events must be ''commensurate with the value of the performance event or performance criterion'' (FAR 32.1004(b)(3)(ii)). DoD does not believe that Congress was unconcerned with ensuring some degree of accountability; if it had been, there would have been no purpose to the statutory requirement that ''in order to receive performance-based payments, a contractor's accounting system shall be in compliance with Generally Accepted Accounting Principles.''

d. Use of incurred cost data in negotiations.

Comment: One respondent was concerned that use of prior incurred costs in negotiation will create ''never-ending discussions, allowing an excuse to prime contractors and contracting officer to delay payments and requiring in any case the burden on data collecting, validating, etc. on both the Supplier and the Buyer.'' This respondent also raised the issue of how data on incurred costs will be stored and managed and who will have access to the database created with these costs. The respondent questioned how the contracting officer will be able to find applicable previous cases.

Response: In accordance with FAR 15.403–3(b), the contracting officer may require data other than certified cost or pricing data to support a determination of a fair and reasonable price. In negotiations, one way to ensure a fair and reasonable price is through the use of various price analysis techniques and procedures to include a comparison of proposed prices to historical prices (*i.e.,* incurred costs) paid for the same or similar items. Use of prior incurred costs in negotiations are not meant to create ''never-ending'' discussions, but to facilitate negotiation of a fair and reasonable price for all concerned parties. The requirement to provide incurred cost data is not a new requirement, and this data has been available for use in negotiations for many years. As with any sensitive information, all incurred cost data will be maintained in the official contract file for official use only. There is no intent to create a new database.

5. Requirement for Title

Comment: Two respondents addressed the requirement in FAR 52.232–32(f) that the Government take title to work in progress immediately upon the date of the receipt of a PBP payment.

Two respondents stated that the requirement for title conflicts with 10 U.S.C. 2307(b)(4)(A), which states that in order to receive performance-based payments, a contractor's accounting system shall be in compliance with GAAP, and there shall be no requirement for a contractor to develop Government-unique accounting systems or practices as a prerequisite for agreeing to receive performance-based payments. According to the respondents, because many GAAP-compliant accounting systems are unable to isolate the work in process associated with a particular unit from the rest of the supply chain until delivery, requiring a contractor to deliver title to such goods is therefore de facto requirement for a Government-unique accounting system.

One respondent also stated that requiring title to work in process immediately upon receipt of a PBP payment represents bad policy. According to the respondent, allowing contractors to aggregate component purchases across multiple contracts can reduce costs and improve schedules. To maximize this flexibility, contractors need to be able to reallocate common parts between contracts based on customer needs and vendor availability. This benefits DoD.

Two respondents pointed out that DoD has existing flexibility in 10 U.S.C. 2307(d) to accept alternate forms of security for PBPs instead of taking title. According to these respondents, such alternate forms of security are common in the commercial marketplace, and allowing contractors without Government-unique accounting systems to provide an alternate form of security is the only way to implement the mandate from Congress to open PBP access to all contractors with GAAP-compliant systems.

Response: While title to the property described in paragraph (f) of the clause at FAR 52.232–32, Performance-Based Payments, is the preferred security for receipt of progress payments, the final rule (DFARS 252.232–7012 and 252.232–7013) addresses the concerns and comments expressed concerning title by allowing the use of other forms of security if the contractor's accounting system is not capable of identifying and tracking through the build cycle the property that is allocable and properly chargeable to the contract.

6. Definition of ''Nontraditional Defense Contractor''

Comment: Two respondents stated that the DFARS does not define ''nontraditional defense contractor'' and recommended inclusion in the DFARS of the definition at 10 U.S.C. 2302(9).

Response: The definition of ''nontraditional defense contractor'' at 10 U.S.C. 2302(9) is incorporated in the DFARS at 212.001. However, since the term is now used in part 232, this final rule moves the definition from DFARS 212.001 to DFARS 202.101, so that the definition is applicable throughout the DFARS.

7. Ceiling of 90 Percent

Comment: One respondent recommended revision to the proposed rule to provide clarity on the financial ceiling of 90 percent provided for in the FAR. According to the respondent, the DFARS should clearly state that performance-based payments will be based on a percentage of price, and that the ceiling for the basis will be 90 percent (FAR 32.1004(b)(2)(ii)).

Response: The DFARS does not restate the 90 percent ceiling that is already stated in FAR 32.1004(b)(2)(ii) and doing so is unnecessary because the DFARS supplements the FAR. Further, performance-based payments are not based on a percentage of price. The bases for performance-based payments are clearly defined in FAR 32.1002.

8. Selection and Valuation of Milestone Events

Comment: One respondent recommended that the final rule should clarify in the DFARS that a PBP payment associated with a particular milestone should reflect the value of all work accomplished by the contractor at the time it meets the milestone. This is consistent with current guidance in the PBP Guide, but the respondent has still encountered widespread confusion. According to the respondent, clarifying this interpretation can reduce the administrative burden by allowing flexibility to choose fewer and more meaningful milestones.

Response: DoD has considered this comment and concludes that no further clarification is required in the final rule. The DoD Performance Based Payment Guide contains sufficient direction with regard to identifying PBP events, establishing completion criteria for PBP events, and establishing PBP event values. PBP events are established as representative milestones that may reflect the total effort needed to accomplish not only that particular milestone, but other activities through that timeframe; milestone events or criteria may be either severable or cumulative, and the contract should state which applies (FAR 32.1004(a)(2)). However, care must be taken to ensure that there is reasonable consistency in event valuation and that valuation of events is reflective of their relative value to the successful performance of the contract, so that the contractor's financial focus is in basic alignment with programmatic priorities.

9. Training and Guidance

Several respondents recommended additional training and guidance on PBPs to both program managers and contracting officers.

a. PBP process.

Comment: One respondent recommended training on the PBP milestone process because the respondent has encountered reluctance on the part of the Government due to lack of experience in use of PBPs and concern for administrative burden on the Government. Another respondent noted that establishing proper milestones requires an understanding of what it takes to perform the contract and how much it will cost. However, it also requires understanding of how businesses operate and why they need certain funding when they do. Therefore, the respondent recommended guidance and training to procurement personnel on how to reach the proper balance between DoD and contractor needs.

Response: Each DFARS case is reviewed for training requirements/changes to current Defense Acquisition University training. In addition to the Continuing Learning Course (CLC 026), Performance Based Payment Overview, the Performance Based Payment Guide, and Guide for Performance Based Service Acquisitions, courses in the Contracting and Program Management curriculum contain appropriate information on PBPs to align with course goals. The changes in the DFARS will prompt changes in the guides and course to ensure the workforce understands the processes.

b. Cash flow.

Comment: One respondent recommended guidance to contracting officers that a slightly positive cash flow is acceptable and encouraged, since it further incentivizes performance. Another respondent when addressing training also noted that limiting reasonable cash flow to contractors may result in deferring expenditures, which could result in late delivery.

Response: FAR 32.1004(b)(2)(i) states that performance-based payments shall reflect prudent contract financing provided only to the extent needed for contract performance, and FAR 32.1004(b)(3)(ii) states that the contracting officer shall ensure that performance-based payment amounts are commensurate with the value of the performance event or performance criterion and are not expected to result in an unreasonably low or negative level of contractor investment in the contract. DoD is not trying to limit reasonable cash flow with this rule as it does not differ from FAR 32.1004 (b)(2)(ii) which limits contract financing to 90% of price. Any training provided will be done so in accordance with the rules in the FAR and DFARS.

10. Applicability to Acquisition of Commercial Items

Comment: One respondent recommended that DoD should consider making PBPs available to commercial item contracts that are large in terms of scope and dollar value when the contractor needs early funding of the facilities, equipment, supplies and the like for performance. The respondent requested that DoD should provide guidance for such use of PBPs.

Response: The law contemplates the use of financing similar to performance based payments on commercial item as well as other contracts. However, it also requires that payments for commercial items ''be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the United States'' (10 U.S.C. 2307(f)(1)). It is impossible to specify in the DFARS what specific terms and conditions for PBPs ''are appropriate or customary in the commercial marketplace,'' since we assume they may vary widely depending on the marketplace for the kind of supply or service item being purchased. For this reason, the FAR and DFARS do not provide further detailed guidance other than what is already prescribed in FAR 32.2 and DFARS 232.2, ''Commercial Item Purchase Financing.''

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the clauses at DFARS 252.232–7012 and 252.232–7013 and adds a new provision at DFARS 252.232–7015, Performance-Based Payments—Representation. These clauses and provision do not apply to contracts at or below the simplified acquisition threshold or for the acquisition of commercial items. In accordance with 10 U.S.C. 2307(f) and 41 U.S.C. 4505, FAR 32.201 provides that payment for commercial items may be made under such terms and conditions as the agency head determines are appropriate or customary in the commercial marketplace and are in the best interest of the United States. Furthermore, FAR 32.202–1 states that Government financing of commercial purchases is expected to be different from that used for noncommercial purchases. While the contracting officer may adapt techniques and procedures from the noncommercial subparts for use in implementing commercial contract financing arrangements, the contracting officer must have a full understanding of effects of the differing contract environments and of what is needed to protect the interests of the Government in commercial contract financing.

IV. Expected Cost Impact

This rule amends the DFARS to implement changes to performance-based payment policies for DoD contracts by amending the policy on performance-based payments at DFARS 232.1001 and amending the clauses at DFARS 252.232–7012, Performance-Based Payments—Whole Contract Basis, and 252.232–7013, Performance-Based Payments—Deliverable Item Basis.

This rule may benefit contractors who receive contract financing from the Government in the form of performance-based payments. Performance-based payments do not apply to—

- Payments under cost-reimbursement line-items;
- Contracts awarded under the authority of FAR part 12 or part 13;
- Contracts for architect-engineer services or construction, or for shipbuilding or ship repair, when the contract provides for progress payments based upon a percentage or stage of completion.

Performance-based payments are tied to the achievement of specific, measurable events or accomplishments that are defined and valued in advance by the parties to the contract. Total performance-based payments cannot exceed 90 percent of the contract price.

This rule removes the DFARS restrictions that limit performance-based payments to amounts not greater than costs incurred up to the time of payment.

If performance-based payments to the contractor based on the negotiated value of completed milestone events are allowed to exceed the total costs incurred up to the time of payment, the cost to the contractor of short-term borrowing will decrease and the cost to the Government of borrowing will increase.

In addition, there is a minimal cost to offerors and the Government related to a new provision at DFARS 252.232–7015, Performance-Based Payments—Representation, which requires each offeror responding to a solicitation that may result in a contract providing performance-based financing to represent whether the offeror's financial statements are in compliance with Generally Accepted Accounting Principles.

This final rule includes additional amendments in response to industry feedback on the proposed rule, which are described in section II.A. of this preamble. In particular, one of the amendments provides alternative forms of security, in lieu of the requirements of paragraph (f) of the clause at FAR 52.232–32. The amendment to the rule will facilitate the use of performance-based payments by contractors that may not have accounting systems designed for FAR part 15 cost-reimbursement work, and contractors without job-cost accounting systems that can associate work in progress with a specific contract. One company expressed support for this specific amendment at an E.O. 12866 meeting on the final rule.

DoD has performed a regulatory cost analysis on this rule. The following is a summary of the estimated public cost savings and Government costs in millions calculated in perpetuity in 2016 dollars at a 7-percent discount rate:

Summary	Public	Government	Total
Present Value	−$53.971	$27.338	−$26.633
Annualized Costs	−3.778	−1.914	−1.864
Annualized Value Costs (as of 2016 if Year 1 is 2020)	−2.882	−1.460	−1.422

To access the complete Regulatory Cost Analysis, go to the Federal eRulemaking Portal at *www.regulations.gov,* search for ''DFARS Case 2019–D002,'' click ''Open Docket,'' and view ''Supporting Documents.''

V. 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 a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is an E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, deregulatory action. We estimate that this rule generates $1.4 million in annualized cost savings, discounted at 7 percent relative to year 2016, over a perpetual time horizon. Details on the estimated cost savings can be found in section IV. of this preamble.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule implements section 831 the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, which amends 10 U.S.C. 2307 to address the use of performance-based payments. The primary objective of this rule is to remove the restrictions at DFARS 232.1001(a) and the clauses at 252.232–7012(b)(i) and 252.232–7013(b)(i) that limit performance-based payments to amounts not greater than costs incurred up to the time of payment, as required 10 U.S.C. 2307.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

This rule will apply to approximately 55 small entities per year that are awarded contracts that provide performance-based contract payments from DoD.

This rule adds a reporting requirement that will require an entry in the annual representations and certifications with regard to whether the offeror's financial statements are in compliance with Generally Accepted Accounting Principles. DoD estimates that the skill necessary for this requirement is at the journeyman level and that each entry will require an average of 6 minutes.

This rule will not have a significant economic impact on small entities. There are no significant alternatives consistent with the stated objectives of the statute.

VIII. Paperwork Reduction Act

This rule affects the information collection requirements at DFARS subpart 232.10 (and associated clauses at DFARS 252.232–7012 and 252.232–7013, currently approved under OMB Control Number 0704–0359, DFARS Part 232, Contract Financing. The impact, however, is negligible, because only the last three lines of the table are deleted, which do not impose the predominance of the burden. This rule also adds a new information collection requirement that has been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement has been assigned OMB Control Number 0750–0001, entitled ''*Defense Federal Acquisition Regulation Supplement (DFARS), Performance-Based Payments—Representation.*''

List of Subjects in 48 CFR Parts 202, 204, 212, 232, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202, 204, 212, 232, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 202, 204, 212, 232, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 202.101 by adding in alphabetical order a definition for ''Nontraditional defense contractor'' to read as follows:

202.101 Definitions.

* * * * *

Nontraditional defense contractor means an entity that is not currently performing and has not performed any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section, for at least the 1-year period preceding the solicitation of sources by DoD for the procurement (10 U.S.C. 2302(9)).

* * * * *

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 3. Amend section 204.1202 by—

■ a. Revising the section heading;

■ b. Redesignating paragraph (2)(xv) as (2)(xvi); and

■ c. Adding a new paragraph (2)(xv).

The revision and addition read as follows:

204.1202 Solicitation provision and contract clause.

* * * * *

(2) * * *

(xv) 252.232–7015, Performance-Based Payments—Representation.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.001 [Amended]

■ 4. Amend section 212.001 by removing the definition of ''Nontraditional defense contractor''.

PART 232—CONTRACT FINANCING

■ 5. In section 232.1001, revise paragraph (a) to read as follows:

232.1001 Policy.

(a) As with all contract financing, the purpose of performance-based payments is to assist the contractor in the payment of costs incurred during the performance of the contract. See PGI 232.1001(a) for additional information on use of performance-based payments. However, in accordance with 10 U.S.C. 2307(b)(2), performance-based payments shall not be conditioned upon costs incurred in contract performance, but on the achievement of performance outcomes. Subject to the criteria in 232.1003–70, all companies, including nontraditional defense contractors, are eligible for performance-based payments, consistent with best commercial practices.

* * * * *

■ 6. Revise section 232.1003–70 to read as follows:

232.1003–70 Criteria for use.

In accordance with 10 U.S.C. 2307(b)(4)(A), a contractor's financial statements shall be in compliance with Generally Accepted Accounting Principles in order to receive performance-based payments. 10 U.S.C. 2307(b)(4)(B) specifies that it does not grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

■ 7. In section 232.1004, revise paragraph (b) to read as follows:

232.1004 Procedures.

(b) *Establishing performance-based finance payment amounts.* (i) The contracting officer should include in a solicitation both the progress payments and performance-based payments provisions and clauses prescribed in this part, when considering both types of payment methods. Only one type of financing will be included in the resultant contract, except as may be authorized on separate orders subject to FAR 32.1003(c)).

(ii) The contracting officer shall analyze the performance-based payment schedule using the performance-based payments (PBP) analysis tool. The PBP analysis tool is on the DPC website in the Cost, Pricing & Finance section, Performance Based Payments—Guide Book & Analysis Tool tab, at *http://www.acq.osd.mil/dpap/cpic/cp/Performance_based_payments.html.*

(A) When considering performance-based payments, obtain from the offeror/contractor a proposed performance-based payments schedule that includes all performance-based payments events, completion criteria and event values along with the projected monthly expenditure profile in order to negotiate the value of the performance events such that the performance-based payments are not expected to result in an unreasonably low or negative level of contractor investment in the contract. If performance-based payments are deemed practical, the Government will evaluate and negotiate the details of the performance-based payments schedule.

(B) For modifications to contracts that already use performance-based payments financing, the basis for negotiation must include performance-based payments. The PBP analysis tool will be used in the same manner to help determine the price for the modification.

(iii) The contracting officer shall document in the contract file that the performance-based payment schedule provides a mutually beneficial settlement position that reflects adequate consideration to the Government for the improved contractor cash flow.

* * * * *

■ 8. Amend section 232.1005–70 by—

■ a. Revising the section heading;

■ b. Redesignating the introductory text as paragraph (a);

■ c. Redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (2), respectively; and

■ d. Adding new paragraph (b) and paragraph (c).

The revision and additions read as follows:

232.1005–70 Solicitation provisions and contract clauses.

* * * * *

(b) Use the provision at 252.232–7015, Performance-Based Payments—Representation, in solicitations where the resulting contract may include performance-based payments.

(c) Use the provision at 252.232–7016, Notice of Progress Payments or Performance-Based Payments, in lieu of FAR 52.232–13, Notice of Progress Payments, when the solicitation contains clauses for progress payments and performance-based payments (only one type of financing will be included in the resultant contract, except as may be authorized on separate orders subject to FAR 32.1003(c)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 252.204–7007 by—

■ a. Removing the provision date of ''(DEC 2019)'' and adding ''(APR 2020)'' in its place; and

■ b. Adding paragraph (d)(2)(vii) to read as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

* * * * *

(d) * * *

(2) * * *

(vii) 252.232–7015, Performance-Based Payments—Representation.

* * * * *

■ 10. Amend section 252.232–7012 by—

■ a. In the introductory text, removing ''232.1005–70(a)'' and adding ''232.1005–70(a)(1)'' in its place;

■ b. Removing the clause date of ''(MAR 2014)'' and adding ''(APR 2020)'' in its place;

■ c. Redesignating paragraph (b) as (c);

■ d. Adding a new paragraph (b);

■ e. Revising the newly redesignated paragraph (c); and

■ f. Adding paragraph (d).

The additions and revision read as follows:

252.232–7012 Performance-Based Payments–Whole-Contract Basis.

* * * * *

(b) In accordance with 10 U.S.C. 2307(b)(4)(A), the Contractor's financial statements shall be in compliance with Generally Accepted Accounting Principles in order to receive performance-based payments.

(c)(1) The Contractor shall, in addition to providing the information required by FAR 52.232–32, submit information for all payment requests using the following format:

Current performance-based payment(s) event(s) addressed by this request:		
Contractor shall identify—	Amount	Totals
(1a) Negotiated value of all previously completed performance-based payment(s) event(s);		
(1b) Negotiated value of the current performance-based payment(s) event(s);		
(1c) Cumulative negotiated value of performance-based payment(s) event(s) completed to date (1a) + (1b); and		
(2) Total costs incurred to date.		

(2) Incurred cost is determined by the Contractor's accounting books and records, to which the Contractor shall provide access upon request of the Contracting Officer. An acceptable accounting system in accordance with DFARS 252.242–7006 is not required for reporting of incurred costs under this clause. If the Contractor's accounting system is not capable of tracking costs on a job order basis, the Contractor shall provide a realistic approximation of the allocation of incurred costs attributable to this contract in accordance with the Contractor's accounting system. FAR 52.232–32(m) does not require certification of incurred costs.

(d) *Security for financing.* (1) Title to the property described in paragraph (f) of the clause at FAR 52.232–32, Performance-Based Payments, is the preferred security for receipt of performance-based payments.

(2)(i) If the Contractor's accounting system is not capable of identifying and tracking through the build cycle the property that is allocable and properly chargeable to this contract, the Contracting Officer may consider acceptance of one or a combination of the following alternative forms of security sufficient to constitute adequate security for the performance-based payments and so specify in the contract, consistent with FAR 32.202–4:

(A) A paramount lien on assets.

(B) An irrevocable letter of credit from a federally insured financial institution.

(C) A bond from a surety, acceptable in accordance with FAR part 28.

(D) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership interest to the Contractor.

(E) Title to identified Contractor assets of adequate worth.

(ii) Paragraph (f) of the clause at FAR 52.232–32 does not apply to the extent that the Contractor and the Contracting Officer agree on alternative forms of security. In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment will be made under this contract. Upon receipt of adequate security, financing payments will be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

■ 11. Amend section 252.232–7013 by—

■ a. In the clause introductory text, removing ''232.1005–70(b)'' and adding ''232.1005–70(a)(2)'' in its place;

■ b. Removing the clause date of ''(APR 2014)'' and adding ''(APR 2020)'' in its place;

■ c. Redesignating paragraph (b) as (c);

■ d. Adding a new paragraph (b);

■ e. Revising the newly redesignated paragraph (c); and

■ f. Adding paragraph (d).

The additions and revision read as follows:

252.232–7013 Performance-Based Payments—Deliverable-Item Basis.

* * * * *

(b) In accordance with 10 U.S.C. 2307(b)(4)(A), the Contractor's financial statements shall be in compliance with Generally Accepted Accounting Principles in order to receive performance-based payments.

(c)(1) The Contractor shall, in addition to providing the information required by FAR 52.232–32, submit information for all payment requests using the following format:

Current performance-based payment(s) event(s) addressed by this request:		
Contractor shall identify—	Amount	Totals
(1a) Negotiated value of all previously completed performance-based payment(s) event(s);		
(1b) Negotiated value of the current performance-based payment(s) event(s);		
(1c) Cumulative negotiated value of performance-based payment(s) events completed to date (1a) + (1b); and		
(2) Total costs incurred to date.		

(2) Incurred cost is determined by the Contractor's accounting books and records, to which the Contractor shall provide access upon request of the Contracting Officer. An acceptable accounting system in accordance with DFARS 252.242–7006 is not required for reporting of incurred costs under this clause. If the Contractor's accounting system is not capable of tracking costs on a job order basis, the Contractor shall provide a realistic approximation of the allocation of incurred costs attributable to this contract in accordance with the Contractor's accounting system. FAR 52.232–32(m) does not require certification of incurred costs.

(d) *Security for financing.* (1) Title to the property described in paragraph (f) of the clause at FAR 52.232–32, Performance-Based Payments, is the preferred security for receipt of performance-based payments.

(2)(i) If the Contractor's accounting system is not capable of identifying and tracking through the build cycle the property that is allocable and properly chargeable to this contract, the Contracting Officer may consider acceptance of one or a combination of the following alternative forms of security sufficient to constitute adequate security for the performance-based payments and so specify in the contract, consistent with FAR 32.202–4:

(A) A paramount lien on assets.

(B) An irrevocable letter of credit from a federally insured financial institution.

(C) A bond from a surety, acceptable in accordance with FAR part 28.

(D) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership interest to the Contractor.

(E) Title to identified Contractor assets of adequate worth.

(ii) Paragraph (f) of the clause at FAR 52.232–32 does not apply to the extent that the Contractor and the Contracting Officer agree on alternative forms of security. In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment will be made under this contract. Upon receipt of adequate security, financing payments will be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

■ 12. Add section 252.232–7015 to read as follows:

252.232–7015 Performance-Based Payments—Representation

As prescribed in 232.1005–70(b), use the following provision:

Performance-Based Payments—Representation (APR 2020)

(a) In accordance with 10 U.S.C. 2307(b)(4)(A), the Contractor's financial statements shall be in compliance with Generally Accepted Accounting Principles in order to receive performance-based payments.

(b) The Offeror represents that its financial statements are [ ] are not [ ] in compliance with Generally Accepted Accounting Principles.

(End of provision)

■ 13. Add section 252.232–7016 to read as follows:

252.232–7016 Notice of Progress Payments or Performance-Based Payments

As prescribed in 232.1005–70(c), insert the following provision:

Notice of Progress Payments or Performance-Based Payments (APR 2020)

(a) The need for customary progress payments in accordance with subpart 32.5 of the Federal Acquisition Regulation (FAR) or performance-based payments in accordance with FAR subpart 32.10 will not be considered as a handicap or adverse factor in the award of the contract.

(b) This solicitation includes a FAR and Defense Federal Acquisition Regulation Supplement (DFARS) clause for performance-based payments and a FAR clause for progress payments. The resultant contract will include either performance-based payments or progress payments, not both, except as may be authorized on separate orders subject to FAR 32.1003(c).

(1) The performance-based payments clauses will be included in the contract if—

(i) The Offeror has provided positive representation in response to DFARS 252.232–7015, Performance-Based Payments—Representation;

(ii) The Offeror proposes a performance-based payment arrangement in accordance with FAR 52.232–28, Invitation to Propose Performance-Based Payments, including proposed events and timing, event completion criteria, event values, and expected expenditure profile; and

(iii) The Offeror and the Government reach agreement on all aspects of the arrangement.

(2) If performance-based payments clauses are not included in the resultant contract, the progress payments clause included in this solicitation will be included in any resultant contract, modified or altered if necessary in accordance with FAR 52.232–16 and its Alternate I. Even though the progress payments clause is included in the contract, the clause shall be inoperative during any time the contractor's accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs.

(End of provision)

[FR Doc. 2020–06728 Filed 4–7–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

[Docket DARS–2019–0049]

RIN 0750–AK14

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Payment for Subline Items Not Separately Priced" (DFARS Case 2018–D050)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to clarify its intent and conform its language to current DFARS terminology, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Effective April 8, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 58362 on October 31, 2019, to modify DFARS clause 252.207–7002, Payment for Subline Items Not Separately Priced, to conform the text of the clause to the current contract line item structure terminology by replacing ''contract line item'' with ''contract line or subline item'' and add a prescription for the DFARS clause in the applicable section of DFARS 204.71. No public comments were received in response to the proposed rule. No changes are made in the final rule from the proposed rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create any new provisions or clauses. The rule updates language used in the clause text to conform with current contract line item structure terminology. This rule does not change the applicability of the affected clause.

III. Executive Orders 12866 and 13563

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. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5

U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of DFARS clause 252.204–7002, Payment for Subline Items Not Separately Priced, to simplify and conform the clause text to current Government contract line item structure terminology.

The objective of this rule is to clarify the intent of the clause for contractors, when submitting invoices under contracts that contain items that are not separately priced. The modification of this DFARS clause supports a recommendation from the DoD Regulatory Reform Task Force. No public comments were received in response to the initial regulatory flexibility analysis.

Based on an average of data for fiscal year 2016 through 2018 from the Federal Procurement Data System and Electronic Document Access, DoD awards approximately 12,435 contracts annually that includes the DFARS clause 252.204–7002. Of the 12,435 awards, approximately 4,924 contracts (40%) are awarded to 1,564 unique small business entities. Based on the available data and the objective of the rule, DoD does not anticipate that this proposed rule will significantly impact small business entities. This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the rule that would meet the stated objectives.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require 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 Parts 204 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 2. Amend section 204.7104–1:

■ a. In paragraph (b)(3)(iii), by removing ''subsection'' and adding ''section'' in its place; and

■ b. By revising paragraph (b)(3)(iv).

The revision reads as follows:

204.7104–1 Criteria for establishing.

* * * * *

(b) * * *

(3) * * *

(iv) When the price for items not separately priced is included in the price of another contract line or subline item, it may be necessary to withhold payment on the priced contract line or subline item until the included line or subline items that are not separately priced have been delivered. See the clause at 252.204–7002, Payment for Contract Line or Subline Items Not Separately Priced.

■ 3. Revise section 204.7109 to read as follows:

204.7109 Contract clauses.

(a) Use the clause at 252.204–7002, Payment for Contract Line or Subline Items Not Separately Priced, in solicitations and contracts when the price for items not separately priced is included in the price of another contract line or subline item.

(b) Use the clause at 252.204–7006, Billing Instructions, in solicitations and contracts if Section G includes—

(1) Any of the standard payment instructions at PGI 204.7108(b)(2); or

(2) Other payment instructions, in accordance with PGI 204.7108(d)(12), that require contractor identification of the contract line item(s) on the payment request.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Revise section 252.204–7002 to read as follows:

252.204–7002 Payment for Contract Line or Subline Items Not Separately Priced.

As prescribed in 204.7109(a), use the following clause:

Payment for Contract Line or Subline Items Not Separately Priced (APR 2020)

(a) If the schedule in this contract contains any contract line or subline items identified as not separately priced (NSP), it means that the unit price for the NSP line or subline item is included in the unit price of another, related line or subline item.

(b) The Contractor shall not invoice the Government for an item that includes in its price an NSP item until—

(1) The Contractor has also delivered the NSP item included in the price of the item being invoiced; and

(2) The Government has accepted the NSP item.

(c) This clause does not apply to technical data.

(End of clause)

252.204–7006 [Amended]

■ 5. Amend section 252.204–7006 introductory text by removing ''204.7109'' and adding ''204.7109(b)'' in its place.

[FR Doc. 2020–06726 Filed 4–7–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 232, and 252

[Docket DARS–2019–0025]

RIN 0750–AK25

Defense Federal Acquisition Regulation Supplement: Prompt Payments of Small Business Contractors (DFARS Case 2018–D068)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019 that provides for accelerated payments to small business contractors and subcontractors.

DATES: Effective April 8, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 25225 on May 31, 2019, to implement section 852 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 852 provides for accelerated payments to DoD contractors that are small businesses and to small business subcontractors by accelerating payments to their prime contractors. Thirteen respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

This final rule adds a definition of ''accelerated payment'' to the clause at DFARS 252.232–7017, Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration. The definition specifies that accelerated payments are made as quickly as possible, with a goal of 15 days or less after receipt of payment from the Government or receipt of a proper invoice from the subcontractor, whichever is later.

B. Analysis of Public Comments

1. Support for the Rule

Comment: Most respondents expressed support for the proposed rule.

Response: DoD acknowledges the respondents' support.

2. Timely Payments to Small Business Subcontractors

Comment: One respondent expressed overall support for the proposed rule if the rule ensures all large business prime contractors are required to pay their subcontractors within 15 days of receiving an invoice from their small business subcontractors, regardless of whether the prime has been paid by the Federal Government. Another respondent suggested an authority to enforce, and a forum to address, grievances for payments from the Government that are past due.

Response: This final rule incorporates the statutory language of section 852 of the NDAA for FY 2019, as implemented via 10 U.S.C. 2307, which establishes the 15-day timeframe as a goal, rather than a firm deadline. The rule provides for prime contractors to make accelerated payments to small business subcontractors after receipt of payment from the Government because a prime contractor who subcontracts with small businesses could be a small business itself. Federal Acquisition Regulation (FAR) subpart 32.9 implements the statutory requirements concerning required documentation for invoice and acceptance, the establishment of payment due dates, and the payment of late payment interest penalties after the due date established under the Prompt Payment Act (*e.g.,* 30 days). DoD payment offices must adhere to these requirements and make payments as quickly as possible, to the fullest extent permitted by law.

Concerning the respondent's suggestion regarding a forum to address late payments, as prescribed in 5 CFR 1315.18, questions concerning delinquent payments should be directed to the designated agency office, or the office responsible for issuing the payment if different from the designated agency office. Questions about disagreements over payment amount or timing should be directed to the contracting officer for resolution. Small business concerns may obtain additional assistance on payment issues by contacting the agency's Office of Small Business Programs.

3. Interest Penalties for Late Payments to Subcontractors

Comment: One respondent suggested that the rule could be improved by also imposing an interest penalty on all small business invoices submitted to the prime contractor that are not paid within 15 days of receipt. Another respondent recommended an authority for the Government to pay interest penalties to both contractors when invoices are past due.

Response: Section 852 does not provide for interest penalties to be paid by the prime contractor for late payments to a subcontractor. Therefore, this final rule does not impose interest penalties beyond those implemented in FAR subpart 32.9 under the Prompt Payment Act. The subcontract between the prime contractor and the subcontractor is a business arrangement between two private parties, and therefore Prompt Payment Act interest penalties do not apply.

4. 15-Day Payment Goal

Comment: Two respondents expressed a preference for the proposed rule to mandate prompt payment instead of making it a goal, however, they commended the DoD proposal to revise the DFARS to implement section 852 of the NDAA for FY 2019 to pay small businesses within 15 days, rather than the current 30-day standard. It is viewed as an important first step for DoD small business contractors. Two other respondents stated that FAR 52.232–40 does not provide for the 15-day payment goal ''to the fullest extent permitted by law,'' which creates a conflict with the specific 15-day goal that section 852 directs DoD to adopt. One of the respondents recommends a new DFARS prescription and contract clause to supplement FAR 52.232–40 be added that provides for the 15-day payment goal ''to the fullest extent permitted by law.'' The respondent supports the revision to DFARS 232.903 to comport with the provisions of section 852 with respect to small business prime contractors.

Response: DoD recognizes the respondents' preference to mandate payment within 15 days instead of making it a goal; and agrees that the goal is an important step for small business contractors working with the DoD. DoD also affirms support for the revision to DFARS 232.903 to implement the provisions of section 852.

Regarding a conflict with the FAR, this final DFARS rule provides details to supplement, rather than conflict with, the requirements of FAR 52.232–40, Providing Accelerated Payments to Small Business Subcontractors. The rule relies on the FAR clause and the DFARS clause at 252.232–7017, used together in a contract, to communicate to prime contractors the requirements concerning accelerated payments. See section III of this preamble for a more detailed explanation of how the clauses are used together. DoD agrees that it is important to clarify what constitutes an accelerated payment from a prime contractor to a small business subcontractor in the context of this DFARS rule. Therefore, the final rule revises the clause at DFARS 252.232–7017 to define ''accelerated payment'' as a payment made to a small business subcontractor as quickly as possible, with a goal of 15 days or less after receipt of payment from the Government or receipt of a proper invoice from the subcontractor, whichever is later.

5. Clarifications

a. Small Business Subcontractors

Comment: One respondent suggested that the definition of small business subcontractors be clarified for the purposes of accelerated payments as those that are directly supporting or charged to a DoD contract in which the prime contractor is receiving accelerated payments (*i.e.,* not those supporting indirect, commercial, or foreign efforts by the prime contractor).

Response: This final rule does not provide a definition of ''small business subcontractor.'' This term is defined at FAR 2.101. The definition provided in the FAR applies to the DFARS, including this rule.

b. Section Heading for DFARS 232.009

Comment: One respondent suggested that the heading to DFARS 232.009 be changed to read ''Providing accelerated payments to small business contractors and small business subcontractors'' because DFARS 232.009–1 adds coverage for both small business and small business subcontractors. In addition, the respondent suggested that the term ''small business primes'' in both DFARS 232.009 and DFARS 232.009–1 would be clearer than ''small business contractor''.

Response: The final rule does not include the respondent's suggested edits. Revising the heading of DFARS 232.009 as suggested would create a disconnect with the title of the new contract clause prescribed in this section. In addition, DFARS 232.009 is numbered to correspond to FAR 32.009, which addresses the same subject matter. This drafting convention allows contracting officers to locate more easily coverage of similar topics in the FAR and DFARS. It is not necessary to add ''prime contractors'' to the heading because, in the FAR and DFARS, the term ''contractor'' means the prime contractor.

6. Governmentwide Application of the Rule

Comment: One respondent stated that section 852 addresses two types of accelerated payments, but noted both are applicable to DoD only. The first type addresses payments to small business prime contractors; the second type addresses payments to any DoD prime contractor that subcontracts with small businesses. The respondent indicated a preference for both types of accelerated payments to be made applicable governmentwide. The respondent also stated that, at a minimum, the rule should acknowledge the governmentwide application of making accelerated payments to small business prime contractors, as provided for in FAR clause 52.232–25, Prompt Payment.

Response: DoD affirms the respondent's statement that section 852 of the NDAA for FY 2019 applies to DoD only. As such, this final DFARS rule will be applicable to DoD only. DoD notes, however, that FAR Case 2020–007, Accelerated Payments Applicable to Contracts with Certain Small Business Concerns, is in process to implement section 873 of the NDAA for FY 2020, which modifies 31 U.S.C. 3903(a) to require accelerated payments for small business prime contractors and prime contractors that subcontract with small business concerns.

7. Definition of ''small business''

Comment: One respondent expressed concern that the rule could be improved by defining what constitutes a small business.

Response: The FAR defines ''small business concern'' in subpart 2.1, Definitions. The definition of ''small business concern'' in the FAR applies throughout the DFARS, including to this rule.

8. Estimate of Fees Paid by Small Business Subcontractors

Comment: One respondent commented on DoD's inability to estimate the number of small business subcontractors who have been required to pay fees or provide consideration in return for accelerated payments from prime contractors, or the dollar value of these fees or consideration. The respondent asked if it was feasible to survey a sample of subcontractors to DoD prime contractors regarding the average fees paid to the prime contractors, and use that data to estimate fees paid by subcontractors to DoD prime contractors in general. The respondent also asked if the contractors could be sorted by size (*i.e.,* small, medium, and large), with an average fee for each size contractor, to find a weighted average number of contractors and fee.

Response: Resources are not available for a survey such as the respondent suggested. DoD does not have any data on which to base an estimate of the number of subcontractors required to pay fees or provide consideration to the prime contractor in return for accelerated payments, or the dollar value of the fees or consideration. Public comments did not provide insight into whether small business subcontractors had been required to pay fees or provide consideration for accelerated payments, or the dollar value of such fees or consideration.

9. Initial Regulatory Flexibility Analysis

Comment: One respondent expressed concern that the initial regulatory flexibility analysis prepared for the proposed rule lacked adequate information to allow small businesses to determine the impact of the rule.

Response: See section VII. of this preamble.

C. Other Changes

This final rule adds a reference to the statute (10 U.S.C. 2307(a) to the instruction at DFARS 212.301(f)(xiii)(G) for use of the clause at DFARS 252.232–7017 in commercial item acquisitions. In the contract clause, this final rule adds a new paragraph (a) to provide a definition for ''Accelerated payment'' also adds the paragraph heading of ''Subcontracts'' to paragraph (c).

III. Expected Impact of the Rule

Current DoD policy, as stated in DFARS 232.903, is to pay small business contractors as quickly as possible after receipt of invoices and proper documentation. This rule specifies that DoD will provide payment as quickly as possible, to the fullest extent permitted by law, with a goal of 15 days after receipt of proper invoices and documentation, and before normal payment due dates. For items that ordinarily require payment in less than 15 days (*e.g.,* perishable food), DoD will provide payment as quickly as possible after receipt of proper invoices and documentation, and before the normal payment due date.

With few exceptions, DoD will provide accelerated payments to small business contractors and to prime contractors that agree to provide accelerated payments to their small business subcontractors without further consideration or fees. DoD will not be able to provide accelerated payments to prime contractors if such payments would result in a violation of the Antideficiency Act. An example would be a lapse in appropriated funds.

This final DFARS rule relies on a FAR clause and a DFARS clause, used together in a contract, to—

(1) Communicate to the prime contractor the requirement to provide accelerated payments to small business subcontractors; and

(2) Obtain the prime contractor's agreement, by signature of the contract, to provide accelerated payments without requiring further consideration from, or charging fees to, the small business subcontractor.

DoD contracting officers do not use the DFARS in isolation; they use the DFARS together with the FAR. The FAR currently requires contracting officers to insert the clause at FAR 52.232–40, Providing Accelerated Payments to Small Business Subcontractors, in solicitations and contracts. This final DFARS rule will require DoD contracting officers to insert the new DFARS clause 252.232–7017, Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration, in solicitations and contracts that include FAR 52.232–40. This means both clauses will be included in DoD contracts.

The FAR clause and the DFARS clause will work together to require accelerated payments to small business subcontractors when DoD provides accelerated payments to the prime contractor. FAR 52.232–40 currently requires prime contractors to provide accelerated payments to their small business subcontractors when the Government provides accelerated payments to the prime contractors. DFARS clause 252.232–7017 defines ''accelerated payment'' as ''a payment made to a small business subcontractor as quickly as possible, with a goal of 15 days or less after receipt of payment from the Government or receipt of a proper invoice from the subcontractor, whichever is later.'' By using both clauses together in a contract, this final DFARS rule requires a prime contractor who receives an accelerated payment from the Government to pay its small business subcontractors as quickly as possible, with a goal of 15 days or less after receipt of payment from the Government or receipt of a proper invoice from the subcontractor, whichever is later.

DoD estimates that 40,282 contractors (including 30,498 small businesses) will receive accelerated payments each year, based on data obtained from the Federal Procurement Data System (FPDS) and input from subject matter experts from the Defense Finance and Accounting Services and the Office of the Under Secretary of Defense (Comptroller). Specifically, DoD awarded contracts to an average of 40,689 unique entities (including 30,806 small businesses) each year from FY 2016 through FY 2018. Subject matter experts estimated that DoD would not provide accelerated payments to approximately 1 percent of these contractors (407, including 308 small businesses) because such payments could result in a violation of the Antideficiency Act (*e.g.,* during a lapse in appropriated funds). Therefore, approximately 40,282 contractors (including 30,498 small businesses) per year would receive accelerated payments.

DoD estimates that there were approximately 9,483 small business subcontractors on DoD prime contracts in FY 2018, based on data from *USASpending.gov* cross-referenced with size representations for DoD contracts. DoD further estimates that approximately 1 percent (95) small business subcontractors may not receive accelerated payments because DoD was not able to provide accelerated payments to the prime contractor (see the previous paragraph).

This rule prohibits contractors from requiring any further consideration from, or charging fees to, their small business subcontractors when making accelerated payments. This prohibition would benefit small business subcontractors who have been required to provide consideration or pay fees to the prime contractor in order to receive accelerated payments. Any costs for prime contractors to implement the prohibition on fees and consideration are expected to be de minimis since DoD expects that only a small number of contractors have required such consideration or fees from their small business subcontractors.

As noted in a preceding paragraph, DoD estimates there were approximately 9,483 small business subcontractors on DoD prime contracts in FY 2018. It is not possible for DoD to estimate how many of these small business subcontractors may have been required to provide consideration or pay fees to the prime contractor in order to receive accelerated payments, nor is it possible to estimate the dollar value of the consideration provided or fees paid. Despite a request for comments on this specific topic, DoD received no information from the public that would inform these estimates. If any small business subcontractors have been required to provide consideration or pay fees in return for accelerated payments, the prohibition on such consideration or fees could result in cost savings. However, if no small business subcontractors have been required to provide consideration or pay fees, there would be no cost savings as a result of this rule.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule applies the requirements of section 852 of the NDAA for FY 2019 to contracts at or below the simplified acquisition threshold (SAT) and to contracts for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

Given that the requirements of section 852 of the NDAA for FY 2019 were enacted to provide accelerated payments to small business contractors and subcontractors, and since approximately 96 percent of DoD contracts are valued at or below the SAT, DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts at or below the SAT. An exception for contracts at or below the SAT would exclude contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

10 U.S.C. 2375 governs the applicability of laws to DoD contracts and subcontracts for the acquisition of commercial items, including COTS items, and is intended to limit the applicability of laws to contracts and subcontracts for the acquisition of commercial items, including COTS items. 10 U.S.C. 2375 provides that if a provision of law contains criminal or civil penalties, or if the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Due to delegations of authority from USD(A&S), the Principal Director, DPC, is the appropriate authority to make this determination.

Given that the requirements of section 852 of the NDAA for FY 2019 were enacted to provide accelerated payments to small business contractors and subcontractors, and since more than half of DoD's contractors are small businesses providing commercial items, including COTS items, DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial items, including COTS items, as defined at FAR 2.101. An exception for contracts for the acquisition of commercial items, including COTS items, would exclude the contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

V. 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. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule is necessary in order to amend the DFARS to implement section 852 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 852 provides for accelerated payments to DoD contractors that are small businesses and to small business subcontractors by accelerating payments to their prime contractors. Specifically, section 852 requires DoD, to the fullest extent permitted by law, to establish an accelerated payment date for small business contractors, with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract. For contractors that subcontract with small businesses, section 852 requires DoD, to the fullest extent permitted by law, to establish an accelerated payment date, with a goal of 15 days after receipt of a proper invoice, if—

(a) A specific payment date is not established by contract; and

(b) The contractor agrees to make accelerated payments to the subcontractor without any further consideration from, or fees charged to, the subcontractor.

The objective of the rule is to implement section 852 by providing accelerated payments to small business contractors and to small business subcontractors via accelerated payments to prime contractors.

DoD received comments from the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, which are summarized below:

(a) *Number of subcontractors required to pay fees:* DoD did not provide the number of small business subcontractors who have been required to provide consideration or pay fees in return for accelerated payments from prime contractors.

(b) *Conclusion regarding cost savings:* DoD concludes, without sound data, that the rule could result in cost savings because of the proposed prohibition on fees and consideration in return for accelerated payments.

(c) *Conflict with FAR:* The rule conflicts with FAR 52.232–40, Providing Accelerated Payments to Small Business Subcontractors, which does not require payment within 15 days.

(d) *Reason for not accelerating payment:* According to DoD, subject matter experts have estimated that DoD would not provide accelerated payments to approximately 1 percent of contractors because such payments would put DoD at risk of a violation of law. DoD did not qualify these individuals as subject matter experts or provide the bases or assumptions that support their conclusions. DoD did not provide small businesses with information on what would constitute a violation of law that would result in DoD not providing accelerated payments to small businesses.

(e) *Action plan when payments are not accelerated:* The rule does not provide a sound action plan for small businesses who may be denied the legal right to accelerated payments.

DoD provides the following responses, including changes made to the final rule as a result of the comments:

(a) *Number of subcontractors required to pay fees:* DoD has no data on which to base an estimate of the number of small business subcontractors who have been required to pay fees or provide consideration to prime contractors in return for accelerated payments. In the proposed rule, DoD requested public comment on the topic of consideration or fees in return for accelerated payments. However, none of the public comments addressed this topic. Therefore, in the final rule DoD has provided a rough estimate of the number of small business subcontractors on DoD contracts. DoD estimates there were approximately 9,483 small business subcontractors on DoD contracts in FY 2018.

(b) *Conclusion regarding cost savings:* The conclusion that the rule could result in cost savings was based on a reasonable assumption that, if a small business was required to pay a fee in return for accelerated payments, and the rule prohibits that fee, then the small business will not be required to pay the fee in the future. If no small businesses have been required to pay a fee, then there would be no cost savings as a result of this rule. In the final rule, DoD has made this clarification in section III of the preamble for this final rule.

(c) *Conflict with FAR:* The rule provides details to supplement, rather than conflict with, the requirements of FAR 52.232–40, Providing Accelerated Payments to Small Business Subcontractors. DoD agrees that it is important to clarify what constitutes an accelerated payment from a prime contractor to a small business subcontractor in the context of this DFARS rule. Therefore, the final rule revises the clause at DFARS 252.232–7017, Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration, to clarify that ''accelerated payment'' means ''a payment made to a small business subcontractor as quickly as possible, with a goal of 15 days or less after receipt of payment from the Government or receipt of a proper invoice from the subcontractor, whichever is later.'' See paragraph (e) for an explanation of how the FAR clause and the DFARS clause will be used together to provide for accelerated payments to small business subcontractors.

(d) *Reason for not accelerating payment:* The estimate that 1 percent of contractors would not receive accelerated payments was based on DoD's expectation that this would be a rare occurrence. DoD's subject matter experts from the Defense Finance and Accounting Service and the Office of the Under Secretary of Defense (Comptroller) have provided clarification on the circumstances that could result in DoD not providing accelerated payments to small businesses. DoD would not be able to provide accelerated payments if such payments would result in a violation of the Antideficiency Act. An example would be a lapse in appropriated funds. DoD has made this clarification in section III of the preamble for this final rule.

(e) *Action plan when payments are not accelerated:* DoD's interpretation of section 852 of the NDAA for FY 2019 is that section 852 does not create a right to accelerated payments. It requires DoD, to the fullest extent permitted by law, to pay contractors on an accelerated basis, with a goal of 15 days. It also requires the prime contractor's agreement to provide accelerated payments without requiring further consideration from, or charging fees to, the small business subcontractor. As with any issue or concern related to payments, small businesses may seek assistance from the Office of Small Business Programs for DoD or for the DoD component that awarded the prime contract. This final DFARS rule relies on a FAR clause and a DFARS clause used together in a contract to—

(i) Communicate to the prime contractor the requirement to provide accelerated payments to small business subcontractors; and

(ii) Obtain the prime contractor's agreement, by signature of the contract, to provide accelerated payments without requiring further consideration from, or charging fees to, the small business subcontractor.

DoD contracting officers use the FAR and DFARS together to award contracts, not one or the other in isolation. The FAR currently requires contracting officers to insert FAR 52.232–40 in solicitations and contracts. This final rule will require contracting officers to insert the new DFARS clause 252.232–7017 in solicitations and contracts that include FAR 52.232–40. This means both clauses will exist in DoD contracts and will work together to require accelerated payments to small business subcontractors when DoD provides accelerated payments to the prime contractor. FAR 52.232–40 currently requires prime contractors to make accelerated payments to their small business subcontractors upon receipt of accelerated payments from the Government. DFARS clause 252.232–7017 defines accelerated payment as ''a payment made to a small business subcontractor as quickly as possible, with a goal of 15 days or less after receipt of payment from the Government or receipt of a proper invoice from the subcontractor, whichever is later.'' By using both clauses together, this final DFARS rule requires a prime contractor who receives an accelerated payment from the Government to pay its small business subcontractors as quickly as possible, with a goal of 15 days or less after receipt of payment from the Government or receipt of a proper invoice from the subcontractor, whichever is later.

This rule applies to small businesses that are DoD prime contractors. According to data obtained from the Federal Procurement Data System, DoD awarded contracts to an average of 30,806 unique small entities each year from FY 2016 through FY 2018. DoD estimates that it may not be possible to provide accelerated payments to approximately 308 small business contractors (1 percent) because such payments would put DoD at risk of a violation of the Antideficiency Act (*e.g.,* during a lapse in appropriated funds). Therefore, approximately 30,498 small contractors per year would receive accelerated payments.

This rule also applies to small businesses that are subcontractors on DoD prime contracts. DoD estimates that there were approximately 9,483 small business subcontractors on DoD prime contracts in FY 2018, based on data from www.*USASpending.gov* cross-referenced with size representations for DoD contracts. DoD estimates that approximately 95 small business subcontractors (1 percent) may not receive accelerated payments because DoD was not able to provide accelerated payments to the prime contractor. With regard to the impact of the prohibition on fees or other consideration in return for accelerated payments, it is not possible for DoD to estimate how many of these small business subcontractors may have been required to provide consideration or pay fees to the prime contractor in order to receive accelerated payments.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known, significant alternatives that would accomplish the objectives of the applicable statute.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require 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 Parts 212, 232, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 232, and 252 are amended as follows:

■ 1. The authority citations for 48 CFR part 212, 232, and 252 continue to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by adding paragraph (f)(xiii)(G) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(xiii) * * *

(G) Use the clause at 252.232–7017, Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration, as prescribed in 232.009–2(2), to comply with 10 U.S.C. 2307(a).

* * * * *

PART 232—CONTRACT FINANCING

■ 3. Add sections 232.009, 232–009–1, and 232.009–2 to read as follows:

232.009 Providing accelerated payments to small business subcontractors.

232.009–1 General.

Section 852 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) requires DoD to provide accelerated payments to small business contractors and subcontractors, to the fullest extent permitted by law, with a goal of 15 days.

232.009–2 Contract clause.

Use the clause at 252.232–7017, Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration, in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial items, that include the clause at FAR 52.232–40, Providing Accelerated Payments to Small Business Subcontractors.

■ 4. Revise section 232.903 to read as follows:

232.903 Responsibilities.

In accordance with section 852 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232), DoD shall assist small business concerns by providing payment as quickly as possible, to the fullest extent permitted by law, with a goal of 15 days after receipt of proper invoices and all required documentation, including acceptance, and before normal payment due dates established in the contract (see 232.906(a)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 252.232–7017 to read as follows:

252.232–7017 Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration.

As prescribed in 232.009–2, use the following clause:

Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration (APR 2020)

(a) *Definition. Accelerated payment,* as used in this clause, means a payment made to a small business subcontractor as quickly as possible, with a goal of 15 days or less after receipt of payment from the Government or receipt of a proper invoice from the subcontractor, whichever is later.

(b) In accordance with section 852 of Public Law 115–232, the Contractor shall not require any further consideration from or charge fees to the small business subcontractor when making accelerated payments, as defined in paragraph (a) of this clause, to subcontractors under the clause at FAR 52.232–40, Providing Accelerated Payments to Small Business Subcontractors.

(c) *Subcontracts.* Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including those for the acquisition of commercial items.

(End of clause)

[FR Doc. 2020–06727 Filed 4–7–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 229 and 252

[Docket DARS–2019–0036]

RIN 0750–AK13

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Tax Relief" (DFARS Case 2018–D049)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to include the text of another DFARS clause on the same subject, in an effort to streamline contract terms and conditions for contractors, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Effective April 8, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 48512 on September 13, 2019, to modify DFARS clause 252.229–7001, Tax Relief, to incorporate the information included in DFARS clause 252.229–7000, Invoices Exclusive of Taxes or Duties. Combining these clauses results in DFARS clause 252.229–7000 being removed from the DFARS. The rule implements a recommendation of the DoD Regulatory Reform Task Force established under Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda.''

No public comments were received in response to the proposed rule. No changes from the proposed rule are made in the final rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-The-Shelf Items

This rule does not create any new provisions or clauses. The rule combines two clauses into a single clause and does not change the applicability of the affected clauses.

III. Executive Orders 12866 and 13563

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 20, 1993. This rule is not a major rule as defined at 5 U.S.C. 804.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is amending DFARS clause 252.229–7001, Tax Relief, to incorporate the information included in DFARS clause 252.229–7000, Invoices Exclusive of Taxes or Duties. Combining these clauses will result in DFARS clause 252.229–7000 being removed from the DFARS. The objective of this rule is to streamline DoD contract terms and conditions and contractor responsibilities pertaining to foreign taxes and duties. The modification of these DFARS clauses supports a recommendation from the DoD Regulatory Reform Task Force under E.O. 13771.

No public comments were received in response to the initial regulatory flexibility analysis.

This rule is combines two existing clauses that address the same topic into a single comprehensive clause. These clauses apply to solicitations and contracts awarded to a foreign concern for contract performance in a foreign country.

This rule is not expected to impact small business entities because this rule only applies to foreign entities. The Small Business Administration (SBA) identifies a ''small business'' as a ''a business entity organized for profit, with a place of business located in the United States, and which operated primarily within the United States or which makes a significant contribution to the U.S. economy through the payment of taxes or use of American products, materials, or labor'' (13 CFR 121.102(a)). This rule only applies to foreign contractors, which do not meet the SBA definition of ''small business'' entities.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the rule that would meet the stated objectives. This rule is not expected to have a significant economic impact on small entities.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require 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 Parts 229 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 229 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 229 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 229—TAXES

229.402–1 [Removed]

■ 2. Remove section 229.402–1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.229–7000 [Removed and Reserved]

■ 3. Remove and reserve section 252.229–7000.

■ 4. Amend section 252.229–7001 by—
■ a. In the clause heading, removing the date ''(SEP 2014)'' and adding ''(APR 2020)'' in its place;
■ b. Revising paragraph (b);
■ c. In Alternate I–
■ i. In the clause heading, removing the date of ''(SEP 2014)'' and adding ''(APR 2020)'' in its place; and
■ ii. Revising paragraph (b).

The revisions read as follows:

252.229–7001 Tax Relief

* * * * *

(b) Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available. The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

* * * * *

Alternate I. * * *

* * * * *

(b) Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available. The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

* * * * *

[FR Doc. 2020–06725 Filed 4–7–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232 and 252

[Docket DARS–2019–0059]

RIN 0750–AK50

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Advance Payment Pool" (DFARS Case 2019–D013)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to include the text of another DFARS clause on the same subject in an effort to streamline contract terms and conditions for contractors, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Effective April 8, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 58364 on October 31, 2019, to include the text of DFARS clause 252.232–7001, Disposition of Payments, in DFARS clause 252.232–7000, Advance Payment Pool, and then remove DFARS clause 252.232–7001 from the DFARS. Both clauses clarify the terms and conditions that apply when advance payment pool agreements are authorized under a contract. As such, these DFARS clauses can be combined to streamline and consolidate the information provided to contractors regarding advance payment pool agreements. No public comments were received in response to the proposed rule. No changes are made in the final rule from the proposed rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create any new provisions or clauses. The rule combines two clauses on the same topic into a single clause and makes minor modifications to simplify clause text. This rule does not change the applicability of the affected clauses, which are not included in solicitations and contracts that are valued at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

III. Executive Orders 12866 and 13563

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. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the DFARS clause 252.232–7000, Advance Payment Pool, to incorporate the information included in DFARS clause 252.232–7001, Disposition of Payments, and make minor changes to simplify the clause text. Combining these clauses will result in 252.232–7001 being removed from the DFARS. The objective of this rule is to streamline and consolidate the information provided to contractors regarding advance payment pool agreements. The modification of this DFARS clause supports a recommendation from the DoD Regulatory Reform Task Force. No public comments were received in response to the initial regulatory flexibility analysis.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the rule that would meet the stated objectives.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require 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 Parts 232 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 232 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 232—CONTRACT FINANCING

232.412–70 [Amended]

■ 2. Amend section 232.412–70 by—
■ a. Removing paragraph (b);
■ b. Redesignating paragraph (c) as paragraph (b); and

■ c. In the newly redesignated paragraph (b), removing ''(See subpart 219.71)'' and adding ''(see subpart 219.71)'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 252.232–7000 by—

■ a. Removing the clause date of ''(DEC 1991)'' and adding ''(APR 2020)'' in its place;

■ b. In paragraph (b), removing ''(*insert the name of the contractor*)'' and adding ''*[insert the name of the Contractor]*'' in its place;

■ c. Adding paragraph (c).

The addition reads as follows:

252.232–7000 Advance payment pool.

* * * * *

(c) When a letter of credit has not been issued to the Contractor in conjunction with the contract, payment will be by a dual payee Treasury check made payable to the Contractor or the disbursing office in the Advance Payment Pool Agreement and will be forwarded to that disbursing office for appropriate disposition.

252.232–7001 [Removed and Reserved]

■ 4. Remove and reserve section 252.232–7001.

252.232–7005 [Amended]

■ 5. Amend section 252.232–7005 in the introductory text by removing ''232.412–70(c)'' and adding ''232.412–70(b)'' in its place.

[FR Doc. 2020–06729 Filed 4–7–20; 8:45 am]

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Proposed Rules

Federal Register

Vol. 85, No. 68

Wednesday, April 8, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–115; NRC–2017–0132]

Fire Protection Compensatory Measures

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying Petition for Rulemaking (PRM)–50–115, ''Petition for Rulemaking—Fire Protection Compensatory Measures,'' dated May 1, 2017, submitted by David Lochbaum and Paul Gunter (the petitioners) on behalf of the Union of Concerned Scientists and Beyond Nuclear, respectively. The petitioners request that the NRC issue regulations that establish acceptable conditions for the use of compensatory measures (*e.g.,* fire watches, surveillance cameras) during periods when fire protection regulations are not met, as well as define the maximum duration that compensatory measures may be relied upon. The NRC staff concludes that the petitioners did not present sufficient new information or arguments to warrant the requested changes to the regulations in light of the NRC's relevant past decisions and current policies. Therefore, the NRC is denying PRM–50–115.

DATES: The docket for PRM–50–115 is closed as of April 8, 2020.

ADDRESSES: Please refer to Docket ID NRC–2017–0132 when contacting the NRC about the availability of information for this action. You can obtain publicly-available documents related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2017–0132. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in Section IV, Availability of Documents.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Pamela Noto, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–6795, email: *Pamela.Noto@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of the Petition

Title 10 of the *Code of Federal Regulations* (10 CFR) 2.802, ''Petition for rulemaking—requirements for filing,'' provides an opportunity for any interested person to petition the Commission to issue, amend, or rescind any regulation. The NRC received a petition dated May 1, 2017, from David Lochbaum and Paul Gunter on behalf of the Union of Concerned Scientists and Beyond Nuclear, respectively, regarding the establishment of acceptable conditions for the use of compensatory measures during periods when fire protection regulations are not met. The NRC assigned Docket Number PRM–50–115 to this petition and published a notice of docketing and request for public comment in the **Federal Register** on October 6, 2017 (82 FR 46717).

Fire protection programs at U.S. commercial nuclear power plants have the primary goal of minimizing both the probability of occurrence and the consequences of fire. The fire protection regulations under 10 CFR 50.48, ''Fire protection,'' establish detailed requirements for fire protection plans at U.S. commercial nuclear power plants. Under § 50.48(a), each operating nuclear power plant licensee must have a fire protection plan that satisfies Criterion 3, ''Fire protection,'' of appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities.'' The fire protection plan describes the overall fire protection program and includes measures related to fire prevention, automatic detection, suppression and response, as well as personnel administrative requirements and the protection of safety-related structures, systems, and components in the event of a fire. The fire protection program for nuclear power plants uses a defense-in-depth approach of administrative controls, fire protection systems and features, and post-fire safe-shutdown capability to achieve the required degree of reactor safety.

Licensees of nuclear power plants that were operating before January 1, 1979, must meet the requirements of appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' to 10 CFR part 50, except to the extent provided for in § 50.48(b). Licensees of facilities licensed to operate after January 1, 1979, must meet the facility-specific fire protection licensing basis that was reviewed and approved by the agency.

As an alternative to § 50.48(b) or to the facility-specific fire protection licensing basis, licensees may also adopt and maintain a fire protection program that meets § 50.48(c), ''National Fire Protection Association Standard (NFPA) 805,'' which incorporates by reference NFPA 805, ''Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition,'' with certain exceptions.

The petitioners stated that the current guidance documents regarding compensatory measures are deficient due to the following issues:

Issue 1: Compensatory Measure Guidance Documents Are Not Enforceable Expectations

The petitioners assert that fire protection compensatory measures guidance documents are not regulations and that they, therefore, convey unenforceable expectations. As an example, the petitioners describe an inspection at the Waterford Steam Electric Station, Unit 3, in November 1995, where NRC inspectors discovered that workers had revised procedures to define a continuous fire watch from having someone in the area at all times to only having a roving fire watch check the area every 15 to 20 minutes. The petitioners assert that the NRC addressed the issue with a ''generic non-answer'' and that no enforcement action was taken. In addition, the petitioners note that the NRC issued: (1) Information Notice 97–48, ''Inadequate or Inappropriate Interim Fire Protection Compensatory Measures,'' in July 1997, describing the discovery of a continuous fire watch that had been improperly redefined; and (2) Regulatory Guide 1.189, Revision 2, ''Fire Protection for Nuclear Power Plants,'' in October 2009, that included the definition of a fire watch. The petitioners observe that the guidance in the information notices and the regulatory guides are not NRC requirements or substitutes for regulations; therefore, compliance with these documents is not required.

Issue 2: Compensatory Measure Guidance Documents Are Not Clear

The petitioners observe that compensatory measure guidance documents are not clear and, therefore, create confusion for licensees, NRC inspectors and reviewers, and the public about what constitutes acceptable compensatory measures for compliance with fire protection regulations and the permissible durations of such measures. The petitioners provide examples of instances in which the NRC regions requested that NRC headquarters staff provide clarification of compensatory measures. Petitioners also noted that NRC inspectors frequently ask questions about the appropriateness and acceptability of fire protection compensatory measures. In addition, the petitioners assert that the available guidance and the lack of regulatory requirements do not help NRC inspectors or industry workers determine a reasonable time period to keep compensatory measures in place. In particular, the petitioners assert that compensatory measures routinely have been used for longstanding noncompliance with fire protection regulations and that not all fire protection compensatory measures may be acceptable for long periods of time.

Issue 3: Compensatory Measure Guidance Documents Were Not Developed Through an Open Process

The petitioners assert that, because compensatory measure guidance documents were not developed through an open process, the public did not have opportunities to provide input on the acceptability of various fire protection compensatory measures. In particular, the petitioners assert that the public did not have opportunity to provide feedback on the acceptability or the duration of fire protection compensatory measures, as they had during the development of the NFPA 805 regulations in appendix R to 10 CFR part 50 and § 50.48(c) via the NRC's rulemaking process. The petitioners also assert that because fire protection compensatory measures have been employed in lieu of compliance with the regulatory requirements in appendix R to 10 CFR part 50 and NFPA 805 for many years, the public's legal rights have been infringed upon, and if compensatory measures will be used as a long-term protection against fire risks, the public deserves an opportunity to formally weigh in on their acceptability.

Petitioners' Requests

The petitioners assert that when violations of the NRC's fire protection regulations are discovered, compensatory measures intended to provide sufficient protection until compliance is restored have not been properly established. Therefore, the petitioners request that the NRC amend its regulations to include compensatory measures that would provide enforceable requirements for licensees. In particular, the petitioners request that the NRC issue a final rule that defines the compensatory measures authorized for use and the conditions under which such measures are required when the NRC's fire protection regulations (*e.g.,* § 50.48 and Criterion 3 of appendix A to 10 CFR part 50) are not met. In addition, the petitioners request that the final rule define the maximum duration that compensatory measures may be relied upon.

II. Public Comments on the Petition

A. Overview of Public Comments

The docketing notice for the PRM invited interested persons to submit comments. The comment period closed on December 20, 2017. The NRC received 7 public comment submissions that collectively contain 27 individual comments. The NRC reviewed and considered all comments in its evaluation of the petition.

B. NRC Response to Public Comments

The NRC binned the comments on the petition into four categories. The following discussion provides a high-level summary of each category and the NRC's response to the binned comments, including—if appropriate—a high-level summary of the basis for the response.

1. Enforceability of Guidance Documents

Comment: Two commenters do not agree with the petitioners' assertion regarding enforceability because compensatory measures are required by a facility's operating license (through a standard license condition on fire protection). The fire protection license condition contained in each power reactor operating license requires the licensee to ''implement and maintain in effect all provisions of the approved fire protection program as described in the updated final safety analysis report, and as approved in the NRC safety evaluation reports . . . .'' Failing to implement the compensatory measures would, therefore, be a violation of the facility's license condition and contrary to the updated final safety analysis report requirement, both of which are enforceable.

NRC response: The NRC partially agrees with this comment. All licensees are required to comply with the applicable regulations and the facility operating license, which are enforceable. The NRC does not agree that guidance documents are enforceable. The NRC issues guidance to provide acceptable methods for meeting regulatory requirements. Licensees may voluntarily rely on methods contained in guidance documents to comply with regulations and the facility license, but the methods themselves are not enforceable as a part of the guidance.

2. Clarity of Guidance Documents

Comment: Two commenters do not agree with the petitioners' assertion regarding the clarity of guidance documents because facility-specific requirements for compensatory measures are sufficiently clear for licensees, the NRC, and the public. Section 50.48(a) requires each facility to have a fire protection program that includes specific features such as administrative controls. The fire protection program is either included directly or is incorporated by reference into the updated final safety analysis report for a facility. Expectations for fire protection compensatory measures are explicitly described for each facility, and are well-understood by the licensee and the NRC.

NRC response: The NRC agrees with this comment. The use of compensatory measures is clearly described in each licensee's approved fire protection program and in NRC guidance documents. Additionally, the use of compensatory measures is discussed in NRC generic communications. For example, (1) Information Notice 97–48, ''Inadequate or Inappropriate Interim Fire Protection Compensatory Measures,'' alerted licensees to potential problems associated with the implementation of interim compensatory measures for degraded or inoperable plant fire protection features, or degraded and inoperable conditions associated with post-fire safe-shutdown capability; (2) Regulatory Issue Summary 2005–07, ''Compensatory Measures to Satisfy the Fire Protection Program Requirements,'' discusses how a licensee with the standard license condition for fire protection may change its approved FPP to use alternate compensatory measures; (3) NUREG/CR–7135, ''Compensatory and Alternative Regulatory MEasures for Nuclear Power Plant FIRE Protection (CARMEN–FIRE),'' documents the history of compensatory measures, details the NRC's regulatory framework established to ensure that they are appropriately implemented and maintained, and explores technologies that did not exist when the current plants were licensed that may offer an effective alternative to the measures specified in a licensee's approved fire protection program and; (4) Inspection Manual Chapter 0326, ''Operability Determinations,'' contains guidance on the use of compensatory measures.

3. Development of Guidance Documents Through an Open Process

Comment: Two commenters do not agree with the petitioners' assertion that guidance documents were not developed through an open process because sufficient opportunities for public comment were available in the development of related guidance documents and the public had ample opportunity to participate. Specifically, Regulatory Guide 1.189, Revision 2, ''Fire Protection for Nuclear Power Plants,'' which discusses treatment of fire protection compensatory measures, was published for public comment under Draft Regulatory Guide DG–1214 in April 2009, and the NRC responded to over 90 public comments.

NRC response: The NRC agrees with this comment. The NRC's policy is to provide opportunity for public participation in the regulatory guidance development process under Management Directive 6.6, ''Regulatory Guides.'' This is to collect input from external stakeholders and allow for an open and collaborative environment. For example, the NRC staff revised the final version of Regulatory Guide 1.189, Revision 2, taking into account comments received on Draft Regulatory Guide DG–1214, which was published for public comment in April 2009. (Revision 3 of Regulatory Guide 1.189 was subsequently issued in February 2018 to incorporate editorial changes and align it with current program guidance for regulatory guides. The changes were intended to improve clarity and did not alter the Staff Regulatory Guidance in Section C of the guide.)

4. List of Licensee Event Reports

Comment: Two commenters do not agree with the petitioners' assertion that the list of licensee event reports in attachment 1 to the petition is compelling testimony to the frequent need for fire protection compensatory measures. The commenters state that, contrary to the assertions in the petition, the licensee event reports show that licensees were following their fire protection program requirements by instituting fire watches when inoperable fire protection features occurred or were discovered. The volume of licensee event reports referenced is indicative of a program that provides little ambiguity or flexibility in implementation. This is an illustration of the process working as intended.

NRC response: The NRC agrees that the licensee event reports listed in attachment 1 of the petition are indicative of regulations that appropriately address the safety concern. The requirements of 10 CFR 50.72, ''Immediate notification requirements for operating nuclear power reactors,'' and 10 CFR 50.73, ''Licensee event report system,'' apply to reporting certain events and conditions related to fire protection at nuclear power plants. Licensees report to the NRC fire events or fire protection deficiencies that meet the criteria of §§ 50.72 and 50.73, as appropriate under the requirements of these regulations.

Additionally, one commenter identified unrelated concerns about the NRC's regulations and practices that the NRC determined are outside the scope of PRM–50–115.

Finally, several commenters provided general support for the petition, recommending that the NRC should initiate rulemaking to address the issues raised by the petitioners, but did not provide supporting rationale for this recommendation.

III. Reasons for Denial

The NRC is denying the petition because the petitioners did not present sufficient new information or arguments to warrant the requested changes to the regulations in light of the NRC's relevant past decisions and current policies. The remaining paragraphs of Section III summarize the NRC's evaluation of the three main issues identified in the petition.

Issue 1: Compensatory Measure Guidance Documents Are Not Enforceable Expectations

The guidance documents referenced in the petition (*i.e.,* regulatory guides and information notices) are not directly enforceable. The NRC's regulatory guides and information notices provide guidance to licensees and inform licensees of operating experience on how to implement specific parts of the NRC's regulations, techniques used by the NRC to evaluate specific problems or postulated events, operating or analytical experience, and data needed by the NRC in its review of applications for licenses.

Historically, at the time of licensing of most currently operating power reactors, compensatory measures were incorporated into the licensee's technical specifications; accordingly, changes to compensatory measures required NRC review and approval. Subsequently, the NRC issued Generic Letter 86–10, ''Implementation of Fire Protection Requirements,'' which described a process for relocating the fire protection program, including management of compensatory measures, into the final safety analysis report for a facility, and adding a standard license condition to a facility's operating license that requires the licensee to ''implement and maintain in effect all provisions of the approved fire protection program as described in the updated final safety analysis report, and as approved in the NRC safety evaluation reports.'' Through the standard fire protection license condition, a site's fire protection program still requires fire protection compensatory measures for equipment that does not meet the functionality requirements.

Section 50.48(a) requires each facility to have a fire protection program; this provision stipulates what that program must contain and includes administrative controls. The approved fire protection program is either described directly in the updated final safety analysis report or incorporated by reference. The licensee's commitments related to fire protection compensatory measures (*e.g.,* fire watches, surveillance cameras) are contained within the fire protection program. Therefore, failing to appropriately implement the fire protection compensatory measures would be a violation of the plant's operating license, which is enforceable. The provisions of § 50.48(a) require, among other things, that any change to the approved fire protection program must meet Criterion 3 of appendix A to part 50. Under 10 CFR 50.48(a)(3), a licensee must retain each change to the fire protection program as a record until the Commission terminates the license. The licensee's changes to the approved fire protection program are subject to inspection, as discussed in Inspection Procedure 71111.21N.05, ''Fire Protection Team Inspection (FPTI).''

In April 1996, the NRC responded to a petition under 10 CFR 2.206, ''Requests for action under this subpart,'' by issuing Director's Decision (DD)–96–03, 42 NRC 183 (1996), which concluded that fire protection compensatory measures, as approved by the NRC on a facility-specific basis, ''continue to ensure public health and safety.'' Since this decision, the NRC has continued to evaluate fire protection compensatory measures on a facility-specific basis. Thus, the current framework ensures adequate protection of public health and safety. Therefore, the NRC concludes that the petitioners' assertion that compensatory measures guidance documents are unenforceable does not raise any new significant safety or security concerns that would support the request to amend the NRC's regulations in light of relevant NRC past decisions and current policies.

Issue 2: Compensatory Measures Guidance Documents Are Not Clear

Section 50.48(a) requires each power reactor licensee to have a fire protection program. This provision stipulates what the fire protection program must contain and, as noted above, includes a requirement for administrative controls. Through the fire protection license condition, a licensee's fire protection program requires fire protection compensatory measures for equipment that does not meet the functionality requirements. The fire protection license condition requires the licensee to ''implement and maintain in effect all provisions of the approved fire protection program as described in the updated final safety analysis report, and as approved in the NRC safety evaluation reports.''

The required compensatory measures for fire protection systems and equipment that do not meet the functionality requirements are explicitly stated within each site's approved fire protection program. These compensatory measures were originally incorporated into most plant's technical specifications. Thus, the initial compensatory measures, and any subsequent changes, were reviewed and approved by the NRC. The NRC subsequently issued Generic Letter 86–10 and Generic Letter 88–12, ''Removal of Fire Protection Requirements From Technical Specifications,'' which formed the basis for licensee assessments that provided the ability to make changes to approved fire protection program's functionality and surveillance requirements, as well as to the compensatory measures required for nonfunctional fire protection systems and equipment.

The licensees could implement such changes under the regulatory framework for fire protection programs that were removed from technical specifications without the NRC's review and approval, provided that the licensee performed an analysis that demonstrated the change would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

The NRC subsequently issued Information Notice 97–48, which provided examples of NRC inspection findings of licensees implementing inappropriate compensatory measures for nonfunctional fire protection systems and equipment. This information notice also reinforced the guidance provided to the NRC inspectors in Generic Letter 91–18, on the resolution of degraded and nonconforming conditions affecting structures, systems, and components relied upon for compliance with § 50.48.

In addition, Information Notice 97–48 reinforced the NRC's expectations of the timeliness of corrective actions documented in Generic Letter 91–18—that is, for structures, systems, and components that are not expressly subject to technical specifications and are determined to be inoperable, the licensee should assess the reasonable assurance of safety. If the assessment assures safety, then the facility may continue to operate while prompt corrective action is taken. Generic Letter 91–18 states that the timeliness of the corrective action should be commensurate with the safety significance of the issue.

The NRC continued the expectation of timeliness of corrective actions from Generic Letter 91–18 in Regulatory Issue Summary 2005–20, ''Revision to NRC Inspection Manual Part 9900 Technical Guidance, 'Operability Determinations & Functionality Assessments for Resolution of Degraded or Nonconforming Conditions Adverse to Quality or Safety,' '' which superseded Generic Letter 91–18. This expectation was further clarified in Part 9900's superseding document, Inspection Manual Chapter 0326, ''Operability Determinations & Functionality Assessments for Conditions Adverse to Quality or Safety,'' which states,

> When evaluating the effect of a condition on an SSC's capability to perform any of its specified safety functions, a licensee may decide to implement compensatory measures, as an interim action, until final corrective action to resolve the condition is completed . . .
>
> In general, these measures should have minimal impact on the operators or plant operations, should be relatively simple to implement, and should be documented.
>
> Conditions calling for a compensatory measure can place additional burden on plant operators and inspectors should verify the licensee addresses the conditions commensurate with its safety significance per 10 CFR 50 Appendix B Criterion XVI.

It is important to note that the majority of long-term compensatory measures that are/were in place for noncompliance with fire protection regulations were put in place for regulatory issues that were the subject of Enforcement Guidance Memoranda (see Enforcement Guidance Memorandum 07–004, ''Enforcement Discretion for Post-Fire Manual Actions Used As Compensatory Measures for Fire Induced Circuit Failures,'' and Enforcement Guidance Memorandum 09–002, ''Enforcement Discretion for Fire Induced Circuit Faults''), or for facilities that were transitioning their licensing basis to meet the requirements of § 50.48(c). For facilities that are not transitioning their licensing basis to § 50.48(c), the deadline for compliance with the referenced Enforcement Guidance Memoranda has expired. Therefore, where a licensee is still relying on compensatory measures for the noncompliances discussed in the Enforcement Guidance Memoranda, and permanent corrective actions have not been taken, these instances would be considered by the NRC for enforcement action.

For facilities that are transitioning their licensing basis to § 50.48(c), the compensatory measures would be removed once a facility achieves full compliance with their new licensing basis. The deadlines for achieving full compliance are detailed in each facility's respective safety evaluation report and fire protection license condition. Any required actions that have not been completed by the deadlines stated in the safety evaluation report are considered by the NRC for enforcement action.

Additionally, the NRC issued Regulatory Issue Summary 2005–07, which informed licensees that alternate compensatory measures as otherwise required by the approved fire protection program may be used for a degraded or inoperable fire protection feature under certain circumstances. The regulatory issue summary was not meant to provide specific examples of acceptable alternate compensatory measures. As stated in the regulatory issue summary, the purpose was to discuss how a licensee, with the standard license condition for fire protection, may change the approved fire protection program to use alternate compensatory measures. The regulatory issue summary also states that a licensee may change the approved fire protection program to implement a different compensatory measure or combination of measures. The licensee must perform a documented evaluation of the impact of the proposed alternate compensatory measure to the fire protection program and its adequacy compared to the compensatory measure required by the fire protection program. The documented evaluation must demonstrate that the alternate compensatory measure would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. The regulatory issue summary provides additional insights into what the documented evaluation should consider, stating,

> [t]he evaluation of the alternate compensatory measure should incorporate risk insights regarding the location, quantity, and type of combustible material in the fire area; the presence of ignition sources and their likelihood of occurrence; the automatic fire suppression and fire detection capability in the fire area; the manual fire suppression capability in the fire area; and the human error probability where applicable.

Additional guidance was provided in Regulatory Guide 1.189, Revision 2, on what would constitute an acceptable evaluation to determine that the change to the fire protection program would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Regulatory Guide 1.189, Revision 3, states that, within the context of the standard fire protection license condition, the phrase ''not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire,'' means to maintain sufficient safety margins. The regulatory guide also states that, with sufficient safety margins, the following applies:

a. Codes and standards or their alternatives approved for use by the NRC are met.

b. Safety analysis acceptance criteria in the licensing basis are met or proposed revisions provide sufficient margin to account for analysis and data uncertainty.

Employing appropriate compensatory measures on a short-term basis is an integral part of the NRC-approved fire protection program. The NRC recognizes that some compensatory measures have been in place for an extended period of time. However, this does not introduce a safety concern.

The fire protection programs at nuclear power plants are built upon the concept of defense in depth [1] with layers of protective features. The technical deficiencies being compensated for do not invalidate the defense-in-depth approach. Further, licensees track fire protection program deficiencies involving compensatory measures at their respective nuclear plants. The NRC's resident inspectors review corrective action programs on a daily basis and are aware of the compensatory measures in place at reactor units. Additionally, the NRC inspects a sample of these compensatory measures for adequacy during routine fire protection inspections.

Therefore, the NRC concludes that fire protection compensatory measures guidance documents are clear and were not meant to provide specific examples of acceptable alternate compensatory measures. As stated in Regulatory Issue Summary 2005–07, a licensee with the standard license condition for fire protection may change the approved fire protection program to use alternate compensatory measures.

Issue 3: Compensatory Measure Guidance Documents Were Not Developed Through an Open Process

It is the policy of the NRC that activities are undertaken in an open and transparent manner; staff decisions are sound and consider the need for and impact of proposed actions; and regulatory guidance will be provided to identify acceptable methods for applicants and licensees to meet applicable laws and regulations, when needed. The NRC views openness as a critical element for achieving the agency's mission to ensure the safe use of radioactive materials for beneficial civilian purposes while protecting people and the environment. This is expressed in Management Directive 6.6, ''Regulatory Guides,'' as an objective to ensure that stakeholders (*e.g.,* licensees, applicants, and members of the public and Agreement States) and individuals and offices within NRC all have an opportunity to consider and comment on a new or substantively changed draft regulatory guide before it is issued as a final (effective) Regulatory Guide. After considering the comments received on a document, the NRC publishes the final version.

The NRC provided opportunities for public comment in the development of guidance documents related to fire protection compensatory measures, and the public had many opportunities to participate. For example, Regulatory Guide 1.189, Revision 2, was issued for public comment as Draft Regulatory Guide (DG)–1214 on April 21, 2009 (74 FR 18262). The NRC responded to 97 public comments on DG–1214 on October 31, 2009 (74 FR 56673). The NRC held a public meeting on May 20, 2009 to discuss comments and questions on DG–1214; and the Advisory Committee on Reactor Safeguards also held a meeting on October 9, 2009, to discuss comments and questions on DG–1214. As addressed above, the staff revised the guidance document based on comments submitted by the public. Revision 3 to Regulatory Guide 1.189 was not issued for public comment because the changes were intended to improve clarity and did not alter the Staff Regulatory Guidance in Section C of the guide. A notice of opportunity for public comment on Regulatory Issue Summary 2005–07 was not published because it is informational.

Therefore, the NRC does not agree with the petitioners' assertion that compensatory measures guidance documents were not developed through an open process.

IV. Availability of Documents

The following table provides information about how to access the documents referenced in this document. The **ADDRESSES** section of this document provides additional information about how to access ADAMS.

[1] Fire protection programs in U.S. nuclear power plants use the concept of defense in depth to achieve the required degree of fire safety by using echelons of protection from fire effects. The three echelons for fire protection are: (1) Prevent the fire from starting, *i.e.,* plants maintain fire safety by taking measures to minimize the likelihood that fires might occur; (2) rapidly detect, control, and promptly extinguish those fires that do occur, *i.e.,* plants establish fire protection systems (sprinklers, fire water systems, etc.) to extinguish (and minimize the consequences of) any fires that do occur; and (3) protect structures, systems, and components important to safety so that a fire not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant, *i.e.,* plants rely on redundant safety systems (*e.g.,* installing fire barriers) that are unlikely to be damaged by a single fire.

Date	Document	ADAMS accession No. or **Federal Register** citation
April 24, 1986	Generic Letter 86–10, "Implementation of Fire Protection Requirements"	ML031150322
August 2, 1988	Generic Letter 88–12, "Removal of Fire Protection Requirements from Technical Specifications"	ML031150471
November 7, 1991	Generic Letter 91–18, "Information to Licensees Regarding Two NRC Inspection Manual Sections of Resolution of Degraded and Nonconforming Conditions and on Operability".	ML031140549
October 21, 1994	1994 petition under 10 CFR 2.206	ML17311B356
April 3, 1996	DD–96–03, "Director's Decision Under 10 CFR 2.206"	ML082401211
July 9, 1997	Information Notice 97–48, "Inadequate or Inappropriate Interim Fire Protection Compensatory Measures".	ML070180068
October 8, 1997	Generic Letter 91–18, Revision 1, "Information to Licensees Regarding Two NRC Inspection Manual Sections of Resolution of Degraded and Nonconforming Conditions and on Operability".	ML031200706
January 13, 2001	NFPA 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants".	Available at *www.nfpa.org*
April 19, 2005	Regulatory Issue Summary 2005–07, "Compensatory Measures to Satisfy the Fire Protection Program Requirements".	ML042360547
June 30, 2007	Enforcement Guidance Memorandum 07-004, "Enforcement Discretion for Post-Fire Manual Actions Used As Compensatory Measures for Fire Induced Circuit Failures".	ML071830345
April 1, 2009	DG–1214, "Fire Protection for Nuclear Power Plants"	ML090070453
April 21, 2009	Notice of Issuance and Availability of Draft Regulatory Guide, DG–1214	74 FR 18262
May 14, 2009	Enforcement Guidance Memorandum 09-002, "Enforcement Discretion for Fire Induced Circuit Faults".	ML090300446
May 6, 2009	Notice of Meeting to Provide Overview and Discuss Comments and Questions on Draft Regulatory Guide DG–1214, "Fire Protection For Nuclear Power Plants".	ML091240146
June 10, 2009	Meeting Summary of May 20, 2009 Public Meeting Regarding Draft Fire Protection Regulatory Guide DG–1214.	ML091480283
October 20, 2009	ACRS Report on the Draft Final Revision 2 to Regulatory Guide 1.189 (DG–1214), "Fire Protection for Nuclear Power Plants".	ML092880515
October 31, 2009	NRC Responses to Comments on Draft Regulatory Guide 1.189, Revision 2 (DG-1214)	ML092580570
October 2009	Regulatory Guide 1.189, Revision 2, "Fire Protection for Nuclear Power Plants"	ML092580550
October 11, 2011	Staff Requirements-SECY–11–0032, "Consideration of the Cumulative Effects of Regulation in the Rulemaking Process".	ML112840466
November 20, 2017	Inspection Manual Chapter 0326, "Operability Determinations & Functionality Assessments for Conditions Adverse to Quality or Safety".	ML16302A480
June 2015	NUREG/CR–7135, "Compensatory and Alternative Regulatory MEasures for Nuclear Power Plant FIRE Protection (CARMEN–FIRE)".	ML15226A446
May 1, 2017	Petition for Rulemaking (PRM–50–115)	ML17146A393
October 6, 2017	Petition for Rulemaking; Notice of Docketing and Request for Comment	82 FR 46717
December 20, 2017	Public Comments on Petition for Rulemaking: Fire Protection Compensatory Measures	ML18088A076

V. Conclusion

The NRC completed an evaluation of the petition and determined that the issues in the petition did not raise any significant safety or security concerns. In addition, the NRC concludes that the arguments presented in the petition do not support the requested revisions to its regulations. Finally, the NRC reaffirms that its existing regulations continue to provide reasonable assurance of adequate protection of public health and safety. For the reasons cited in this document, the NRC is denying PRM–50–115.

Dated at Rockville, Maryland, this 2nd day of April, 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2020–07341 Filed 4–7–20; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 337

RIN 3064–AE94

Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions; Extension of Comment Period

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking: Extension of comment period.

SUMMARY: On February 10, 2020, the FDIC published in the **Federal Register** a Notice of Proposed Rulemaking (NPR) entitled ''Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions,'' proposing revisions to its regulations relating to the brokered deposits restrictions that apply to less than well capitalized insured depository institutions. The NPR provided for a 60-day comment period, which would have closed on April 10, 2020. The FDIC has determined that an extension of the comment period until June 9, 2020, is appropriate. This action will allow interested parties additional time to analyze the proposal and prepare comments.

DATES: The comment period for the brokered deposits-related NPR published on February 10, 2020 (85 FR 7453),[1] is extended from April 10, 2020, to June 9, 2020.

ADDRESSES: You may submit comments, identified by RIN 3064–AE94, on the notice of proposed rulemaking using any of the following methods:

- *Agency website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the agency website.
- *Email: comments@fdic.gov.* Include ''RIN 3064–AE94'' in the subject line.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/RIN 3064–AE94, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

[1] 85 FR 7453 (Feb. 10, 2020).

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7 a.m. and 5 p.m.

• *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal.*

FOR FURTHER INFORMATION CONTACT: Division of Risk Management Supervision: Rae-Ann Miller, Associate Director, (202) 898–3898, *rmiller@fdic.gov.* Legal Division: Vivek V. Khare, Counsel, (202) 898–6847, *vkhare@fdic.gov.*

SUPPLEMENTARY INFORMATION: On February 10, 2020, the FDIC published in the **Federal Register**[2] an NPR proposing revisions to the brokered deposits-related regulations implementing Section 29 of the FDI Act.[3]

The NPR stated that the comment period would close on April 10, 2020. The FDIC has received requests to extend the comment period. An extension of the comment period will provide additional opportunity for the public to prepare comments to address the matters raised by the NPR. Therefore, the FDIC is extending the comment period for the brokered deposits-related NPR from April 10, 2020, to June 9, 2020.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 2, 2020.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–07322 Filed 4–7–20; 8:45 am]

BILLING CODE 6714–01–P

[2] 85 FR 7453.

[3] 12 U.S.C. 1831f.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0214; Product Identifier 2018–SW–039–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

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 Airbus Helicopters Model EC225LP helicopters. This proposed AD was prompted by a mechanical deformation found on the protective cover of the ‘‘SHEAR’’ control pushbutton installed on a copilot collective stick. This proposed AD would require modification of the helicopter by replacing the protective cover and re-identifying the part number (P/N) of the pilot and copilot collective sticks. 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 May 26, 2020.

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 *https://www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0214; 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 Mandatory Continuing Airworthiness Information (MCAI), 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: Clark Davenport, Flight Test Analyst, Flight Test Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5151; email *clark.davenport@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–2020–0214; Product Identifier 2018–SW–039–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 received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

The European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2018–0106, dated May 10, 2018 (referred to after this as ‘‘the MCAI’’), to correct an unsafe condition for all Airbus Helicopters Model EC225LP helicopters. EASA advises that mechanical deformation was found on the protective cover of the ‘‘SHEAR’’ control pushbutton on a copilot collective stick. The root cause for the deformation was identified as incorrect handling. This condition, if not corrected, could lead to unintended shearing of the hoist cable, possibly resulting in loss of a hoisted load or person(s). To address this unsafe condition, the EASA AD requires replacement of the protective cover of the ‘‘SHEAR’’ control pushbutton and re-identification (new AH P/N 704A41110149, new NSE MP/N 00014100AA) of the pilot and copilot collective sticks. The EASA AD also prohibits installation of the old design protective cover.

You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0214.

Related Service Information Under 1 CFR Part 51

Airbus Helicopters has issued Alert Service Bulletin EC225–67A017, Revision 0, dated March 26, 2018. This service information describes procedures for modification of the helicopter by replacing the protective cover of the ''SHEAR'' control pushbutton and re-identifying the part number of the pilot and copilot collective sticks.

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 after evaluating all the relevant information and determining the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

The FAA estimates that this proposed AD affects 12 helicopters 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
2 work-hours × $85 per hour = $170	$2,632	$2,802	$33,624

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

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.

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):

Airbus Helicopters: Docket No. FAA–2020–0214; Product Identifier 2018–SW–039–AD.

(a) Comments Due Date

The FAA must receive comments by May 26, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model EC225LP helicopters, certificated in any category.

(d) Subject

Joint Aircraft System/Component Codes (JASC) Code 67, Rotorcraft Flight Controls.

(e) Reason

This AD was prompted by mechanical deformation found on the protective cover of the ''SHEAR'' control pushbutton installed on a copilot collective stick. The FAA is issuing this AD to address this condition, which could lead to unintended shearing of the hoist cable, possibly resulting in loss of a hoisted load or person(s).

(f) Compliance

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

(g) Definitions

For the purposes of this AD, the definitions specified in paragraphs (g)(1) through (3) of this AD apply.

(1) Affected part: A pilot or copilot collective stick having part number (P/N) 704A41110139, equipment manufacturer NSE P/N N2000355.

(2) Group 1 helicopters: Helicopters that have an affected part installed.

(3) Group 2 helicopters: Helicopters that do not have an affected part installed. A helicopter that has embodied Airbus Helicopters Modification 332P084165 in production is a Group 2 helicopter, provided that helicopter remains in that configuration.

(h) Required Actions

For Group 1 helicopters: At the applicable time specified in Table 1 to paragraph (h) of this AD, modify the helicopter by replacing the protective cover of the ''SHEAR'' control pushbutton and re-identifying the part number of the pilot and copilot collective sticks, in accordance with the Accomplishment Instructions of Airbus Helicopters Alert Service Bulletin EC225–67A017, Revision 0, dated March 26, 2018.

Table 1 to Paragraph (h) – *Compliance times for required actions*

Helicopter configuration	Compliance time
"SHEAR" control associated with a hoist installation	Within 3 months after the effective date of this AD
"SHEAR" control not associated with a hoist installation	Within 12 months after the effective date of this AD or upon connecting the "SHEAR" control with an installation, whichever occurs first

(i) Parts Installation Prohibition

At the applicable times specified in paragraphs (i)(1) and (2) of this AD: Do not install on any helicopter a ''SHEAR'' control pushbutton protective cover having P/N 700070 on the pilot or copilot collective stick, and do not install on any helicopter a pilot or copilot collective stick having P/N 704A41110139 (equipment manufacturer NSE P/N N2000355).

(1) For Group 1 helicopters: After modification of the helicopter as required by paragraph (h) of this AD.

(2) For Group 2 helicopters: From the effective date of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Clark Davenport, Flight Test Analyst, Flight Test Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5151; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, notify your principal inspector or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(k) Related Information

(1) The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD No. 2018–0106, dated May 10, 2018. This EASA AD may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0214.

(2) For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

Issued on April 3, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–07354 Filed 4–7–20; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 255

Guides Concerning the Use of Endorsements and Testimonials in Advertising; Extension of Comment Period

AGENCY: Federal Trade Commission.

ACTION: Extension of deadline for submission of public comments.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is extending the deadline for filing comments on its Guides Concerning the Use of Endorsements and Testimonials in Advertising (''the Endorsement Guides'').

DATES: For the proposed rule published on February 21, 2020 (85 FR 10104), comments must be received on or before June 22, 2020.

SUPPLEMENTARY INFORMATION: On February 12, 2020, the Commission announced that it would seek public comments on whether to make changes to the Endorsement Guides. The FTC's Regulatory Review and Request for Public Comment was subsequently published in the **Federal Register**, with April 21, 2020 established as the deadline for the submission of comments. *See* 85 FR 10104 (Feb. 21, 2020).

The Commission has received inquiries about extending the comment period deadline in light of the disruption caused by the coronavirus pandemic.

The Commission believes that a two-month extension is appropriate. Accordingly, it has decided to extend the deadline for submission of comments on the Endorsement Guides to Monday, June 22, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer (202–326–2699), *mostheimer@ftc.gov,* Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Room CC–10603, 600 Pennsylvania Avenue NW, Washington, DC 20580.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2020–07173 Filed 4–7–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0207]

RIN 1625–AA08

Special Local Regulation; USA Triathlon, Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation for certain waters of the Milwaukee Harbor. This action is necessary to provide for the safety of life on these navigable waters within the Lake Shore State Park Lagoon during a triathlon swim event taking place from August 7, 2020 through August 9, 2020. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized

by the Captain of the Port Lake Michigan 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 May 8, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0207 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Chief Petty Officer Kyle Weitzell, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414–747–7148, email *Kyle.W.Weitzell@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 10, 2020, USA Triathlon notified the Coast Guard that it will be hosting a triathlon in Milwaukee, WI from August 7, 2020 through August 9, 2020. Over the course of the three days this triathlon is being held, there will be as many as 6,000 participants involved in the swim portion of the triathlon in the Lake Shore State Park Lagoon within the Milwaukee Harbor. The hazard from this triathlon is the large number of people and support watercraft, including kayaks, personal watercraft, standup paddleboards, and other small boats, in the lagoon which will impede normal navigation. The Captain of the Port Lake Michigan (COTP) has determined that this hazard would be a safety concern for anyone within the lagoon during the swim portion of the triathlon.

The purpose of this proposed rulemaking is to protect the safety of persons, vessels, and the navigable waters within the Lake Shore State Park Lagoon before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1233).

III. Discussion of Proposed Rule

The COTP is proposing to establish a special local regulation from 8 a.m. on August 7, 2020 through 2 p.m. on August 9, 2020. The special local regulation would cover all navigable waters of the Lake Shore State Park Lagoon in the Milwaukee Harbor within an area bound by coordinates 43° 02.20′ N, 087° 53.69′ W, then south to 43° 01.75′ N, 087° 53.71′ W, then southwest to 43° 01.73′ N, 087° 53.96′ W, then northeast to 43° 02.20′ N, 087° 53.83′ W, then east to point of origin. The duration of the regulation is intended to protect the safety of persons, vessels, and these navigable waters before, during, and after the swim portion of the traithlon. No vessel or person, except those participating in the event, would be permitted to enter the regulated area without obtaining permission from the COTP or the Patrol Commander. The daily schedule of the swim portion of the triathlon will be made available publicly by Broadcast Notice to Mariners. The regulatory text we are proposing appears at the end of this document.

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 (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on location, size, and duration of this proposed special local regulation. This regulation will be in effect only on the Lake Shore State Park Lagoon during the swim portion of the triathlon from August 7, 2020 through August 9, 2020. Additionally, the COTP may consider the movement of persons and vessels through or within the regulated, if it is safe to do so.

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 call or email 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 call or email 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, Rev. 1, associated implementing instructions, 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 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 special local regulation lasting three days that would prohibit entry in the Lake Shore State Park Lagoon within the Milwaukee Harbor during the swim portion of a triathlon. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. 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 call or email 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 *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email 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 *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://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 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T09–0207 to read as follows:

§ 100.T09–0207 Special Local Regulation; USA Triathlon, Milwaukee Harbor, Milwaukee, WI

(a) *Regulated area.* This area includes all waters of the Lake Shore State Park Lagoon in the Milwaukee Harbor within an area bound by coordinates 43°02.20′ N, 087°53.69′ W, then south to 43°01.75′ N, 087°53.71′ W, then southwest to 43°01.73′ N, 087°53.96′ W, then northeast to 43°02.20′ N, 087°53.83′ W, then east to point of origin.

(b) *Special Local Regulations.* (1) The regulations in this section, along with the regulations of § 100.901, apply to this marine event. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Captain of the Port Lake Michigan (COTP) or the Patrol Commander.

(2) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the Patrol Commander on VHF–FM Channel 16 to obtain permission to do so. Vessel operators given permission to enter or operate within the regulated area must comply with all directions given to them by the COTP or the Patrol Commander.

(c) *Effective dates.* These regulations are in effect from 8 a.m. on August 7, 2020 through 2 p.m. on August 9, 2020. Public notice of specific enforcement times will be made available through Broadcast Notice to Mariners.

Dated: April 1, 2020.

T.J. Stuhlreyer,

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

[FR Doc. 2020–07244 Filed 4–7–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1 and 4

[NPS–WASO–REGS; 29978; GPO Deposit Account 4311H2]

RIN 1024–AE61

General Provisions; Electric Bicycles

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes regulations governing the use of electric bicycles, or e-bikes, within the National Park System. This rule would define the term ''electric bicycle'' and establish rules for how electric bicycles may be used. This rule would implement Secretary of the Interior Order 3376, ''Increasing Recreational Opportunities through the use of

Electric Bikes,'' on lands administered by the National Park Service.

DATES: Comments on the proposed rule must be received by June 8, 2020.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024–AE61, by either of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov* and search for ''1024–AE61''. Follow the instructions for submitting comments.

(2) *By hard copy:* Mail or hand deliver to: Jay Calhoun, Regulations Program Manager, National Park Service, 1849 C Street NW, MS–2472, Washington, DC 20240.

Instructions: Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words ''National Park Service'' or ''NPS'' and must include the RIN 1024–AE61 for this rulemaking. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. Comments received may be posted without change to *www.regulations.gov,* including any personal information provided. The NPS seeks meaningful public input on this rule. The intent of this action is to address an emerging technology in a manner that accommodates visitors and increases opportunities for the public to recreate within and travel through the National Park System, while at the same time protecting the resources and values that draw millions of visitors each year.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov* and search for ''1024–AE61''.

FOR FURTHER INFORMATION CONTACT: Jay Calhoun, Regulations Program Manager, National Park Service; (202) 513–7112; *waso_regulations@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Use and Management of Bicycles

Bicycling is a popular recreational activity in many units of the National Park System. Cyclists of all skill levels and ages enjoy riding on park roads and designated bicycle trails for scenery, exercise, and adventure. Visitors bicycle alone, with friends, or with family. From leisurely rides to challenging alpine climbs, bicycles offer spectacular opportunities to experience the resources of the National Park System.

National Park Service (NPS) regulations at 36 CFR 4.30 govern the use of bicycles on NPS-administered lands. These regulations identify where bicycles are allowed, manage how bicycles may be used, and allow superintendents to restrict bicycle use when necessary. Bicycles are allowed on park roads and parking areas open to public motor vehicles. Bicycles are also allowed on administrative roads that are closed to motor vehicle use by the public but open to motor vehicle use by the NPS for administrative purposes, but only after the superintendent determines that such bicycle use is consistent with protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and will not disturb wildlife or park resources. The use of bicycles on trails is subject to a thorough approval and review process. When bicycle use is proposed for a new or existing trail, the NPS must complete a planning process that evaluates bicycle use on the specific trail, including impacts to trail surface and soil conditions, maintenance costs, safety considerations, potential user conflicts, and methods to protect resources and mitigate impacts. For both new and existing trails, the NPS must complete an environmental assessment or environmental impact statement that concludes that bicycle use on the trail will have no significant impacts. The superintendent must prepare and the regional director must approve the same written determination that is required for allowing bicycles on administrative roads. Each of these documents must be made available for public review and comment. For new trails outside of developed areas, the NPS must publish a special regulation designating the trail for bicycle use, which is subject to a separate public comment period.

Adherence to the procedures in these regulations helps ensure that bicycles are allowed only in locations where, in the judgment of the NPS, their use is appropriate and will not cause unacceptable impacts. The NPS has completed the process required by these regulations in many NPS units, including the following that have special regulations designating trails for bicycle use: Rocky Mountain National Park, Saguaro National Park, Cuyahoga Valley National Park, Hot Springs National Park, Grand Teton National Park, Mammoth Cave National Park, Sleeping Bear Dunes National Lakeshore, New River Gorge National River, Chattahoochee River National Recreation Area, Bryce Canyon National Park, Pea Ridge National Military Park, and Golden Gate National Recreation Area.

Introduction of Electric Bicycles

While bicycling has been a decades-long tradition in many park areas, the appearance of electric bicycles, or e-bikes, is a relatively new phenomenon. An e-bike is a bicycle with a small electric motor that provides power to help move the bicycle. As they have become more popular both on and off NPS-managed lands, the NPS has recognized the need to address this emerging form of recreation so that it can exercise clear management authority over e-bikes and provide clarity to visitors and stakeholders such as visitor service providers.

Similar to traditional bicycles, the NPS believes that, with proper management, the use of e-bikes may be an appropriate activity in many park areas. E-bikes advance the NPS's ''Healthy Parks Healthy People'' goals to promote national parks as a health resource.[1] Specifically, e-bikes can increase bicycle access to and within parks. E-bikes make bicycle travel easier and more efficient because they allow bicyclists to travel farther with less effort. E-bikes can expand the option of bicycling to more people by providing a new option for those who want to ride a bicycle but might not otherwise do so because of physical fitness, age, or convenience, especially at high altitude or in hilly or strenuous terrain. Also, when used as an alternative to gasoline- or diesel-powered modes of transportation, e-bikes can reduce greenhouse gas emissions and fossil fuel consumption, improve air quality, and support active modes of transportation for park staff and visitors. Similar to traditional bicycles, e-bikes can decrease traffic congestion, reduce the demand for vehicle parking spaces, and increase the number and visibility of cyclists on the road.

Policy Direction for Managing E-Bikes

Secretary's Order 3376

On August 29, 2019, Secretary of the Interior Bernhardt signed Secretary's Order 3376, ''Increasing Recreational Opportunities through the use of Electric Bikes.'' The purpose of this Order is to increase recreational opportunities for all Americans, especially those with physical limitations, and to encourage the enjoyment of lands and waters managed by the Department of the Interior. The Order emphasizes the potential for e-bikes to reduce the physical demands of

[1] For more information about how the NPS promotes the health and well-being of park visitors through the Healthy Parks Healthy People movement, visit *https://www.nps.gov/subjects/health/and/safety/health-benefits-of-parks.htm.*

operating a bicycle and therefore expand access to recreational opportunities, particularly for those with limitations stemming from age, illness, disability or fitness, and in more challenging environments, such as high altitudes or hilly terrain. E-bikes have an electric motor yet are operable in a similar manner to traditional bicycles and in many cases appear indistinguishable from them. For these reasons, the Order acknowledges there is regulatory uncertainty regarding whether e-bikes should be managed similar to other types of bicycles, or, alternatively, considered motor vehicles. The Order states that this regulatory uncertainty has led to inconsistent management of e-bikes across the Department and, in some cases, served to decrease access to Federally owned lands by users of e-bikes. In order to address these concerns, the Order directs the NPS and other Department of the Interior agencies to define e-bikes separately from motor vehicles and to allow them where other types of bicycles are allowed.

NPS Policy Memorandum 19–01

On August 30, 2019, the Deputy Director of the NPS, Exercising the Authority of the Director, issued Policy Memorandum 19–01, Electric Bicycles. This policy satisfies a requirement in the Secretary's Order that all Department of the Interior agencies adopt policy and provide appropriate public guidance regarding the use of e-bikes on public lands that conforms to the policy direction set forth in the Order.

The Memorandum defines an e-bike as ''a two- or three-wheeled cycle with fully operable pedals and an electric motor of less than 750 watts that provides propulsion assistance.'' This definition is consistent with the definition of ''low speed electric bicycle'' in the Consumer Product Safety Act (15 U.S.C. 2085), currently the only federal statutory definition of e-bikes, except that the definition in the Memorandum does not include the statutory requirement that an e-bike may not reach 20 mph on a paved level surface, when powered solely by the motor while ridden by an operator who weighs less than 170 pounds. Instead, the Memorandum, consistent with the Secretary's Order and many states that have promulgated regulations for e-bikes, refers to a three-class system that limits the maximum assisted speed of an e-bike:

• *Class 1 electric bicycle* means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour.

• *Class 2 electric bicycle* means an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour.

• *Class 3 electric bicycle* means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour.

Consistent with the Order, the Memorandum announces a policy that e-bikes are allowed where traditional bicycles are allowed and that e-bikes are not allowed where traditional bicycles are prohibited. The Memorandum refers to regulations for bicycles in paragraphs (f), (g), and (h) of 36 CFR 4.30 that relate to closures and other use restrictions, other requirements, and prohibited acts. The Memorandum requires that these provisions also govern the use of e-bikes so that the use of e-bikes and bicycles are generally regulated in the same manner.

Paragraph (f) of section 4.30 allows superintendents to limit or restrict or impose conditions on bicycle use or close any park road, trail, or portion thereof to bicycle use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives. The Memorandum authorizes superintendents to limit or restrict or impose conditions on e-bike use for the same reasons, provided the public is notified through one or more methods listed in 36 CFR 1.7. When using this authority, the Memorandum advises superintendents to understand state and local rules addressing e-bikes so that the use of e-bikes within a park area is not restricted more than in adjacent jurisdictions, to the extent possible.

Paragraph (g) of section 4.30 states that bicycle use is subject to certain NPS regulations that apply to motor vehicles. Specifically, bicycle use is subject to regulations in sections 4.12 (Traffic control devices), 4.13 (Obstructing traffic), 4.20 (Right of way), 4.21 (Speed limits), 4.22 (Unsafe operation), 4.23 (Operating under the influence of alcohol or drugs). The Memorandum applies these provisions in the same manner to e-bikes. Paragraph (g) also states that, unless specifically addressed by NPS regulations, the use of a bicycle is governed by state law, which is adopted and made part of section 4.30. The Memorandum requires superintendents to adopt state law in the same manner for e-bikes. State laws concerning the definition, safety operation, and licensing of e-bikes vary from state to state. A growing number of states use the three-class system to differentiate between the models and top assisted speeds of e-bikes.

Paragraph (h) of section 4.30 prohibits possessing a bicycle in wilderness and contains safety regulations for the use of bicycles. Specifically, paragraphs (h)(3)–(5) establish rules relating to operation during periods of low visibility, abreast of another bicycle, and with an open container of alcohol. The Memorandum applies these provisions in the same manner to e-bikes.

The Memorandum directs the superintendents of any NPS unit with e-bikes present to implement the actions required by the policy using their regulatory authority in 36 CFR 1.5(a)(2). This authority allows superintendents to designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity. As of the date this proposed rule, more than 380 units of the National Park System have implemented the e-bike policy under the authority in 36 CFR 1.5(a)(2) and have published notice of this action in the park-specific compilation of management actions required by 36 CFR 1.7(b), referred to as the superintendent's compendium. This means that for each of these NPS units, e-bikes are already allowed subject to the rules governing them that are set out in the compendium.

Proposed Rule

As explained above, Secretary's Order 3376 directs the NPS to develop a proposed rule to revise 36 CFR 1.4 and any associated regulations to be consistent with the Order. Specifically, the Order directs the NPS to add a definition for e-bikes consistent with 15 U.S.C. 2085, and expressly exempt all e-bikes as defined in the Order from the definition of motor vehicles.

This rule would accomplish these directives. The rule would amend 36 CFR 1.4 to add a new definition of ''electric bicycle'' that is the same as the definition used in the Policy Memorandum, with one minor difference. The definition in the Memorandum refers to the definition in the Consumer Product Safety Act (15 U.S.C. 2085) that limits the power of the motor to less than 750 watts. Many manufacturers sell e-bikes with motors having exactly 750 watts. In order to avoid the unintended consequence of excluding many devices from the regulatory definition of an e-bike due to a one watt difference in power, the definition of e-bikes in the proposed rule would include devices of not more than 750 watts.

The rule would explicitly exclude e-bikes from the definition of ''motor vehicle'' found at 36 CFR 1.4. This would make it clear that, except as stated in section 4.30(g), e-bikes are not subject to the regulations in 36 CFR part 4 that apply to the use of motor vehicles. The NPS does not need to change the existing definition of ''bicycle'' to distinguish them from e-bikes because the definition of bicycle includes only those devices that are ''solely human powered.'' E-bikes are excluded from this definition because they have an electric motor that helps power the device.

Consistent with the Secretary's Order and the Policy Memorandum, the proposed rule would state that e-bikes may be allowed on roads, parking areas, administrative roads and trails that are open to traditional bicycles. The rule would also state that superintendents will designate the areas open to e-bikes and notify the public pursuant to 36 CFR 1.7. E-bikes would not be allowed in other locations. E-bikes would be allowed on administrative roads and trails where bicycles are allowed without the need to undertake the procedural steps in paragraphs (b)–(e) of section 4.30 that were required when traditional bicycles were first allowed in those locations. If a park superintendent proposes to designate an administrative road or trail for e-bike use where traditional bicycles are not yet allowed, the superintendent would need to follow the procedural steps required by paragraphs (b)–(e) in order to designate those locations for bicycle and e-bike use.

Although they will be defined differently, the proposed rule would apply certain regulations that govern the use of bicycles to the use of e-bikes in the same manner as the Policy Memorandum. These regulations are explained in more detail above and include rules of operation and adoption of state law to the extent not addressed by NPS regulations. The rule would also give superintendents the authority to limit or restrict e-bike use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives. If warranted by these criteria, superintendents may use this authority to manage e-bikes, or particular classes of e-bikes, differently than traditional bicycles in particular locations. For example, a superintendent could determine that a trail open to traditional bicycles should not be open to e-bikes, or should be open to class 1 e-bikes only. Every restriction or closure that limits the use of e-bikes will be supported by a written record explaining the basis for such action. The record will explain why e-bikes are managed differently than traditional bicycles if that is the effect of the restriction or closure. All such restrictions and closures should be listed in the superintendent's compendium (or written compilation) of discretionary actions referred to in 36 CFR 1.7(b).

Except for administrative actions taken by the NPS in limited circumstances, the Wilderness Act prohibits mechanical transport in wilderness areas designated by Congress. 16 U.S.C. 1133(c). Accordingly, paragraph (h)(2) of section 4.30 prohibits possessing a bicycle, a form of mechanical transport, in a wilderness area established by Federal statute. For the same reason, the rule would prohibit the possession of e-bikes in designated wilderness areas, even though this prohibition already exists under the Wilderness Act.

Except on park roads and other locations where the use of motor vehicles by the public is allowed, the rule would prohibit an operator from using the electric motor to move an e-bike without pedaling. This restriction is consistent with the Policy Memorandum and intended to allow the public to use e-bikes for transportation and recreation in a similar manner to traditional bicycles. It would only affect the use of class 2 e-bikes, which have a motor that may be used exclusively to propel the e-bike. The NPS specifically requests comment on whether this restriction is appropriate or workable. Alternatively, the NPS could allow superintendents to implement this restriction at the park level if necessary in specific locations.

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 (OIRA) in the Office of Management and Budget will review all significant rules. The OIRA has waived review of this proposed rule and, at the final rule stage, will make a separate decision as to whether the rule is a significant regulatory action as defined by Executive Order 12866.

Executive Order 13563 reaffirms the principles of E.O. 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)

Enabling regulations are considered deregulatory under guidance implementing E.O. 13771 (M–17–21). This rule would address regulatory uncertainty regarding the use of electric bicycles in the National Park System by clearly stating that they may be used where traditional bicycles are allowed.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the economic analyses found in the report entitled ''Draft Cost-Benefit and Regulatory Flexibility Threshold Analyses: Proposed Regulations Addressing the Designation of Electric Bicycle Use in Units of the National Park System''. The report may be viewed online at *www.regulations.gov* by searching for ''1024–AE61''.

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 the use of electric bicycles on federally-administered lands. It has no outside effects on other areas. A federalism summary impact statement is not required.

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. The NPS has determined the rule is categorically excluded under 43 CFR 46.210(i) which applies to ''policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.''

Many units of the National Park System already allow the use of e-bikes where traditional bicycles are allowed under the direction of the Policy Memorandum. The Policy Memorandum required those units to evaluate the environmental impacts of allowing e-bikes under NEPA. Because traditional bicycles were already an established presence in areas where e-bikes were recently allowed, traditional bicycles were part of the baseline of existing conditions from which the environmental impacts of e-bikes were measured. Therefore, the impacts potentially caused by the implementation of the Policy Memorandum were limited only to those impacts from e-bikes that differ from the existing impacts of traditional bicycles. As a result, for most units a categorical exclusion has applied.

For those units that have already allowed e-bikes under the Policy Memorandum, this rule is administrative and legal in nature because it would simply clarify that superintendents have the authority to allow e-bikes in units, but does not change the management of e-bikes or require any action because the general statements in park compendiums that e-bikes are allowed wherever traditional bicycles are allowed would constitute a designation under this rule.

In some units of the National Park System, the superintendent may have not yet opened bicycle trails to e-bikes, or may have closed a location to the use of e-bikes or otherwise restricted their use. In these units, any future decision to allow e-bikes in a new location or manner will be subject to an evaluation of the environmental impacts of that decision at that time. This will also be true for locations where, in the future, traditional bicycles and e-bikes are introduced for the first time. If a park superintendent proposes to designate an administrative road or trail for e-bike use where traditional bicycles are not yet allowed, the superintendent will need to follow the same procedural steps in order to designate those locations for bicycle and e-bike use. In both of the circumstances described above, the environmental effects of this rule are too speculative or conjectural at this time to lend themselves to meaningful analysis, and those later designations will be subject to the NEPA process.

The NPS has also determined that 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

36 CFR Part 1

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

36 CFR Part 4

National Parks, Traffic Regulations.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR parts 1 and 4 as set forth below:

PART 1—GENERAL PROVISIONS

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

Authority: 54 U.S.C. 100101, 100751, 320102.

■ 2. Amend § 1.4 by adding, in alphabetical order, a definition for ''Electric bicycle'' and revising the definition for ''Motor vehicle'' to read as follows:

§ 1.4 What terms do I need to know?

(a) * * *

* * * * *

Electric bicycle means a two- or three-wheeled cycle with fully operable pedals and an electric motor of not more than 750 watts that meets the requirements of one of the following three classes:

(1) ''Class 1 electric bicycle'' shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour.

(2) ''Class 2 electric bicycle'' shall mean an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour.

(3) ''Class 3 electric bicycle'' shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour.

* * * * *

Motor vehicle means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or water, except an electric bicycle, a snowmobile, and a motorized wheelchair.

* * * * *

PART 4—VEHICLES AND TRAFFIC SAFETY

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

Authority: 54 U.S.C. 100101, 100751, 320102.

■ 4. Amend § 4.30 by adding paragraph (i) to read as follows:

§ 4.30 Bicycles

* * * * *

(i) *Electric bicycles.*

(1) The use of an electric bicycle may be allowed on park roads, parking areas, and administrative roads and trails that are otherwise open to bicycles. The Superintendent will designate the areas open to electric bicycles and notify the public pursuant to 36 CFR 1.7.

(2) The use of an electric bicycle is prohibited in locations not designated by the Superintendent under paragraph (i)(1) of this section.

(3) Except where use of motor vehicles by the public is allowed, using the electric motor to move an electric bicycle without pedaling is prohibited.

(4) Possessing an electric bicycle in a wilderness area established by Federal statute is prohibited.

(5) A person operating or possessing an electric bicycle is subject to the following sections of this part that apply to bicycles: Sections 4.12, 4.13, 4.20, 4.21, 4.22, 4.23, and 4.30(h)(3)–(5).

(6) Except as specified in this section, the use of an electric bicycle is governed by State law, which is adopted and made a part of this section. Any act in violation of State law adopted by this paragraph is prohibited.

(7) Superintendents may limit or restrict or impose conditions on electric bicycle use, or may close any park road, parking area, administrative road, trail, or portion thereof to such electric bicycle use, or terminate such condition, closure, limit or restriction after:

(i) Taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives; and

(ii) Notifying the public through one or more methods listed in 36 CFR 1.7, including in the superintendent's compendium (or written compilation) of discretionary actions referred to in section 1.7(b).

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020–07163 Filed 4–7–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF DEFENSE

48 CFR Parts 203, 205, 211, 212, 217, 219, 225, 228, 236, 237, 246, 250, and 252

[Docket DARS–2020–0002]

RIN 0750–AK76

Defense Federal Acquisition Regulation Supplement: Inflation Adjustment of Acquisition–Related Thresholds (DFARS Case 2019–D036)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to further implement 41 U.S.C. 1908, Inflation adjustment of acquisition-related dollar thresholds. This statute requires an adjustment every five years of acquisition-related thresholds for inflation using the Consumer Price Index for all urban consumers, except for the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds. DoD is also proposing to use the same methodology to adjust some nonstatutory DFARS acquisition-related thresholds in 2020.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 8, 2020, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2019–D036, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2019–D036.'' Select ''Comment Now'' and follow the instructions to submit a comment. Please include your name, company name (if any), and ''DFARS Case 2019–D036'' on any attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2019–D036 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kimberly R. Ziegler, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Instructions: Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal 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. Kimberly R. Ziegler, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to amend multiple DFARS parts to further implement 41 U.S.C. 1908. Section 1908 requires an adjustment every five years (on October 1 of each year evenly divisible by five) of statutory acquisition-related thresholds for inflation, using the Consumer Price Index (CPI) for all urban consumers, except for the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds (see Federal Acquisition Regulation (FAR) 1.109). As a matter of policy, DoD is also proposing to use the same methodology to adjust some nonstatutory DFARS acquisition-related thresholds on October 1, 2020. FAR case 2019–013 proposes comparable changes to acquisition-related thresholds in the FAR.

This is the fourth review of DFARS acquisition-related thresholds since the statute was enacted on October 28, 2004 (section 807 of the National Defense Authorization Act for FY 2004). The last review was conducted under DFARS case 2014–D025. The final rule was published under that case in the **Federal**

Register on June 26, 2015 (80 FR 36903), effective October 1, 2015. DoD subsequently published a correction to DFARS case 2014–D025 on August 3, 2015 at 80 FR 45899.

II. Discussion and Analysis

A. What is an acquisition-related threshold?

This case builds on the review of DFARS thresholds in 2005, 2010, and 2015, using the same interpretation of an acquisition-related threshold. 41 U.S.C. 1908 is applicable to ''a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency, as the [FAR] Council determines.'' There are other thresholds in the DFARS that, while not specified in law, nevertheless meet all the other criteria. These thresholds may have their origin in Executive order or regulation. Therefore, the FAR Council has determined, that in this case, ''acquisition-related threshold'' has a broader meaning, *i.e.,* a threshold that is specified in law, Executive order, or regulation as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law, Executive order, or regulation to the procurement of property or services by an Executive agency. Acquisition-related thresholds are generally tied to the value of a contract, subcontract, or modification.

Examples of thresholds that are not ''acquisition-related,'' as defined in this case, are thresholds relating to claims, penalties, withholding, payments, required levels of insurance, small business size standards, liquidated damages, protests, etc. This report does not address thresholds that are not acquisition-related.

B. What acquisition-related thresholds are not subject to escalation adjustment under this case?

41 U.S.C. 1908 does not permit escalation of acquisition-related thresholds established by the Construction Wage Rate Requirements statute (Davis-Bacon Act), the Service Contract Labor Standards statute, or the United States Trade Representative pursuant to the authority of the Trade Agreements Act of 1979.

Also, the statute does not authorize DoD to escalate thresholds originating in Executive order or the implementing agency (such as the Department of Labor or the Small Business Administration), unless the Executive order or agency regulations are first amended.

C. How does DoD analyze escalation of a statutory acquisition-related threshold?

If an acquisition-related threshold is based on statute, the matrix at *https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/current/PGI201_1.htm* identifies the statute, and the statutory threshold, including the original threshold and any subsequent revisions to it.

With the exception of thresholds set by the Construction Wage Rate Requirements statute (Davis-Bacon Act), the Service Contract Labor Standards statute, and trade agreements, 41 U.S.C. 1908 requires adjustment of the acquisition-related thresholds for inflation using the Consumer Price Index (CPI) for all-urban consumers. Acquisition-related thresholds in statutes that were in effect on October 1, 2000, are only subject to escalation from that date forward. Acquisition-related thresholds in statutes that took effect after October 1, 2000, are escalated from the date that they took effect. For purposes of this proposed rule, the matrix includes calculation of escalation based on the estimated CPI value for March 2020 (currently estimated at 258.6) divided by the CPI for the date of enactment of the statute or regulation (October 2000, for statutes enacted prior to October 1, 2000). DoD will subsequently adjust as necessary before issuance of the final rule.

Once the escalation factor is applied to the acquisition-related threshold, then statutory thresholds must be rounded as follows:

<$10,000 to nearest $500
$10,000–<$100,000 to nearest $5,000
$100,000–<$1 million to nearest $50,000
$1 million–<$10 million to nearest $500,000
$10 million–<$100 million to nearest $5 million
$100 million–<$1 billion to nearest $50 million

Note that since the last adjustment in 2015, the calculation formula for over $1 million was revised in 41 U.S.C. 1908.

The calculations in this proposed rule are all based on the base year amount, because escalated amounts in the 2015 rule were subject to rounding and using those amounts as the base would distort future calculations.

In 2015, some thresholds, although subject to inflation calculation, did not actually change, because the inflation in 2015 was insufficient to overcome the rounding requirements—*i.e.,* the escalation factor, when applied, did not cause the escalated values to be high enough to round to the next higher value. However, for the FY 2020 calculations, some thresholds that did not escalate in 2015 have increased through other statutory actions or will now escalate because of five additional years of inflation. Likewise, some thresholds that were escalated in 2015 will not escalate in 2020.

This proposed rule is based on a projected CPI of 258.6 for March 2020. If the actual CPI for March 2020 is higher than 258.6, then additional statutory thresholds may be subject to escalation in the final rule, even though not included in the proposed rule.

D. How does DoD analyze a nonstatutory acquisition-related threshold?

No statutory authorization is required to escalate thresholds that are policy-based within the DFARS. For consistency, escalation of the DoD policy acquisition-related thresholds is generally recommended using the same formula applied to the statutory thresholds, unless a reason has been provided for not doing so.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This proposed rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the simplified acquisition threshold, or for commercial items, including COTS items.

IV. 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. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

The rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule maintains the status quo by adjusting thresholds for actual inflationary increases in the CPI. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule proposes to amend the Defense Federal Acquisition Regulation Supplement to implement 41 U.S.C. 1908 and to amend other acquisition-related dollar thresholds that are based on policy rather than statute in order to adjust for the changing value of the dollar. 41 U.S.C. 1908 requires adjustment every five years of statutory acquisition-related dollar thresholds, except for Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds. While reviewing all statutory acquisition-related thresholds, this case presented an opportunity to also review all nonstatutory acquisition-related thresholds in the DFARS that are based on policy.

The objective of the case is to maintain the status quo, by adjusting acquisition-related thresholds for inflation. The legal basis is 41 U.S.C. 1908. The statute does not authorize escalation of thresholds originating in Executive orders or the implementing agency (such as the Department of Labor or the Small Business Administration), unless the Executive order or agency regulations are first amended.

This rule will likely affect to some extent all small business concerns that submit offers or are awarded contracts by DoD. However, most of the threshold changes proposed in this rule are not expected to have any significant economic impact on small business concerns because they are intended to maintain the status quo by adjusting for changes in the value of the dollar. Data generated from the Federal Procurement Data System (FPDS) for fiscal years 2017 through 2019, indicates that DoD has awarded an average of 1,494,202 contracts to 56,851 unique small entities during the three-year period. It is assumed that all 56,851 unique small entities may be affected by this rule, however, the impact will most likely be beneficial, by preventing burdensome requirements from applying to more and more acquisitions, as the dollar loses value.

The rule does not impose any new reporting, recordkeeping, or compliance requirements. Changes in thresholds for approved information collection requirements are intended to maintain the status quo and prevent those requirements from increasing over time.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the statute.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2019–D036), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act does apply. The proposed changes to the DFARS do not impose new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* By adjusting the thresholds for inflation, the status quo for the current information collection requirements are maintained under OMB clearance numbers 0704–0229, DFARS Part 225, Foreign Acquisition and related clauses and 0704–0286, DFARS Part 205, Publicizing Contract Actions and Provision of Information to Cooperative Agreement Holders.

List of Subjects in 48 CFR Parts 203, 205, 211, 212, 217, 219, 225, 228, 236, 237, 246, 250, and 252

Government Procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 203, 205, 211, 212, 217, 219, 225, 228, 236, 237, 246, 250, and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 203, 205, 211, 212, 217, 219, 225, 228, 236, 237, 246, 250, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.1004 [Amended]

■ 2. Amend section 203.1004 in paragraph (b)(2)(ii) by removing ''$5.5 million'' and adding ''$6 million'' in its place.

PART 205—PUBLICIZING CONTRACT ACTIONS

205.303 [Amended]

■ 3. Amend section 205.303 by removing ''$7 million'' everywhere it appears and adding ''$7.5 million'' in its place.

205.470 [Amended]

■ 4. Amend section 205.470 by removing ''$1,000,000'' and adding ''$1.5 million'' in its place.

PART 211—DESCRIBING AGENCY NEEDS

211.503 [Amended]

■ 5. Amend section 211.503 in paragraph (b) by removing ''$700,000'' and adding ''$750,000'' in its place in two places.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.271 [Amended]

■ 6. Amend section 212.271 by removing ''$40,000'' and adding ''$45,000'' in its place.

PART 217—SPECIAL CONTRACTING METHODS

217.170 [Amended]

■ 7. Amend section 217.170 in paragraphs (d)(1)(iv) and (d)(5) introductory text by removing ''$135.5 million'' and adding ''$150 million'' in both places.

217.171 [Amended]

■ 8. Amend section 217.171 in paragraph (d) by removing ''$678.5 million'' and adding ''$750 million'' in its place.

217.172 [Amended]

■ 9. Amend section 217.172 in paragraphs (c), (d), and (f)(1) and (2) by removing ''$678.5 million'' and adding ''$750 million'' in each place.

PART 219—SMALL BUSINESS PROGRAMS

219.502–2 [Amended]

■ 10. Amend section 219.502–2 in paragraph (a)(i) by removing ''$2.5 million'' and adding ''$3 million'' in its place.

PART 225—FOREIGN ACQUISITION

225.7204 [Amended]

■ 11. Amend section 225.7204 in paragraphs (a) and (b) by removing ''$13.5 million'' and adding ''$15 million'' in each place.

225.7703–2 [Amended]

■ 12. Amend section 225.7703–2 by—

■ a. In paragraph (b)(2)(i) by removing ''$93 million'' and adding ''$100 million'' in its place; and

■ b. In paragraph (b)(2)(ii) introductory text by removing ''Director, Defense Procurement and Acquisition Policy'' and adding ''Principal Director, Defense Pricing and Contracting'' in its place and by removing ''$93 million'' and adding ''$100 million'' in its place.

PART 228—BONDS AND INSURANCE

228.102–1 [Amended]

■ 13. Amend section 228.102–1, in the introductory text and paragraph (1), by removing ''$35,000'' and adding ''$40,000'' in its place in both places.

PART 236—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

236.303–1 [Amended]

■ 14. Amend section 236.303–1 in paragraph (a)(4)(i) introductory text and (a)(4)(ii) by removing ''$4 million'' and adding ''$4.5 million'' in its place in both places.

PART 237—SERVICE CONTRACTING

237.170–2 [Amended]

■ 15. Amend section 237.170–2 in paragraphs (a)(1) and (2) by removing ''$93 million'' and adding ''$100 million'' in its place in both places.

PART 246—QUALITY ASSURANCE

■ 16. Amend section 246.402 introductory text by removing ''$300,000'' and adding ''$350,000'' in its place.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

250.102–1 [Amended]

■ 17. Amend section 250.102–1 in paragraph (b) by removing ''$70,000'' and adding ''$75,000'' in its place.

250.102–1–70 [Amended]

■ 18. Amend section 250.102–1–70 in paragraph (b)(1) by removing ''$70,000'' and adding ''$75,000'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7003 [Amended]

■ 19. Amend section 252.225–7003 by—

■ a. Removing the clause date ''(OCT 2015)'' and adding ''(DATE)'' in its place; and

■ b. In paragraph (b)(1), removing ''$13.5 million'' and adding ''$15 million'' in its place; and

■ c. In paragraph (b)(2)(i) removing ''$700,000'' and adding ''$750,000'' in its place.

[FR Doc. 2020–06733 Filed 4–7–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 232, and 252

[Docket DARS–2019–0047]

RIN 0750–AJ52

Defense Federal Acquisition Regulation Supplement: Expediting Contract Closeout (DFARS Case 2017–D042)

AGENCY: Defense Acquisition Regulation System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to provide for expedited contract closeout through a waiver by the contractor and the Government of entitlement to any residual dollar amounts that are due to either party at the time of final contract closeout. The changes are necessary to establish an expedited contract closeout agreement that will save administrative costs for both the contractor and the Government.

DATES: Comments on the proposed rule should be submitted in writing using one of the methods shown in **ADDRESSES** on or before June 8, 2020, to be considered in the formation of a final rule.

ADDRESSES: Submit comments in response to DFARS CASE 2017–D042 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via Federal Rulemaking portal by entering ''DFARS Case 2017–D042'' under the heading ''Enter keyword of ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2017–D042.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2017–D042'' on your attached document.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2017–D042 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kimberly Bass, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulation.gov,* including any personal 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. Kimberly Bass, telephone 571–372–6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to add a new DFARS contract clause that allows for an expedited contract closeout agreement between the contractor and the Government that will save administrative costs for both the contractor and the Government. The clause will be used when the contracting officer intends to expedite the contract closeout process by having the contractor and the Government waive entitlement to any residual dollar amounts up to $1,000 at the time of final contract closeout. The objective of the rule is to reduce the amount of time and money expended on reconciling small dollar residual dollar amounts in order to close out contracts.

II. Discussion and Analysis

The proposed DFARS clause 252.204–70XX, Expediting Contract Closeout, provides an agreement by the Government and contractor to waive any entitlement that otherwise might accrue to either party in any amount of $1,000 or less at the time of final contract closeout. The new clause will be prescribed at DFARS 204.804–70 for use in solicitations and contracts, including those under FAR part 12 procedures for acquisition of commercial items, when the contracting officer intends to expedite contract closeout through such a waiver.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule proposes to create a new clause DFARS 252.204–70XX, Expediting Contract Closeout. DoD plans to apply this clause to solicitations and contracts for the acquisition of commercial items, including commercially available off-the-shelf items, and to acquisitions valued at or below the simplified acquisition threshold. These categories of acquisitions are those most likely to benefit from expedited contract closeout.

IV. 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, or reducing costs, or 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. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not expected to be subject to E.O. 13771, because this rule is not a significant regulatory action.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An initial regulatory flexibility analysis (IRFA) has been performed and is summarized as follows:

The Department of Defense (DoD) proposes amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add a new contract clause 252.204–70XX, Expediting Contract Closeout, to expedite contract closeout on contracts with a residual dollar amount of $1,000 or less at the time of final closeout.

The objective of the proposed clause is to facilitate expedited contract closeout and avoid excessive administrative costs for both the contractor and the Government to reconcile relatively small residual dollar amounts in order to close out a contract.

The proposed rule will apply to small entities that have been or will be awarded contracts, including those under FAR part 12 procedures for the acquisition of commercial items. DoD is unable to estimate the total number of small entities that have DoD contracts with a residual amount of $1,000 or less; however, the Defense Contract Management Agency (DCMA) was able to provide information on contracts administered by DCMA. According to data available in Mechanization of Contract Administration Services/Shared Data Warehouse as of June 2019, there were 11,831 flexibly-priced contracts with residual dollar amounts of $1,000 or less, of which 3,507 contracts were awarded to small entities. The average residual amount on these contracts was $70.

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known, significant, alternative approaches to the proposed rule that would meet the requirements of the proposed rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2017–D042), in correspondence.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require 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 Parts 204, 212, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 212, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 2. Add section 204.804–70 to read as follows:

204.804–70 Contract clause.

Use the clause at 252.204–70XX, Expediting Contract Closeout, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the contracting officer intends to expedite contract closeout through the waiver of entitlement to any residual dollar amounts by the contractor and the Government at the time of final contract closeout.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Amend section 212.301 by adding paragraph (f)(ii)(K) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(ii) * * *

(K) Use the clause at 252.204–70XX, Expediting Contract Closeout, as prescribed in 204.804–70.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 252.204–70XX to read as follows:

252.204–70XX Expediting contract closeout.

As prescribed in 204.804–70, use the following clause:

Expediting Contract Closeout (DATE)

(a) Both the Government and the Contractor agree to waive any entitlement that otherwise might accrue to either party in any residual dollar amount of $1,000 or less at the time of final contract closeout.

(b) A residual dollar amount includes all money owed to either party at the end of the contract and as a result of the contract, excluding amounts connected in any way with taxation or a violation of law or regulation.

(c) For purposes of determining residual dollar amounts, offsets (for example across multiple contracts or orders) may be considered to the extent permitted by law.

(End of clause)

[FR Doc. 2020–06724 Filed 4–7–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211 and 252

[Docket DARS–2019–0056]

RIN 0750–AK59

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Provision "Alternate Preservation, Packaging, and Packing" (DFARS Case 2019–D022)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a provision that is no longer necessary, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 8, 2020, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2019–D022, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2019–D022'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2019–D022.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include ''DFARS Case 2019–D022'' on any attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2019–D022 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: *Carrie Moore,* OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal 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. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to remove the DFARS provision 252.211–7004, Alternate Preservation, Packaging, and Packing, from the DFARS as the provision is no longer necessary. DFARS provision 252.211–7004 is included in solicitations that include military preservation, packaging, or packing specifications when it is feasible to evaluate and award using commercial or industrial preservation, packaging, or packing methods. The provision: (1) Notifies offerors that they may submit two prices for the item—one based on the military requirements and one based on commercial standards; (2) specifies the information to be provided with the proposed commercial alternative; and (3) requires the offeror to agree to use the military requirements if the proposed commercial standards are not accepted by the contracting officer.

Since the implementation of the provision, acquisition reform efforts have provided additional latitude to contracting officers to use performance and commercial specifications and standards, in lieu of military specifications and standards. As a result, contracting officers regularly rely on commercial preservation, packaging, and packing standards, unless the use of other specifications and standards is essential to the acquisition.

Additionally, agency acquisition officials have broad discretion to develop and apply factors that support a meaningful comparison between proposals. If the use of military versus commercial preservation, packaging, and packing standards shall be evaluated as part of a contract award, then the solicitation will include an evaluation factor for such criteria to be considered in the source selection decision. The ability to make tradeoffs between commercial standards and military specifications and cost or price already exists for acquisition officials as part of acquisition planning; therefore, this provision is no longer necessary.

II. Discussion and Analysis

The removal of this DFARS provision supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause. The DoD Regulatory Reform Task Force reviewed the requirements of DFARS clause 252.211–7004, determined that the DFARS coverage was unnecessary, and recommended its removal from the DFARS.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This proposed rule only removes the obsolete solicitation provision at DFARS 252.211–7004. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

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. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not expected to be subject to E.O. 13771, because this rule is not subject to E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule is not creating any new requirements for contractors or changing any existing policies and practices. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The Department of Defense is proposing to repeal DFARS provision

252.211–7004, Alternate Preservation, Packaging, and Packing, as the provision is no longer necessary. This repeal is pursuant to action taken by the Regulatory Reform Task Force. The objective of this proposed rule is to reduce regulatory burden on the public. The repeal of this DFARS clause supports a recommendation from the DoD Regulatory Reform Task Force.

DoD does not collect data on the number of small businesses that respond to a solicitation that includes DFARS clause 252.211–7004 or the number of small businesses responding to such a solicitation with alternative preservation, packaging, or packing methods. Instead, DoD subject matter experts advise that approximately 375 solicitations are issued each year that contain military preservation, packaging, or packing requirements where commercial or industrial methods may also be acceptable. DoD estimates that it receives 1.5 responses to each solicitation, for a total of 563 offers received in response to the solicitation. This total estimated number of responses does not delineate between the business size of the offerors or those offerors that did and did not proposed alternative methods for preservation, packaging, or packing in lieu of military specifications. Based on the information available, DoD does not anticipate that this rule will significantly impact small business entities.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. Rather, this rule proposes to eliminate a reporting requirement. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known alternative to the rule that will meet the stated objectives or minimize the impact on of the rule on small entities.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2019–D022) in correspondence.

VII. Paperwork Reduction Act

This rule removes the burden associated with DFARS 252.211–7004 from the information collection requirement currently approved under OMB Control Number 0704–0398, entitled DFARS Part 211, Describing Agency Needs, and Related Clauses at DFARS 252.211. This reduction is reflected in the proposed revision to and extension of the information collection, as published in the **Federal Register** on February 27, 2020, at 85 FR 11351.

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211 and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 211 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

211.272 [Removed and Reserved]

■ 2. Remove and reserve section 211.272.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211–7004 [Removed and Reserved]

■ 3. Remove and reserve section 252.211–7004.

[FR Doc. 2020–06730 Filed 4–7–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211 and 252

[Docket DARS–2020–0006]

RIN 0750–AK60

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Substitutions for Military or Federal Specifications and Standards" (DFARS Case 2019–D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove internal agency guidance and a clause that is no longer necessary, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 8, 2020, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2019–D023, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Search for "DFARS Case 2019–D023" under the heading "Enter keyword or ID" and selecting "Search." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2019–D023" on any attached document.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2019–D023 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal 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. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to remove DFARS subpart 211.273, Substitutions for Military or Federal Specifications and Standards, and DFARS clause 252.211–7005, Substitutions for Military or Federal Specifications and Standards, from the DFARS as the guidance and clause are no longer necessary.

II. Discussion and Analysis

DFARS clause 252.211–7005 is included in solicitations and contracts for the acquisition of previously developed items. The clause encourages offerors to propose Single Process Initiative (SPI) processes in lieu of military of Federal specifications; provides a link to a Defense Contract Management Agency guidebook that lists currently accepted SPI processes; and requires the offeror, when proposing to use an SPI process, to provide certain information with its offer.

DFARS subpart 211.273 provides DoD contracting officers internal guidance on the use and acceptance of SPI processes in lieu of specific military or Federal specifications and standards in contracts and include the prescription for use of DFARS clause 252.211–7005.

The SPI process was established to aid DoD and contractors in the transition from an acquisition environment of strict adherence to military specifications to a balanced approach of commercial practices and military specifications. The SPI permits offerors to propose alternatives to military or Federal specifications and standards cited in DoD solicitations for previously developed items. When SPI was established, DoD was responsible for the management and oversight of the initiative through the use of a Management Council, which included representatives of the contractor, the military departments, and the Defense Contract Management Agency, and the Defense Contract Audit Agency.

Since the implementation of the SPI, acquisition reform efforts have provided additional latitude to contracting officers and contractors to utilize performance specifications and commercial standards, in lieu of military and Federal specifications and standards. As a result, the use of SPI has declined since its inception and oversight and management of the initiative has transferred from a DoD-enterprise responsibility to a DoD component-level responsibility. Each component may manage the initiative to support its individual needs and requirements; therefore, DoD enterprise-level guidance to contracting officers and contractors is no longer necessary and can be removed from the DFARS.

The removal of this DFARS text and clause supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause. The DoD Task Force reviewed the requirements of DFARS clause 252.211–7005, determined that the DFARS coverage is no longer necessary, and recommended its removal from the DFARS.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This proposed rule only removes obsolete internal guidance and clause 252.211–7005 from the DFARS. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

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. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule is not creating any new requirements for contractors or changing any existing policies and practices. However, an initial regulatory flexibility analysis (IRFA) has been performed and is summarized as follows:

The Department of Defense is proposing to repeal DFARS subpart 211.273, Substitutions for Military or Federal Specifications and Standards, and DFARS clause 252.211–7005, Substitutions for Military or Federal Specifications and Standards, as the guidance and clause are no longer necessary.

The objective of this proposed rule is to remove outdated guidance from the DFARS and reduce regulatory burden on the public. The repeal of this DFARS clause supports a recommendation from the DoD Regulatory Reform Task Force.

DoD does not collect data on the number of small businesses that proposed an SPI process in lieu of military or Federal specifications or standards cited in the solicitation. Instead, DoD subject matter experts estimate that approximately 10 contractors participate in SPI and that each participant will respond to one solicitation per year. Based on the information available, DoD does not anticipate that this rule will significantly impact small business entities.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known alternative to the rule that will meet the stated objectives or minimize the impact on of the rule on small entities.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2019–D023) in correspondence.

VII. Paperwork Reduction Act

This rule removes the burden associated with DFARS 252.211–7005 from the information collection requirement currently approved under OMB Control Number 0704–0398, entitled DFARS Part 211, Describing Agency Needs, and Related Clauses at DFARS 252.211. This reduction in burden is reflected in the proposed revision to and extension of the information collection, as published in the **Federal Register** on February 27, 2020, at 85 FR 11351.

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 211 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

211.273 [Removed and Reserved]

■ 2. Remove and reserve section 211.273.

211.273–1 through 211.273–4 [Removed]

■ 3. Remove sections 211.273–1 through 211.273–4.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211–7005 [Removed and Reserved]

■ 4. Remove and Reserve section 252.211–7005.

[FR Doc. 2020–06731 Filed 4–7–20; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register

Vol. 85, No. 68

Wednesday, April 8, 2020

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee

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 (FACA) that a meeting of the California Advisory Committee (Committee) to the Commission will be held at 2:00 p.m. (Pacific Time) Wednesday, April 29, 2020. The purpose of the meeting is for the Committee to review the first draft of their report on immigration enforcement.

DATES: The meeting will be held on Wednesday, April 29, 2020, at 2:00 p.m. PT.

Public Call Information:
Dial: 800–263–0877.
Conference ID: 5903809.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–263–0877, conference ID number: 5903809. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ*

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome

II. Review Report Findings and Recommendations

III. Public Comment

IV. Next Steps

V. Adjournment

Dated: April 2, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–07320 Filed 4–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–20–2020]

Foreign-Trade Zone (FTZ) 32—Miami, Florida, Notification of Proposed Production Activity, BLU Products, Inc. (Cellular Phones, Accessories, and Components), Doral, Florida

BLU Products, Inc. (BLU) submitted a notification of proposed production activity to the FTZ Board for its facility in Doral, Florida. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 1, 2020.

The BLU facility is located within FTZ 32. The facility will used for the assembly, disassembly, and kitting of cellular (cell) phones, and their accessories and components. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt BLU from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, BLU would be able to choose the duty rates during customs entry procedures that apply to cell phones, and their accessories and components (duty rate ranges from duty-free to 5.0%). BLU would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Cell phones; paper labels; plastic components (SIM card; blister package; audio adapter; screen insert; back housing battery cover; flash cover; front cover housing; SIM card tray; flex power cable for power and volume keys; internal speaker housing; phone vibrator; volume key button; internal cell phone earpiece net; battery cooling film; housing net; keypad dome; phone power key); hands-free headphones; polyurethane and copper data cables; lithium-ion batteries; tempered glass; paperboard gift/retail boxes; master cartons; cell phone chargers; iron components (Universal Serial Bus (USB) connector; flash shield; front camera motor support clamp, front camera thumb screw; phone vibrator); back cover foam protectors; acrylic plastic components (camera housing; rear camera ornament or decoration; front camera housing; rear camera flash cover); ethylene vinyl acetate adhesives; cell phone camera lenses; zinc alloy components (fingerprint reader; front camera motor lift mechanism; front camera guide pillar; internal cell phone microphone; SIM card tray cap; phone housing mesh); front camera components (acrylic and zinc alloy front camera; poly resin mesh; insulation tape; lens; rubber stop; magnet); PVC resin components (front camera guide pillar shaft sleeve; sub-printed circuit board (also with radio frequency, radio frequency antenna, or with microphone and USB connector); flex power cable (also for volume key, and power key); sub-power cable; plastic for housing; GPS system antenna; radio frequency antenna); copper components (front camera spring; coaxial line; screws); glass film liquid crystal display (LCD) units; LCD units with polyvinyl touch panel and resin front housing with power volume flex power cable; rear camera lenses; aluminum components (SIM card tray; battery cover); audio jack connectors; internal cell phone receivers (earpieces); mobile cellular communication receivers; internal cell phone speakers; glass tactile phone panels; acrylic face proximity sensors; and, aluminum alloy speaker mesh (duty rate ranges from duty-free to 3.4%). The request indicates that the materials/components are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 18, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: April 2, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–07395 Filed 4–7–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–54–2020]

Foreign-Trade Zone 47—Boone County, Kentucky, Application for Subzone, Mitsubishi Electric Automotive America, Inc., Maysville, Kentucky

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 47, requesting subzone status for the facility of Mitsubishi Electric Automotive America, Inc. (MEAA), located in Maysville, Kentucky. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on April 2, 2020.

The proposed subzone (25.4 acres) is located at 1703 and 1705 Downing Drive Maysville, Mason County. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 47.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 18, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 2, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: April 2, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–07396 Filed 4–7–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–75–2019]

Foreign-Trade Zone (FTZ) 277—Western Maricopa County, Arizona, Authorization of Production Activity, Ball Metal Beverage Container Corporation (Aluminum Cans and Briquettes), Goodyear, Arizona

On December 5, 2019, Ball Metal Beverage Container Corporation submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 277, in Goodyear, Arizona.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 69355–69356, December 18, 2019). On April 3, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: April 3, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–07394 Filed 4–7–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that each of the companies for which an administrative review was requested, and not withdrawn, failed to demonstrate eligibility for a separate rate; therefore each is part of the China-wide entity.

DATES: Applicable April 8, 2020.

FOR FURTHER INFORMATION CONTACT: Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6312.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2019, Commerce published the *Preliminary Results* [1] of the review of the antidumping duty order [2] on aluminum extrusions from the People's Republic of China (China) covering the period May 1, 2018 through April 30, 2019. Although we invited interested parties to comment on the *Preliminary Results,*[3] we received no comments. Accordingly, for these final results of review, we adopt the determinations expressed in the *Preliminary Results* and accompanying Preliminary Decision Memorandum. No decision memorandum accompanies this **Federal Register** notice.[4]

Scope of the Order

The merchandise covered by the *Order* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.,* without any coating or further finishing), brushed, buffed, polished, anodized (including brightdip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.,* prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.,* by welding or fasteners) to form subassemblies, *i.e.,* partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation. The following aluminum extrusion products are excluded: Aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a ''finished goods kit.'' A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ''as is'' into a finished product. An imported product will not be considered a ''finished goods kit'' and therefore excluded from the scope of the *Order* merely by including fasteners such as screws, bolts, *etc.,* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

[1] *See Aluminum Extrusions from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2018–2019,* 84 FR 72294 (December 31, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).

[2] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011) (the *Order*).

[3] *See Preliminary Results,* 84 FR at 72294.

[4] For further details of the issues addressed in this proceeding, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) Length of 37 millimeters (''mm'') or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of this *Order* are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 7606.12.3091, 7606.12.3096, 7604.21.0010, 7604.21.0090, 7604.29.1010, 7604.29.1090, 7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 8541.90.00.00, 8708.10.30.50, 8708.99.68.90, 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Final Results of Review

We find that each of the companies for which an administrative review was requested, and not withdrawn, failed to demonstrate eligibility for a separate rate; therefore, each is part of the China-wide entity.[5] A list of these companies is in the attached appendix.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review in the **Federal Register**. Consistent with Commerce's assessment practice in non-market economy cases, if Commerce determines that an exporter under review had no shipments of subject merchandise, any suspended entries that entered under the exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide rate.[6]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters not subject to this administrative review that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most-recently completed segment of this proceeding in which the exporter was reviewed; (2) for all Chinese exporters of subject merchandise which have not been found to be entitled to a separate rate,[7] the cash deposit rate will be that established for the China-wide entity, which is 86.01 percent; and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter with the subject merchandise. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this period of review. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

[5] For the list of companies subject to this administrative review, *see Preliminary Results,* 84 FR at 72295–72296.

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[7] For the list of these companies, *see* the appendix; *see also Preliminary Results,* 84 FR at 72295–72296.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), 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 the terms of an APO is a sanctionable violation. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[8]

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a) and 777(i)(1) of the Act.

Dated: April 1, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Companies Failing To Demonstrate Eligibility for a Separate Rate

1. Activa Leisure Inc.
2. Allied Maker Limited
3. Birchwoods (Lin'an) Leisure Products Co., Ltd.
4. Changzhou Changzhen Evaporator Co., Ltd.
5. Changzhou Changzheng Evaporator Co., Ltd.
6. Cosco (J.M.) Aluminum Co., Ltd.
7. Cosco (JM) Aluminum Development Co., Ltd.
8. Dynabright International Group (HK) Ltd.
9. Dynamic Technologies China
10. ETLA Technology (Wuxi) Co. Ltd
11. First Union Property Limited
12. Foshan Jinlan Aluminum Co. Ltd.
13. Foshan JinLan Aluminum Co., Ltd.
14. Foshan Shanshui Fenglu Aluminum Co., Ltd.
15. Guangdong Hao Mei Aluminum Co., Ltd.
16. Guangdong Weiye Aluminum Factory Co., Ltd.
17. Guangdong Xingfa Aluminum Co., Ltd.
18. Hanwood Enterprises Limited
19. Hanyung Metal (Suzhou) Co., Ltd.
20. Honsense Development Company
21. Innovative Aluminum (Hong Kong) Limited
22. Jiangsu Changfa Refrigeration Co.
23. Jiangyin Trust International Inc.
24. Jiangyin Xinhong Doors and Windows Co., Ltd.
25. JMA (HK) Company Limited
26. Justhere Co., Ltd.
27. Kanal Precision Aluminum Product Co., Ltd
28. Kromet International
29. Kromet International Inc.
30. Kromet Intl Inc
31. Longkou Donghai Trade Co., Ltd.
32. Metaltek Group Co., Ltd.
33. Ningbo Yili Import and Export Co., Ltd.
34. North China Aluminum Co., Ltd.
35. PanAsia Aluminum (China) Limited
36. Pingguo Aluminum Company Limited
37. Pingguo Asia Aluminum Co., Ltd.
38. Popular Plastics Company Limited
39. Precision Metal Works Ltd.
40. Shangdong Nanshan Aluminum Co., Ltd.
41. Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co. Ltd.
42. Shenzhen Jiuyuan Co., Ltd.
43. Skyline Exhibit Systems (Shanghai) Co. Ltd.
44. Summit Heat Sinks Metal Co, Ltd
45. tenKsolar (Shanghai) Co., Ltd.
46. Tianjin Jinmao Import & Export Corp., Ltd.
47. Tianjin Ruxin Electric Heat Transmission Technology Co., Ltd.
48. Top-Wok Metal Co., Ltd.
49. Union Industry (Asia) Co., Ltd.
50. Zhejiang Anji Xinxiang Aluminum Co., Ltd.
51. Zhejiang Yongkang Listar Aluminum Industry Co., Ltd.
52. Zhongshan Gold Mountain Aluminum Factory Ltd.

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

[FR Doc. 2020–07378 Filed 4–7–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838]

Carbazole Violet Pigment 23 From India: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Pidilite Industries Limited (Pidilite), a producer/exporter of carbazole violet pigment 23 (CVP 23) from India, did not sell subject merchandise at prices below normal value (NV) during the period of review (POR) December 1, 2017 through November 30, 2018.

DATES: Applicable April 8, 2020.

FOR FURTHER INFORMATION CONTACT: George Ayache, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2623.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2020, Commerce published in the **Federal Register** the *Preliminary Results* of the administrative review of the antidumping duty order on CVP 23 from India.[1] This review covers one producer/exporter of the subject merchandise, Pidilite. We invited parties to comment on the *Preliminary Results.*[2] No interested party submitted comments or a request for a hearing. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the *Order*[3] is CVP–23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of *diindolo [3,2-b:3′,2′-m]*[4] *triphenodioxazine, 8,18-dichloro-5, 15-diethy-5, 15-dihydro-,* and molecular formula of C34 H22 Cl2 N4 O2. The subject merchandise includes the crude pigment in any form (*e.g.,* dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.,* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the *Order.*

The merchandise subject to the *Order* is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the *Order* is dispositive.

Changes Since the Preliminary Results

As no parties submitted comments on the margin calculation methodology used in the *Preliminary Results,* Commerce made no adjustments to that methodology in the final results of this review.

[1] *See Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 5394 (January 30, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *Id.*

[3] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 from India,* 69 FR 77988 (December 29, 2004) (*Order*).

[4] The bracketed section of the product description, [3,2-b:3′,2′-m], is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. *See* ''Amendment to Petition for Antidumping Investigations of China and India and a Countervailing Duty Investigation of India on Imports of Carbazole Violet Pigment 23 in the forms of Crude Pigment, Presscake and Dry Color Pigment,'' dated December 3, 2003, at 8.

Final Results of the Review

As a result of this review, Commerce determines that a weighted-average dumping margin of 0.00 percent exists for entries of subject merchandise that were produced and/or exported by Pidilite during the POR.

Assessment Rates

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review, pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Because we calculated a zero margin for Pidilite in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce intends to issue the appropriate assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of these final results for all shipments of CVP 23 from India entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Pidilite will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 27.48 percent, the all-others rate established in the *Order.* These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

In accordance with 19 CFR 351.305(a)(3), 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 the APO, 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 subject to sanction.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: April 2, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–07379 Filed 4–7–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders and findings with February anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable April 8, 2020.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs 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:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders and findings with February anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status *unless* they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than February 28, 2021.

AD proceedings [5]	Period to be reviewed
INDIA: Certain Frozen Warmwater Shrimp, A–533–840	2/1/19–1/31/20
Abad Fisheries Private Limited	
ADF Foods Ltd.	
Akshay Food Impex Private Limited	
Alashore Marine Exports (P) Limited	
Albys Agro Private Limited	
Al-Hassan Overseas Private Limited	
Allana Frozen Foods Pvt. Ltd.	
Allanasons Ltd.	
Alpha Marine	
Alps Ice & Cold Storage Private Limited	
Amarsagar Seafoods Private Limited	
Amulya Seafoods	
Ananda Aqua Applications/Ananda Aqua Exports (P) Ltd./Ananda Foods [6]	
Ananda Enterprises (India) Private Limited	
Anantha Seafoods Private Limited	
Anjaneya Seafoods	
Apex Frozen Foods Limited	
Aquatica Frozen Foods Global Pvt. Ltd.	
Arya Sea Foods Private Limited	
Asvini Agro Exports	
Asvini Fisheries Ltd/Asvini Fisheries Private Ltd. [7]	
Avanti Frozen Foods Private Ltd. [8]	
Ayshwarya Seafood Private Limited	
B R Traders	
Baby Marine Eastern Exports	
Baby Marine Exports	
Baby Marine International	
Baby Marine Sarass	
Baby Marine Ventures	
Balasore Marine Exports Private Limited	
BB Estates & Exports Private Limited	
Bell Exim Private Limited (Bell Foods (Marine Division))	
Bell Exim Pvt. Ltd.	
Bhatsons Aquatic Products	
Bhavani Seafoods	
Bijaya Marine Products	
Blue Fin Frozen Foods Pvt. Ltd.	
Blue Water Foods & Exports P. Ltd.	
Bluepark Seafoods Pvt. Ltd.	
BMR Exports	
BMR Industries Private Limited	
B-One Business House Private Limited	
Britto Seafood Exports Pvt Ltd.	
C P Aquaculture (India) Pvt. Ltd.	
Calcutta Seafoods Pvt. Ltd./Bay Seafood Pvt. Ltd./Elque & Co. [9]	
Canaan Marine Products	
Capithan Exporting Co.	
Cargomar Private Limited	
Castlerock Fisheries Ltd.	
Chakri Fisheries Private Limited	
Chemmeens (Redg)	
Cherukattu Industries (Marine Div.)	
Choice Trading Corporation Pvt. Ltd.	
Coastal Aqua Private Limited [10]	
Coastal Corporation Ltd.	
Cochin Frozen Food Exports Pvt. Ltd.	
Continental Fisheries India Pvt. Ltd.	
Coreline Exports	
Corlim Marine Exports Pvt. Ltd.	
CPF (India) Private Limited	
Crystal Sea Foods Private Limited	
Delsea Exports Pvt. Ltd.	
Devi Fisheries Limited/Satya Seafoods Private Limited/Usha Seafoods/Devi Aquatech Private Limited [11]	
Devi Marine Food Exports Private Ltd./Kader Export Private Limited/Kader Investment and Trading Company Private Limited/Liberty Frozen Foods Pvt. Ltd./Liberty Oil Mills Ltd/Premier Marine Products Private Limited/Universal Cold Storage Private Limited [12]	
Devi Sea Foods Limited [13]	
Diamond Seafoods Exports/Edhayam Frozen Foods Pvt. Ltd./Kadalkanny Frozen Foods/Theva & Company [14]	
Empire Industries Limited	

AD proceedings[5]	Period to be reviewed
Entel Food Products Private Limited	
Esmario Export Enterprises	
Everblue Sea Foods Private Limited	
Falcon Marine Exports Limited/KR Enterprises[15]	
Febin Marine Foods	
Five Star Marine Exports Private Limited	
Forstar Frozen Foods Pvt. Ltd.	
Fouress Food Products Private Limited	
Frontline Exports Pvt. Ltd.	
G A Randerian Ltd.	
Gadre Marine Exports	
Galaxy Maritech Exports P. Ltd.	
Geo Aquatic Products (P) Ltd.	
Geo Seafoods	
Godavari Mega Aqua Food Park Private Limited	
Grandtrust Overseas (P) Ltd.	
Green House Agro Products	
Growel Processors Private Limited	
GVR Exports Pvt. Ltd.	
Hari Marine Private Limited	
Haripriya Marine Export Pvt. Ltd.	
HIC ABF Special Foods Pvt. Ltd.	
Hiravati Exports Pvt. Ltd.	
Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)	
Hiravati Marine Products Private Limited	
HMG Industries Limited	
HN Indigos Private Limited	
Hyson Logistics and Marine Exports Private Limited	
IFB Agro Industries Limited	
Indian Aquatic Products	
Indo Aquatics	
Indo Fisheries	
Indo French Shellfish Company Private Limited	
International Freezefish Exports	
ITC Ltd.	
Jagadeesh Marine Exports	
Jayalakshmi Sea Foods Pvt. Ltd.	
Jinny Marine Traders	
Jiya Packagings	
KNC Agro Pvt. Ltd.	
K V Marine Exports	
Kalyan Aqua & Marine Exp. India Pvt. Ltd.	
Karunya Marine Exports Private Limited	
Kaushalya Aqua Marine Products Exports Pvt. Ltd.	
Kay Kay Exports	
Kings Marine Products	
Koluthara Exports Ltd.	
Landauer Ltd.	
Libran Cold Storages (P) Limited	
Magnum Esates Limited	
Magnum Export	
Magnum Sea Foods Limited/Magnum Estates Limited[16]	
Mangala Marine Exim India Pvt. Ltd.	
Mangala Sea Products	
Mangala Seafoods	
Marine Harvest India	
Megaa Moda Pvt. Ltd.	
Milesh Marine Exports Private Limited	
Milsha Agro Exports Private Limited	
Milsha Sea Products	
Minaxi Fisheries Private Limited	
Mindhola Foods LLP	
MMC Exports Limited	
Monsun Foods Pvt Ltd.	
Mourya Aquex Pvt. Ltd.	
MTR Foods	
Munnangi Seafoods (Pvt) Ltd.	
N.K. Marine Exports LLP	
Naga Hanuman Fish Packers	
Naik Frozen Foods	
Naik Oceanic Exports Pvt. Ltd./Rafiq Naik Exports Pvt. Ltd.[17]	
Naik Seafoods Ltd.	
Neeli Aqua Private Limited	
Nekkanti Mega Food Park Private Limited	
Nekkanti Sea Foods Limited	
Nezami Rekha Sea Foods Private Limited	
Nila Sea Foods Exports	
Nila Sea Foods Pvt. Ltd.	
Nine Up Frozen Foods	
Nutrient Marine Foods Limited	
Oceanic Edibles International Limited	
Paragon Sea Foods Pvt. Ltd.	
Paramount Seafoods	

AD proceedings [5]	Period to be reviewed
Parayil Food Products Pvt., Ltd.	
Pasupati Aquatics Private Limited	
Penver Products (P) Limited	
Pesca Marine Products Pvt., Ltd.	
Pijikay International Exports P Ltd.	
Pravesh Seafood Private Limited	
Premier Exports International	
Premier Marine Foods	
Premier Seafoods Exim (P) Ltd.	
RDR Exports	
R F Exports	
RF Exports Private Limited	
RSA Marines	
R V R Marine Products Limited	
Raju Exports	
Ram's Assorted Cold Storage Ltd.	
Raunaq Ice & Cold Storage	
Razban Seafoods Ltd.	
Royal Imports and Exports	
Royal Oceans	
Royale Marine Impex Private Limited	
Rupsha Fish Private Limited	
S Chanchala Combines Private Limited	
S A Exports	
Sagar Grandhi Exports Pvt. Ltd.	
Sagar Samrat Seafoods	
Sahada Exports	
Sai Marine Exports Pvt. Ltd.	
Sai Sea Foods	
Salet Seafoods Private Limited	
Samaki Exports Private Limited	
Sanchita Marine Products P Ltd	
Sandhya Aqua Exports Pvt. Ltd.	
Sandhya Marines Limited	
Sasoondock Matsyodyog Sahakari Society Ltd.	
Sea Foods Private Limited	
Seagold Overseas Pvt. Ltd.	
Sharat Industries Ltd.	
Shimpo Exports Private Limited	
Shimpo Seafoods Private Limited	
Shiva Frozen Food Exp. Pvt. Ltd.	
Shree Datt Aquaculture Farms Pvt. Ltd.	
Shroff Processed Food & Cold Storage P Ltd.	
Silver Seafood	
Sita Marine Exports	
Sonia Fisheries Private Limited	
Southern Tropical Foods Pvt. Ltd.	
Sprint Exports Pvt. Ltd.	
Sri Sakkthi Cold Storage	
Srikanth International [18]	
SSF Ltd.	
Star Agro Marine Exports Private Limited	
Star Organic Foods Private Limited	
Stellar Marine Foods Private Limited	
Sterling Foods	
Sun Agro Exim	
Sunrise Seafoods India Private Limited [19]	
Supran Exim Private Limited	
Suryamitra Exim (P) Ltd.	
Suvarna Rekha Exports Private Limited	
Suvarna Rekha Marines P Ltd.	
TBR Exports Pvt. Ltd.	
Teekay Marine P. Ltd.	
The Waterbase Limited	
Triveni Fisheries P Ltd.	
U & Company Marine Exports	
Ulka Sea Foods Private Limited	
Uniroyal Marine Exports Ltd.	
Unitriveni Overseas	
V V Marine Products	
Vasai Frozen Food Co.	
Vasista Marine	
Veerabhadra Exports Private Limited	
Veronica Marine Exports Private Limited	
Victoria Marine & Agro Exports Ltd.	
Vinner Marine	
Vitality Aquaculture Pvt. Ltd.	
VRC Marine Foods LLP	
Wellcome Fisheries Limited	
West Coast Fine Foods (India) Private Limited	
West Coast Frozen Foods Private Limited	
Z A Sea Foods Pvt. Ltd.	
Zeal Aqua Limited	

AD proceedings[5]	Period to be reviewed
INDIA: Stainless Steel Bar, A–533–810	2/1/19–1/31/20
Ambica Steels Limited	
Hindustan Inox Ltd.	
Precision Metals	
Sieves Manufacturers (India) Pvt. Ltd.	
Venus Group	
Venus Wire Industries Pvt. Ltd.	
ITALY: Stainless Steel Butt-Weld Pipe Fittings, A–475–828	2/1/19–1/31/20
Filmag Italia, SpA	
MALAYSIA: Stainless Steel Butt-Weld Pipe Fittings, A–557–809	2/1/19–1/31/20
Pantech Stainless & Alloy Industries Sdn. Bhd.	
TSS Pipes & Fittings Industry Sdn. Bhd. (also known as TSS Pipe & Fittings Industry Sdn. Bhd.)	
MEXICO: Large Residential Washers, A–201–842	2/1/19–1/31/20
Electrolux Home Products de Mexico S.A. de C.V./Electrolux Home Products Corp. NV	
PHILIPPINES: Stainless Steel Butt-Weld Pipe Fittings, A–565–801	2/1/19–1/31/20
E N Corporation	
Enlin Steel Corporation	
Vinox Corporation (a/k/a Vinoc Corporation)	
REPUBLIC OF KOREA: Certain Cut-to-Length Carbon-Quality Steel Plate, A–580–836	2/1/19–1/31/20
BDP International	
Dongkuk Steel Mill Co., Ltd.	
Hyundai Steel Company	
Sung Jin Steel Co., Ltd.	
SOCIALIST REPUBLIC OF VIETNAM: Certain Frozen Warmwater Shrimp, A–552–802	2/1/19–1/31/20
Blue Bay Seafood Co., Ltd.[20]	
TAIWAN: Certain Crystalline Silicon Photovoltaic Products, A–583–853	2/1/19–1/31/20
AU Optronics Corporation	
Baoding Jiasheng Photovoltaic Technology Co. Ltd.	
Baoding Tianwei Yingli New Energy Resources Co., Ltd.	
Beijing Tianneng Yingli New Energy Resources Co. Ltd.	
Boviet Solar Technology Co., Ltd.	
Canadian Solar Inc.	
Canadian Solar International, Ltd.	
Canadian Solar Manufacturing (Changshu), Inc.	
Canadian Solar Manufacturing (Luoyang), Inc.	
Canadian Solar Solution Inc.	
EEPV CORP.	
E–TON Solar Tech. Co., Ltd.	
Gintech Energy Corporation	
Hainan Yingli New Energy Resources Co., Ltd.	
Hengshui Yingli New Energy Resources Co., Ltd.	
Inventec Energy Corporation	
Inventec Solar Energy Corporation	
Kyocera Mexicana S.A. de C.V.	
Lixian Yingli New Energy Resources Co., Ltd.	
Mega Sunergy Co., Ltd.	
Motech Industries, Inc.	
Neo Solar Power Corporation	
Shenzhen Yingli New Energy Resources Co., Ltd.	
Sino-American Silicon Products Inc.	
Solartech Energy Corporation'	
Sunengine Corporation Ltd.	
Sunrise Global Solar Energy	
Tianjin Yingli New Energy Resources Co., Ltd.	
TSEC Corporation	
United Renewable Energy Co., Ltd.	
Vina Solar Technology Co., Ltd.	
Win Win Precision Technology Co., Ltd.	
Yingli Energy (China) Co., Ltd.	
Yingli Green Energy International Trading Company Limited	
THAILAND: Certain Frozen Warmwater Shrimp, A–549–822	2/1/19–1/31/20
A Foods 1991 Co., Ltd./May Ao Foods Co., Ltd.[21]	
A. Wattanachai Frozen Products Co., Ltd.	
A.P. Frozen Foods Co., Ltd.	
A.S. Intermarine Foods Co., Ltd.	
Ampai Frozen Food Co., Ltd.	
Anglo-Siam Seafoods Co., Ltd.	
Apitoon Enterprise Industry Co., Ltd.	
Asian Alliance International Co., Ltd.	
Asian SeaFoods Coldstorage (Suratthani) Co., Limited	
Asian Seafoods Coldstorage PLC	
Asian SeaFoods Coldstorage Public Co., Ltd.	
B.S.A. Food Products Co., Ltd.	
C.P. Intertrade Co. Ltd.	
Chaivaree Marine Products Co., Ltd.	
Chanthaburi Frozen Food Co., Ltd.	
Chanthaburi Seafoods Co., Ltd.	
Charoen Pokphand Foods Public Co., Ltd./CP Merchandising Co., Ltd.[22]	
Chonburi LC	
Commonwealth Trading Co., Ltd.	
CPF Food Products Co., Ltd.	
Crystal Frozen Foods Co., Ltd.	

AD proceedings[5]	Period to be reviewed
Daedong (Thailand) Co. Ltd.	
Daiei Taigen (Thailand) Co., Ltd.	
Daiho (Thailand) Co., Ltd.	
Earth Food Manufacturing Co., Ltd.	
F.A.I.T. Corporation Limited	
Far East Cold Storage Co., Ltd.	
Findus (Thailand) Ltd.	
Fortune Frozen Foods (Thailand) Co., Ltd.	
Gallant Ocean (Thailand) Co., Ltd.	
Golden Sea Frozen Foods Co., Ltd.	
Golden Seafood International Co., Ltd.	
Good Fortune Cold Storage Co., Ltd.	
Good Luck Product Co., Ltd.	
Grobest Frozen Foods Co., Ltd.	
Haitai Seafood Co., Ltd.	
Handy International (Thailand) Co., Ltd.	
Heritrade Co., Ltd.	
HIC (Thailand) Co., Ltd.	
I.T. Foods Industries Co., Ltd.	
Inter-Oceanic Resources Co., Ltd.	
Inter-Pacific Marine Products Co., Ltd.	
K & U Enterprise Co., Ltd.	
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd.	
Kingfisher Holdings Ltd./KF Foods Limited[23]	
Kitchens of The Oceans (Thailand) Company Ltd.	
Kongphop Frozen Foods Co., Ltd.	
Lee Heng Seafood Co., Ltd.	
Li-Thai Frozen Foods Co., Ltd.	
Lucky Union Foods Co., Ltd.	
Mahachai Food Processing Co., Ltd.	
Marine Gold Products Ltd.[24]	
Merkur Co., Ltd.	
N&N Foods Co., Ltd.	
N.R. Instant Produce Co., Ltd.	
Narong Seafood Co., Ltd.	
Nongmon SMJ Products	
Pacific Fish Processing Co., Ltd.	
Penta Impex Co., Ltd.	
Phatthana Frozen Food Co., Ltd.	
Phatthana Seafood Co., Ltd.	
Premier Frozen Products Co., Ltd.	
S & D Marine Products Co., Ltd.	
S. Chaivaree Cold Storage Co., Ltd.	
S. Khonkaen Food Industry Public Co., Ltd.	
S.K. Foods (Thailand) Public Co. Limited	
S2K Marine Product Co., Ltd.	
Sea Bonanza Food Co., Ltd.	
Seafresh Industry Public Co., Ltd./Seafresh Fisheries[25]	
Sethachon Co.. Ltd.	
Shianlin Bangkok Co., Ltd.	
Shing-Fu Seaproducts Development Co.	
Siam Food Supply Co., Ltd.	
Siam Intersea Co., Ltd.	
Siam Marine Products Co. Ltd.	
Siam Ocean Frozen Foods Co., Ltd.	
Siamchai International Food Co., Ltd.	
Smile Heart Foods	
SMP Food Product Co., Ltd.	
Southport Seafood	
Starfoods Industries Co., Ltd.	
STC Foodpak Ltd.	
Suntechthai Intertrading Co., Ltd.	
Surapon Foods Public Co., Ltd./Surat Seafoods Public Co., Ltd.[26]	
Surapon Nichirei Foods Co., Ltd.	
Tep Kinsho Foods Co., Ltd.	
Tey Seng Cold Storage Co., Ltd./Chaiwarut Co., Ltd.[27]	
Thai Agri Foods Public Co., Ltd.	
Thai I Mei Frozen Food Co., Ltd.	
Thai Ocean Venture Co., Ltd.	
Thai Royal Frozen Food Co., Ltd.	
Thai Spring Fish Co., Ltd.	
Thai Union Group Public Co., Ltd./Thai Union Frozen Products Co., ltd./Thai Union Seafood Co., Ltd./Pakfood Public Company Limited/Asia Pacific (Thailand) Co., Ltd./Chaophraya Cold Storage Co., Ltd./Okeanos Co., Ltd./Okeanos Food Co., Ltd./Takzin Samut Co., Ltd.[28]	
Thai Union Manufacturing Company Limited	
The Siam Union Frozen Foods Co., Ltd.	
The Union Frozen Products Co., Ltd./Bright Sea Co., Ltd.[29]	
Top Product Food Co., Ltd.	
Trang Seafood Products Public Co., Ltd.	
Xian-Ning Seafood Co., Ltd.	
Yeenin Frozen Foods Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Frozen Warmwater Shrimp, A–570–893	2/1/19–1/31/20

AD proceedings[5]	Period to be reviewed
Allied Pacific (HK) Co., Ltd.[30]	
Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.	
Allied Pacific Food (Dalian) Co., Ltd.	
Anhui Fuhuang Sungem Foodstuff Group Co., Ltd	
Asian Seafoods (Zhanjiang) Co., Ltd.	
Beihai Anbang Seafood Co., Ltd.	
Beihai Boston Frozen Food Co., Ltd.	
Beihai Tianwei Aquatic Food Co. Ltd.	
Changli Luquan Aquatic Products Co., Ltd.	
Chengda Development Co. Ltd.	
Dalian Beauty Seafood Company Ltd.	
Dalian Changfeng Food Co., Ltd.	
Dalian Guofu Aquatic Products and Food Co., Ltd.	
Dalian Haiqing Food Co., Ltd.	
Dalian Hengtai Foods Co., Ltd.	
Dalian Home Sea International Trading Co., Ltd.	
Dalian Philica International Trade Co., Ltd.	
Dalian Philica Supply Chain Management Co., Ltd.	
Dalian Rich Enterprise Group Co., Ltd.	
Dalian Shanhai Seafood Co., Ltd.	
Dalian Sunrise Foodstuffs Co., Ltd.	
Dalian Taiyang Aquatic Products Co., Ltd.	
Dandong Taihong Foodstuff Co., Ltd	
Dongwei Aquatic Products (Zhangzhou) Co., Ltd.	
Ferrero Food	
Food Processing Co., Ltd.	
Fujian Chaohui Aquatic Food Co., Ltd.	
Fujian Chaohui Group	
Fujian Chaohui International Trading Co., Ltd.	
Fujian Dongshan County Shunfa Aquatic Product Co., Ltd.	
Fujian Dongwei Food Co., Ltd.	
Fujian Dongya Aquatic Products Co., Ltd.	
Fujian Fuding Seagull Fishing Food Co., Ltd.	
Fujian Hainason Trading Co., Ltd.	
Fujian Haohui Import & Export Co., Ltd.	
Fujian Hongao Trade Development Co.	
Fujian R & J Group Ltd.	
Fujian Rongjiang Import and Export Co., Ltd.	
Fujian Zhaoan Haili Aquatic Co., Ltd.	
Fuqing Chaohui Aquatic Food Co., Ltd.	
Fuqing Dongwei Aquatic Products Industry Co., Ltd.	
Fuqing Longhua Aquatic Food Co., Ltd.	
Fuqing Minhua Trade Co., Ltd.	
Fuqing Yihua Aquatic Food Co., Ltd.	
Gallant Ocean Group	
Guangdong Foodstuffs Import & Export (Group) Corporation	
Guangdong Gourmet Aquatic Products Co., Ltd.	
Guangdong Jinhang Foods Co., Ltd.	
Guangdong Rainbow Aquatic Development	
Guangdong Shunxin Marine Fishery Group Co., Ltd.	
Guangdong Taizhou Import & Export Trade Co., Ltd.	
Guangdong Universal Aquatic Food Co. Ltd.	
Guangdong Wanshida Holding Corp.	
Guangdong Wanya Foods Fty. Co., Ltd.	
HaiLi Aquatic Product Co., Ltd.	
Hainan Brich Aquatic Products Co., Ltd.	
Hainan Golden Spring Foods Co., Ltd.	
Hainan Qinfu Foods Co., Ltd.	
Hainan Xintaisheng Industry Co., Ltd.	
Huazhou Xinhai Aquatic Products Co. Ltd.	
Kuehne Nagel Ltd. Xiamen Branch	
Leizhou Bei Bu Wan Sea Products Co., Ltd.	
Longhai Gelin Foods Co., Ltd.	
Maoming Xinzhou Seafood Co., Ltd.	
New Continent Foods Co., Ltd.	
Ningbo Prolar Global Co., Ltd.	
North Seafood Group Co.	
Pacific Andes Food Ltd.	
Penglai Huiyang Foodstuff Co., Ltd.	
Penglai Yuming Foodstuff Co., Ltd.	
Qingdao Free Trade Zone Sentaida	
Qingdao Fusheng Foodstuffs Co., Ltd.	
Qingdao Yihexing Foods Co., Ltd.	
Qingdao Yize Food Co., Ltd.	
Qingdao Zhongfu International	
Qinhuangdao Gangwan Aquatic Products Co., Ltd.	
Rizhao Meijia Aquatic Foodstuff Co., Ltd.	
Rizhao Meijia Keyuan Foods Co. Ltd.	
Rizhao Rongxing Co. Ltd.	
Rizhao Smart Foods Company Limited	
Rongcheng Yinhai Aquatic Product Co., Ltd.Rushan Chunjiangyuan Foodstuffs Co., Ltd.	
Rushan Hengbo Aquatic Products Co., Ltd.	
Savvy Seafood Inc.	

AD proceedings[5]	Period to be reviewed
Sea Trade International Inc.	
Shanghai Zhoulian Foods Co., Ltd.	
Shantou Freezing Aquatic Product Foodstuffs Co.	
Shantou Haili Aquatic Product Co. Ltd.	
Shantou Haimao Foodstuff Factory Co., Ltd.	
Shantou Jiazhou Food Industrial Co., Ltd.	
Shantou Jintai Aquatic Product Industrial Co., Ltd.	
Shantou Longsheng Aquatic Product Foodstuff Co., Ltd.	
Shantou Ocean Best Seafood Corporation	
Shantou Red Garden Food Processing Co., Ltd.	
Shantou Red Garden Foodstuff Co., Ltd.[31]	
Shantou Ruiyuan Industry Co., Ltd.	
Shantou Wanya Foods Fty. Co., Ltd.	
Shantou Yuexing Enterprise Company	
Shengyuan Aquatic Food Co., Ltd.	
Suizhong Tieshan Food Co., Ltd.	
Thai Royal Frozen Food Zhanjiang Co., Ltd.	
Tongwei Hainan Aquatic Products Co., Ltd.	
Xiamen East Ocean Foods Co., Ltd.	
Xiamen Granda Import and Export Co., Ltd.	
Yangjiang Dawu Aquatic Products Co., Ltd.	
Yangjiang Guolian Seafood Co., Ltd.	
Yangjiang Haina Datong Trading Co.	
Yantai Longda Foodstuffs Co., Ltd.	
Yantai Tedfoods Co., Ltd.	
Yantai Wei Cheng Food Co., Ltd.	
Yantai Wei-Cheng Food Co., Ltd.	
Yixing Magnolia Garment Co., Ltd.	
Zhangzhou Donghao Seafoods Co., Ltd.	
Zhangzhou Hongwei Foods Co., Ltd.	
Zhangzhou Xinhui Foods Co., Ltd.	
Zhangzhou Xinwanya Aquatic Product Co., Ltd.	
Zhangzhou Yanfeng Aquatic Product & Foodstuff Co., Ltd.	
Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.	
Zhanjiang Fuchang Aquatic Products Co., Ltd.	
Zhanjiang Fuchang Aquatic Products Freezing Plant	
Zhanjiang Guolian Aquatic Products Co., Ltd.[32]	
Zhanjiang Longwei Aquatic Products Industry Co., Ltd.	
Zhanjiang Newpro Foods Co., Ltd.	
Zhanjiang Regal Integrated Marine Resources Co., Ltd.[33]	
Zhanjiang Universal Seafood Corp.	
Zhaoan Yangli Aquatic Co., Ltd.	
Zhejiang Evernew Seafood Co.	
Zhejiang Xinwang Foodstuffs Co., Ltd.	
Zhoushan Genho Food Co., Ltd.	
Zhoushan Green Food Co., Ltd.	
Zhoushan Haizhou Aquatic Products	
Zhuanghe Yongchun Marine Products	
THE PEOPLE'S REPUBLIC OF CHINA: Common Alloy Aluminum Sheet, A–570–073	6/22/18–1/31/20
Alcha International Holdings Limited	
Alumax Composite Material (Jiangyin) Co., Ltd.	
Chalco Ruimin Co., Ltd	
Choil Aluminium Co., Ltd	
Companhia Brasileira de Aluminio	
Granges Aluminum (Shanghai) Co., Ltd	
Henan Founder Beyond Industry Co., Ltd	
Henan Jinyang Luyue Co., Ltd	
Henan Mingtai Al Industrial Co., Ltd.	
Henan Xintai Aluminum Industry Co., Ltd.	
Henan Zhongyuan Aluminum Co., Ltd	
Huafon Nikkei Aluminium Corporation	
Jiangsu Alcha Aluminum Co., Ltd.	
Jiangsu Lidao New Material Co., Ltd	
Jiangsu Zhong He Aluminum Co., Ltd	
Jiangyin Litai Ornamental Materials Co., Ltd	
Jiangyin New Alumax Composite Material Co. Ltd	
Luoyang Xinlong Aluminum Co., Ltd	
Multipanel UK Ltd.	
PMS Metal Profil Aluminyum San. Ve Tic. A.S. Demirtas Organize Sanayi Bolgesi	
Shandong Fuhai Industrial Co., Ltd	
Shandong Nanshan Aluminium Co., Ltd	
Shanghai Dongshuo Metal Trade Co., Ltd	
Teknik Aluminyum	
Tianjin Zhongwang Aluminium Co., Ltd	
United Metal Coating LLC	
Xiamen Xiashun Aluminum Foil Co., Ltd	
Yantai Jintai International Trade Co., Ltd	
Yinbang Clad Material Co., Ltd	
Zhengzhou Mingtai Industry Co., Ltd.	
Zhengzhou Silverstone Limited	
THE PEOPLE'S REPUBLIC OF CHINA: Truck and Bus Tires, A–570–040	2/15/19–1/31/20
Giti Tire Global Trading Pte. Ltd.	
Guangrao Kaichi Trading Co., Ltd.	

AD proceedings[5]	Period to be reviewed
Jiangsu General Science Technology Co., Ltd.	
Maxon Int'l Co., Limited	
Megalith Industrial Group Co., Ltd.	
Qingdao Keter International Co., Ltd.	
Qingdao Powerich Tyre Co., Ltd.	
Qingdao Shinego Tire Tech Co., Limited	
Qingdao Shinego Tyre Tech Co., Ltd.	
Qingdao Sunfulcess Tyre Co., Ltd.	
Sailun (Shenyang) Tire Co., Ltd.	
Sailun Group Co., Ltd.	
Sailun Group (Hong Kong) Co., Limited	
Sailun Jinyu Group (Hong Kong) Co., Limited	
Shandong Hugerubber Co., Ltd.	
Shandong Huasheng Rubber Co., Ltd.	
Shandong Yongsheng Rubber Group Co., Ltd.	
Shanghai Huayi Group Corporation Limited	
Shengtai Tyre Co., Ltd.	
Tongli Tyre Co., Ltd.	
Triangle Tyre Co., Ltd.	
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd.	

[5] On February 28, 2020, Maodi Solar Technology (Dongguan) Co., Ltd. requested an administrative review of the antidumping duty order on certain crystalline silicon photovoltaic products from the People's Republic of China (A–570–010) for the period 2/1/19–1/31/20. However, on April 2, 2020, the company withdrew its request for a review. Accordingly, we are not initiating a review with respect to this company.

[6] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 32835 (July 16, 2018) (*2016–2017 AR Final*). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[7] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2016–2017 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[8] On December 15, 2016, Avanti Frozen Foods Private Limited was found to be the successor-in interest to Avanti Feeds Limited. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India,* 81 FR 90774 (December 15, 2016). Therefore, we have not initiated a separate administrative review with respect to Avanti Feeds Limited.

[9] In the 2017–2018 administrative review of this order, Commerce determined to treat these companies as a single entity. *See Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 57847 (October 29, 2019) (*2017–2018 AR Final*). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[10] On October 3, 2018, Coastal Aqua Private Limited was found to be the successor-in-interest to Coastal Aqua. *See Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 83 FR 49909 (October 3, 2018).

[11] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2016–2017 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[12] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2016–2017 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review. Additionally, on December 2, 2014, Premier Marine Products Private Limited was found to be the successor-in-interest to Premier Marine Products. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India,* 79 FR 71384 (December 2, 2014).

[13] Shrimp produced and exported by Devi Sea Foods Limited (Devi) was excluded from the order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp from India: Final Results of the Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part,* 75 FR 41813, 41814 (July 19, 2010). Accordingly, we are initiating this administrative review with respect to Devi only for shrimp produced in India where Devi acted as either the manufacturer or exporter (but not both).

[14] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2016–2017 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[15] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2016–2017 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[16] In the 2017–2018 administrative review of this order, Commerce determined to treat these companies as a single entity. *See 2017–2018 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[17] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2016–2017 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[18] On August 27, 2010, Srikanth International was found to be the successor-in-interest to NGR Aqua International. *See Certain Warmwater Shrimp from India: Final Results of Antidumping Duty Changed Circumstances Review,* 75 FR 52718 (August 27, 2010). Therefore, we have not initiated a separate administrative review with respect to NGR Aqua International.

[19] On September 27, 2019, Sunrise Seafoods India Private Limited was found to be the successor-in-interest to Sunrise Aqua Food Exports. *See Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 84 FR 51114 (September 27, 2019). Therefore, we have not initiated a separate administrative review with respect to Sunrise Aqua Food Exports.

[20] Where multiple interested parties requested an administrative review of the same companies and requested those company names with identical spelling and punctuation, Commerce listed the name only once to prevent redundancy and administrative burden.

[21] In past reviews, Commerce has treated these companies as a single entity. *See Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2015–2016,* 82 FR 30836 (July 3, 2017) (*2015–2016 AR Final*). Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[22] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2015–2016 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[23] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2006–2007,* 73 FR 50933 (August 29, 2008) (*2006–2007 AR Final*). Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[24] Shrimp produced and exported by Marine Gold Products Ltd. (Marine Gold) were excluded from the order effective February 1, 2012. *See Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Revocation of the Order (in Part); 2011–2012,* 78 FR 42497 (July 16, 2013). Accordingly, we are initiating this administrative review with respect to Marine Gold only for shrimp produced in Thailand where Marine Gold acted as either the manufacturer or exporter (but not both).

[25] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2015–2016 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[26] In past reviews, Commerce has treated these companies as a single entity. *Id.* Absent information to the contrary, we intend to continue to treat these

Continued

CVD proceedings	Period to be reviewed
CANADA: Certain Softwood Lumber Products [34], C–122–858	1/1/19–12/31/19
Carter Forest Products Inc.	
INDIA: Certain Cold Drawn Mechanical Tubing of Carbon and Alloy Steel, C–533–874	1/1/19–12/31/19
Anand Tubes Pvt., Ltd.	
Apl Apollo Steel Tubes	
Automotive Steel Pipe	
Bhushan Steel Ltd./Tata Steel BSL Limited	
Garg Tube Limited	
Good Luck Industries	
Goodluck India Limited	
Hyundai Steel Pipe India Pvt., Ltd.	
Innoventive Industries	
ISMT Limited	
Jindal (India) Ltd.	
Jindal Saw Ltd.	
Khanna Industrial Pipes Pvt., Ltd.	
Pennar Industries, Inc.	
Sandvik Asia Pvt., Ltd.	
Tube Investments of India Ltd. [35]	
REPUBLIC OF KOREA: Certain Cut-To-Length Carbon-Quality Steel Plate, C–580–837	1/1/19–12/31/19
BDP International	
Dongkuk Steel Mill Co., Ltd.	
Hyundai Steel Company	
Sung Jin Steel Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Cold-Drawn Mechanical Tubing, C–570–059	1/1/19–12/31/19
Anji Pengda Steel Pipe Co., Ltd.	
Changshu Fushilai Stecl Steel Pipec Co., Ltd.	
Changshu Jingdi Imp. & Exp. Co.	
Changshu Special Shaped Steel Tube Co., Ltd.	
Hebei Changfeng Steel Tube Mfg.	
Hubei Xinyegang Steel Co., Ltd.	
Hunan Standard Steel Co., Ltd.	
Jiangsu Hongyi Steel Pipe Co., Ltd.	
Jiangsu Huacheng Industry Pipe Making Corporation	
Jiangsu Liwan Precision Tube Manufacturing Co., Ltd.	
Shijiazhuang Teneng Electrical & Mechanical Equipment Co., Ltd.	
Suzhou Baojia New Energy Technology Co., Ltd.	
Suzhou Foster International Co., Ltd.	
Tianjin Xinyue Industrial and Trade Co., Ltd	
Wuxi Dajin High-Precision Cold-Drawn Steel Tube Co., Ltd.	
Wuxi P&C Machinery Co., Ltd.	
Yangzhou Lontrin Steel Tube Co., Ltd.	
Zhangjiagang Huacheng Import & Export Co., Ltd.	
Zhangjiagang Salem Fine Tubing Co., Ltd.	
Zhangjiagang Shengdingyuan Pipe-Making Co., Ltd.	
Zhejiang Dingxin Steel Tube Manufacturing Co., Ltd.	
Zhejiang Minghe Steel Pipe Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Common Alloy Aluminum Sheet, C–570–074	4/23/18–12/31/19
Alcha International Holdings Limited	
Choil Aluminium Co., Ltd.	
Companhia Brasileira de Aluminio	
Henan Gongdian Thermal Co., Ltd.	
Henan Mingtai Al Industrial Co., Ltd.	
Jiangsu Alcha Aluminium Co., Ltd.	

companies as a single entity for the purpose of this administrative review.

[27] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2006–2007 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[28] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2015–2016 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[29] In past reviews, Commerce has treated these companies as a single entity. *Id.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[30] This *Order* was revoked with respect to merchandise exported by Allied Pacific (HK) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd., and manufactured by Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., or Allied Pacific Aquatic Products (Zhongshan) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd. *See Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders,* 78 FR 18958, 18959 (March 28, 2013). Accordingly, we are initiating this review for these exporters only with respect to subject merchandise produced by entities other than the aforementioned producers.

[31] This *Order* was revoked with respect to merchandise exported by Shantou Red Garden Foodstuff Co., Ltd., and produced by Red Garden Food Processing Co., Ltd., or Chaoyang Jindu Hengchang Aquatic Products Enterprise Co., Ltd., or Raoping County Longfa Seafoods Co., Ltd., or Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd., or Shantou Jinyuan District Mingfeng Quick-Frozen Factory, or Shantou Long Feng Foodstuffs Co., Ltd. *See Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders,* 78 FR 18958, 18959 (March 28, 2013). Accordingly, we are initiating this review for this exporter only with respect to subject merchandise produced by entities other than the aforementioned producers.

[32] This *Order* was revoked with respect to subject merchandise produced and exported by Zhanjiang Guolian Aquatic Products Co., Ltd. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People's Republic of China,* 70 FR 5149, 5152 (February 1, 2005). Accordingly, we are initiating this review for this exporter only with respect to subject merchandise produced by another entity.

[33] This *Order* was revoked with respect to subject merchandise produced and exported by Zhanjiang Regal Integrated Marine Resources Co., Ltd. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Administrative Review; 2011–2012,* 78 FR 56209, 56210 (September 12, 2013). Accordingly, we are initiating this review for this exporter only with respect to subject merchandise produced by another entity.

[34] In the initiation notice that published on March 10, 2020 (85 FR 13860), covering cases with January anniversary dates, Commerce inadvertently omitted the company listed above. Accordingly, Commerce is initiating this administrative review with respect to this company.

[35] This initiation includes Tube Investments of India Ltd., and its division, Tube Products of India.

CVD proceedings	Period to be reviewed
Luoyang Longding Aluminium Industries Co., Ltd.	
Multipanel UK Ltd.	
Nanjie Resources Co., Ltd.	
PMS Metal Profil Aluminyum San. Ve Tic. A.S. Demirtas Organize Sanayi Bolgesi	
Teknik Aluminyum	
United Metal Coating LLC	
Yinbang Clad Material Co., Ltd.	
Yong Jie New Material Co., Ltd.	
Zhejiang Yongjie Aluminum Co., Ltd.	
Zhejiang Nanjie Industry Co., Ltd	
Zheiiang Yongjie Holding Co., Ltd	
Zhengzhou Mingtai Industry Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Crystalline Silicon Photovoltaic Products, C–570–011	1/1/19–12/31/19
Maodi Solar Technology (Dongguan) Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Truck and Bus Tires, C–570–041	2/15/19–12/31/19
Aeolus Tyre Co., Ltd.	
Chaoyang Long March Tyre Co., Ltd	
Doublestar International Trading (Hongkong) Co., Limited	
Giti Radial Tire (Anhui) Company	
Giti Tire (Fujian) Company Ltd.	
Giti Tire Global Trading Pte. Ltd.	
Guangrao Kaichi Trading Co., Ltd.	
Guizhou Tyre Co., Ltd	
Guizhou Tyre Import and Export Co., Ltd	
Hefei Wanli Tire Co., Ltd	
Hongtyre Group Co.	
Jiangsu General Science Technology Co., Ltd.	
Koryo International Industrial Limited	
Maxon Int'l Co., Limited	
Megalith Industrial Group Co., Limited	
Prinx Changshan (Shandong) Tire Co., Ltd	
Qingdao Awesome International Trade Co., Ltd	
Qingdao Doublestar Tire Industrial Co., Ltd.	
Qingdao Doublestar Overseas Trading Co., Ltd.	
Qingdao Ge Rui Da Rubber Co., Ltd.	
Qingdao Fullrun Tyre Corp. Ltd	
Qingdao Jinhaoyang International Co., Ltd.	
Qingdao Keter International Co, Limited	
Qingdao Lakesea Tyre Co., Ltd	
Qingdao Powerich Tyre Co., Ltd.	
Qingdao Shinego Tire Tech Co., Limited	
Qingdao Sunfulcess Tyre Co., Ltd.	
Sailun (Shenyang) Tire Co., Ltd.	
Sailun Group Co., Ltd.	
Sailun Group (Hong Kong) Co., Limited (Previously known as "Sailun Jinyu Group (Hong Kong) Co., Limited")	
Shandong Habilead Rubber Co., Ltd	
Shandong Haohua Tire Co., Ltd.	
Shandong Huasheng Rubber Co., Ltd	
Shandong Hugerubber Co., Ltd.	
Shandong Kaixuan Rubber Co., Ltd	
Shandong Province Sanli Tire Manufactured Co., Ltd	
Shandong Qilun Rubber Co., Ltd	
Shandong Transtone Tyre Co., Ltd	
Shandong Wanda Boto Tyre Co., Ltd.	
Shandong Yongsheng Rubber Group Co., Ltd.	
Shanghai Huayi Group Corporation Limited	
Shengtai Tyre Co., Ltd.	
Sichuan Kalevei Technology Co., Ltd.	
Tongli Tyre Co., Ltd.	
Triangle Tyre Co., Ltd.	
Weifang Shunfuchang Rubber and Plastic Products Co., Ltd.	

Suspension Agreements

None.

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[36] available at *https://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[37]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[38] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[39] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: April 2, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–07377 Filed 4–7–20; 8:45 am]

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[36] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[37] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

[38] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[39] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA111]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a webinar-based meeting with the public to provide information on options available to recreational anglers fishing for blueline or golden tilefish for electronically submitting Vessel Trip Reports (VTRs) in the Greater Atlantic Region. This is in support of the Council's action that could require electronic reporting of VTRs by operators fishing for tilefish managed under Amendment 6 to the Council's Tilefish Fishery Management Plan.

DATES: The meeting will be held on Tuesday, April 28, beginning at 5:30 p.m. and conclude by 7:30 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held via webinar (*http://mafmc.adobeconnect.com/pr_private_tf/*) with a telephone audio connection (provided when connecting). Audio only access via conference phone number: 1–800–832–0736; Room Number: 5068609.

Council address: Mid-Atlantic Fishery Management Council, 800 N State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org* also has details on the proposed agenda, webinar access, and briefing materials.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), published proposed regulations on January 29, 2020 to implement permitting and reporting measures for private recreational tilefish vessels that were approved as part of the Council's Amendment 6 to the Tilefish Fishery Management Plan. These actions would apply to anglers using a personal vessel to fish for and/or obtain blueline and/or golden tilefish for personal consumption that are not sold or bartered and would not impact the regulations for party/charter vessels. Private recreational tilefish vessels would be required to submit vessel trip reports (VTRs) for any trip targeting tilefish, through any NMFS-approved electronic reporting system. This meeting will provide a review of approved electronic VTR applications, initial steps that would be necessary for private recreational vessel operators to begin reporting electronically, and a demonstration of the most popular electronic reporting application (with limited time for questions) to convey information on the process involved for private recreational vessel operators to report VTRs electronically.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: April 3, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–07412 Filed 4–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XX049]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; 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 Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an exempted fishing permit application submitted by The Nature Conservancy contains all of the required information and warrants further consideration. This exempted fishing permit would allow participants to use electronic monitoring systems in lieu of at-sea monitors in support of a study to develop electronic monitoring for catch monitoring in the Northeast multispecies fishery. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received on or before April 23, 2020.

ADDRESSES: You may submit written comments by either of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''PARTIAL EM EFP RENEWAL.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''PARTIAL EM EFP RENEWAL.''

FOR FURTHER INFORMATION CONTACT: Claire Fitz-Gerald, Fishery Policy Analyst: 978–281–9255; *claire.fitz-gerald@noaa.gov.*

SUPPLEMENTARY INFORMATION: Northeast multispecies (groundfish) sectors must implement and fund an at-sea monitoring (ASM) program, and the Northeast Multispecies Fishery Management Plan (FMP) regulations allow sectors to use electronic monitoring (EM) to satisfy this monitoring requirement, provided that NMFS deems the technology sufficient for catch monitoring. NMFS recently notified the Council of its intent to allow sectors to submit EM plans instead of, or in addition to, ASM plans as part of the fishing year 2021 and 2022 sector operations plans approval process. For the 2020 fishing year, lessons learned through this exempted fishing permit (EFP) would allow NMFS to continue developing standards and requirements for the groundfish EM program. Project partners include The Nature Conservancy, the Cape Cod Commercial Fishermen's Alliance, the Maine Coast Fishermen's Association, and fishermen.

The Nature Conservancy first obtained an EFP authorizing participant vessels to use EM in lieu of human observers to meet their ASM requirements in fishing year 2016. Project partners applied to renew this EFP in fishing years 2017, 2018, and 2019. The EFP was reissued for all 3 years.

TABLE 1—PARTICIPATION IN PREVIOUS ISSUES OF THE PARTIAL AUDIT-MODEL EM EFP

Fishing year	Number of participant vessels	ASM coverage level (percent)
2016	14	14
2017	5	16
2018	5	15
2019	5	31

On February 27, 2020, The Nature Conservancy, along with project partners, submitted a request to renew this EFP for the 2020 fishing year, as part of an ongoing effort to develop EM in the groundfish fishery. The proposed participant list includes five vessels, all of which participated in this EFP in fishing year 2019. Together, they are expected to take an a total of 235 trips in fishing year 2020. Vessels would be assigned observer coverage at the fishing year 2020 ASM coverage level of 40 percent, which is a combination of Northeast Fishery Observer Program (NEFOP) and ASM coverage. At 40-percent observer coverage, this would equate to roughly 94 EFP trips.

On groundfish trips selected for observer coverage, vessels participating in this EFP would use EM in lieu of human ASMs, and in addition to NEFOP observers. Vessels would adhere to a vessel-specific Vessel Monitoring Plan (VMP) detailing at-sea catch handling protocols. An EM service provider would review 100 percent of the video footage. The provider would also produce an EM summary report identifying, counting, and generating weight estimates for all groundfish discards, which it would submit to the NMFS Greater Atlantic Fisheries Regional Office. These data would be used for catch accounting purposes on trips selected for ASM coverage. EM data would not be used for catch accounting in place of observer data on NEFOP trips. Following the EM service provider's review, the Northeast Fisheries Science Center would conduct a secondary review of the EM summary reports for a subset of EFP trips.

Under this EFP, participating vessels would be exempt from minimum fish size requirements (§ 648.83(a)) for Northeast multispecies, for sampling purposes only; and ocean pout, windowpane flounder, and Atlantic wolffish possession prohibitions (§ 648.86(l)), for sampling purposes only. Vessels would also be exempt from their sector's third-party monitoring program requirements (§ 648.87(b)(1)(v)(B)); all other standard sector reporting and monitoring requirements would still apply. All catch of allocated groundfish stocks would be deducted from the appropriate sector's allocation. Legal-sized regulated groundfish would be retained and landed as required by the Northeast Multispecies FMP. Undersized groundfish would be handled according to the VMP guidelines in view of cameras and returned to the sea as quickly as possible. All other species would be handled per normal commercial fishing operations. No legal-size regulated groundfish would be discarded, unless otherwise permitted through regulatory exemptions granted to the participating vessel's sector.

If approved, the applicant may request minor modifications to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: April 3, 2020.

Hélène M.N. Scalliet,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–07391 Filed 4–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA110]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 71 South Atlantic Gag Grouper Data Scoping Webinar.

SUMMARY: The SEDAR 71 assessment of the South Atlantic stock of Gag Grouper will consist of a data scoping webinar and a series assessment webinars.

DATES: The SEDAR 71 Gag Grouper Data Scoping Webinar has been scheduled for Tuesday, May 12, 2020 from 12 p.m. to 3 p.m., Eastern Daylight Time (EDT).

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/7558944934802809100.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 71 Gag Grouper Data Scoping Webinar are as follows:

- Discuss available data sources
- Identify and discuss potential new data sources

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 3, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–07411 Filed 4–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV174]

Determination of Overfishing or an Overfished Condition

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has found that Southern Atlantic greater amberjack, Southern Atlantic red grouper, Gulf of Mexico greater amberjack, and Gulf of Mexico gray triggerfish are now subject to overfishing; Gulf of Maine/Georges Bank white hake and Georges Bank winter flounder are now overfished; Gulf of Maine/Georges Bank windowpane flounder, Atlantic witch flounder, Southern New England/Mid-Atlantic yellowtail flounder, Pribilof Islands blue king crab, and Atlantic white marlin are still overfished; and both Georges Bank Atlantic cod and Gulf of Maine Atlantic cod are still

subject to overfishing and still overfished. NMFS, on behalf of the Secretary, notifies the appropriate regional fishery management council (Council) whenever it determines that overfishing is occurring, a stock is in an overfished condition, or a stock is approaching an overfished condition.

FOR FURTHER INFORMATION CONTACT: Regina Spallone, (301) 427–8568.

SUPPLEMENTARY INFORMATION: Pursuant to section 304(e)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2), NMFS, on behalf of the Secretary, must notify Councils, and publish in the **Federal Register**, whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

NMFS has determined that Gulf of Mexico greater amberjack and Gulf of Mexico gray triggerfish are now subject to overfishing. Neither of these stocks were assessed in 2019 and catch data from 2018 support determinations that these stocks are subject to overfishing because total catch for each stock in 2018 exceeded their respective overfishing limit (OFL). NMFS has notified the Gulf of Mexico Fishery Management Council of their obligation to end and prevent overfishing for these stocks.

NMFS has determined that Southern Atlantic greater amberjack and Southern Atlantic red grouper are now subject to overfishing. Neither stock was assessed in 2019, and catch data from 2017/2018 (for greater amberjack) and from 2018 (for red grouper) support determinations that the stocks are subject to overfishing because total catch for each stock exceeded their respective OFL. NMFS has notified the South Atlantic Fishery Management Council of their obligation to end and prevent overfishing for these stocks.

NMFS has also determined that Gulf of Maine/Georges Bank white hake and Georges Bank winter flounder are now overfished, and that Gulf of Maine/Georges Bank windowpane flounder and Southern New England/Mid-Atlantic yellowtail flounder continue to be overfished. These determinations are made based on the most recent stock assessments, completed in 2019 using data through 2018, which indicate that biomass estimates are now below or remain below thresholds. Atlantic witch flounder also continues to be overfished, but could not be quantitatively determined and was qualitatively determined based on continued poor stock condition. Further, both Georges Bank Atlantic cod and Gulf of Maine Atlantic cod are still subject to overfishing and still overfished. The status of Georges Bank cod could not be quantitatively determined and was qualitatively determined to be overfished based on continued poor stock condition. The overfishing status of this stock continues to be based on the last accepted assessment that provided quantitative information, in 2013. The status of Gulf of Maine cod is based on the most recent stock assessment, completed in 2019, using data through 2018, which indicates that biomass remains below its threshold and fishing mortality remains above its threshold. NMFS has notified the New England Fishery Management Council of the requirements to rebuild and to end and prevent overfishing on these stocks.

NMFS has also determined that Pribilof Islands blue king crab is still overfished. This determination is based on the most recent assessment, completed in 2019 using data through 2019, which indicates that the biomass estimate remains below its threshold. NMFS has notified the North Pacific Fishery Management Council of the requirements to rebuild this stock.

NMFS has also determined that Atlantic white marlin is still overfished domestically. This determination is based on the most recent stock assessment, completed in 2019 using data through 2017, which indicates that the biomass estimate remains below its threshold. NMFS continues to work with the International Commission for the

Conservation of Atlantic Tunas (ICCAT) to rebuild Atlantic white marlin, including through the first-ever rebuilding program, which was adopted at the 2019 ICCAT Annual Meeting.

Dated: April 2, 2020.

Hélène M.N. Scalliet,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–07323 Filed 4–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice for open public virtual meeting, correction with a change of date, and request for comments.

SUMMARY: This serves as a correction and notice of a new meeting for the Hydrographic Services Review Panel (HSRP) who will have a virtual public meeting on April 28, 1 p.m. EDT, by webinar. This announcement is a correction and replaces the prior public meeting notice for a meeting scheduled for April 28–30, 2020. The meeting originally scheduled for April 28–30, 2020, which will focus on Hawaii and the Pacific, has been postponed to the week of September 21, 2020, in Oahu, Hawaii. For the virtual public meeting on April 28, 2020, 1 p.m. EDT, the public comments are requested in advance and/or during the public comment period. Information about the HSRP meetings, agendas, presentations, and advance webinar registration, is posted and updated online. The meeting documents will be available for downloading prior to the meeting at: *https://www.nauticalcharts.noaa.gov/hsrp/hsrp.html* and *https://www.nauticalcharts.noaa.gov/hsrp/meetings.html.*

DATES: The virtual public meeting is on April 28, 2020, 1 p.m. EDT.

ADDRESSES: The meeting will be conducted by webinar. The agenda, speakers and times are subject to change. For updates, please check online at the web page below or sign up to receive meeting emails. To receive the meeting announcements by email, including the agenda, please sign up via the tab for ''Meeting Sign Up Information'' on the meeting web page at *https://www.nauticalcharts.noaa.gov/hsrp/meeting-webinar-2020.html* or send an email to *Virginia.Dentler@noaa.gov.*

Advance registration is required for the April 28, 2020, webinar and can be found via the link: *https://register.gotowebinar.com/rt/6546237546550851853.*

Public comments are encouraged and individuals or groups who would like to submit advance written statements should email their comments to *hydroservices.panel@noaa.gov, Lynne.Mersfelder@noaa.gov*, and *Virginia.Dentler@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Lynne Mersfelder-Lewis, HSRP program manager, National Ocean Service, Office of Coast Survey, NOAA (N/CS), 1315 East-West Highway, SSMC3 #6413, Silver Spring, Maryland 20910, or email: *hydroservices.panel@noaa.gov, Lynne.Mersfelder@noaa.gov,* phone

240–533–0064, and *Virginia.Dentler@noaa.gov.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public via webinar. Public comment is encouraged on the topics of the HSRP meeting and there is a public comment period scheduled in the agenda. Each individual or group making written comments will be limited to one comment per public comment period, the comment will be transcribed, and comments will become part of the meeting record. Comments or letters can be submitted in writing via email prior to the meeting or by email or in the chat function of the webinar during the meeting. The HSRP will provide webinar capability. Pre-registration is required to access the webinar as noted above.

The Hydrographic Services Review Panel (HSRP) is a Federal Advisory Committee established to advise the Under Secretary of Commerce for Oceans and Atmosphere, the NOAA Administrator, on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, as amended, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice. Past recommendations and issue papers are located online at: *https://www.nauticalcharts.noaa.gov/hsrp/recommendations.html.*

Past HSRP public meeting documents are located online at: *https://www.nauticalcharts.noaa.gov/hsrp/meetings.html.*

Matters To Be Considered

The panel is convening on issues relevant to NOAA's navigation services, including stakeholder use of navigation services data, products and services, Seabed 2030 and ocean mapping plans, hydrographic surveys, nautical charting including the Five-Year Plan for Sunsetting Traditional NOAA Paper Charts, the National Spatial Reference System (NSRS) and datums updates for 2022, legislative priorities and other topics. Navigation services include the data, products, and services provided by the NOAA programs and activities that undertake geodetic observations, gravity modeling, shoreline mapping, bathymetric mapping, hydrographic surveying, nautical charting, tide and water level observations, current observations, flooding, inundation and sea level rise, marine modeling, and related topics. This suite of NOAA products and services support safe and efficient navigation, resilient coasts and communities, and the nationwide positioning information infrastructure to support America's commerce. The Panel will hear about the mission and use of NOAA's navigation services, the value these services bring, and what improvements could be made. Other administrative matters may be considered. The agenda, speakers and time are subject to change, please refer to the website for the most updated information.

Special Accommodations

This meeting is physically accessible to people with disabilities. Please direct requests for sign language interpretation or other auxiliary aids to *hydroservices.panel@noaa.gov, Lynne.Mersfelder@noaa.gov* and *Virginia.Dentler@noaa.gov* at least 10 days in advance of the meeting.

Shepard M. Smith,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–07352 Filed 4–7–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Ocean Exploration Advisory Board (OEAB); Meeting

AGENCY: Office of Ocean Exploration and Research (OER) National Oceanic and Atmospheric Administration (NOAA) Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Ocean Exploration Advisory Board (OEAB). OEAB members will discuss and provide advice on Federal ocean exploration programs, with a particular emphasis on the topics identified in the section on Matters to Be Considered.

DATES: The announced meeting is scheduled for Wednesday, April 8, 2020, from 1:00 to 4:30 p.m. EDT and Thursday, April 9, 2020, from 1:00 to 4:30 p.m. EDT.

ADDRESSES: This will be a virtual meeting. Information about how to participate will be posted to the OEAB website at *http://oeab.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. David McKinnie, Designated Federal Officer, Ocean Exploration Advisory Board, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Seattle, WA 98115, (206) 526–6950.

SUPPLEMENTARY INFORMATION: NOAA established the OEAB under the Federal Advisory Committee Act (FACA) and legislation that gives the agency statutory authority to operate an ocean exploration program and to coordinate a national program of ocean exploration. The OEAB advises NOAA leadership on strategic planning, exploration priorities, competitive ocean exploration grant programs and other matters as the NOAA Administrator requests.

OEAB members represent government agencies, the private sector, academic institutions, and not-for-profit institutions involved in all facets of ocean exploration—from advanced technology to citizen exploration.

In addition to advising NOAA leadership, NOAA expects the OEAB to help to define and develop a national program of ocean exploration—a network of stakeholders and partnerships advancing national priorities for ocean exploration.

Matters to be Considered: The OEAB will discuss the following topics: (1) The new OEAB Blue Economy Subcommittee; (2) OER updates, including the OER program review; (3) the future of the OEAB; (4) the National Strategy for Mapping, Exploring, and Characterizing the U.S. Exclusive Economic Zone; and (5) other matters as described in the agenda. The agenda and other meeting materials are available on the OEAB website at *http://oeab.noaa.gov.*

Status: The meeting will be open to the public with a 15-minute public comment period on Thursday, April 9, 2020 from 3:00 to 3:15 p.m. EDT (please check the final agenda on the OEAB website to confirm the time). The public may listen to the meeting and provide comments during the public comment period via teleconference. Dial-in information may be found on the meeting agenda on the OEAB website.

The OEAB expects that public statements at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to three minutes. The Designated Federal Officer must receive written comments by April 3, 2020, to provide sufficient time for OEAB review. Written comments received after April 3, 2020, will be distributed to the OEAB but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Special Accomodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Designated Federal Officer by April 3, 2020.

Dated: April 2, 2020.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–07337 Filed 4–7–20; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XX047]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; 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 Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an exempted fishing permit application submitted by the Cape Cod Commercial Fishermen's Alliance contains all of the required information and warrants further consideration. This exempted fishing permit would require participants to use electronic monitoring systems on 100 percent of sector trips for catch accounting in the Northeast multispecies fishery; additionally, vessels would be authorized to access portions of Northeast multispecies closed areas. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received on or before April 23, 2020.

ADDRESSES: You may submit written comments by either of the following methods:

• *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''AUDIT–MODEL EM EFP.''

• *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''AUDIT–MODEL EM EFP.''

FOR FURTHER INFORMATION CONTACT: Claire Fitz-Gerald, Fishery Policy Analyst, 978–281–9255.

SUPPLEMENTARY INFORMATION: Northeast multispecies (groundfish) sectors must implement and fund an at-sea monitoring (ASM) program, and the Northeast Multispecies Fishery Management Plan regulations allow sectors to use electronic monitoring (EM) to satisfy this monitoring requirement, provided that NMFS deems the technology sufficient for catch monitoring. NMFS recently notified the Council of its intent to allow sectors to submit EM plans instead of, or in addition to, ASM plans as part of the fishing year 2021 and 2022 sector operations plans approval process. For the 2020 fishing year, lessons learned through this exempted fishing permit (EFP) will allow NMFS to continue developing standards and requirements for the groundfish EM program. Project partners include the Cape Cod Commercial Fishermen's Alliance, The Nature Conservancy, the Maine Coast Fishermen's Association, and fishermen.

If approved, this EFP would build on previous EFPs issued to the project partners in support of the audit-model EM program for groundfish sectors. The first EFP was issued in fishing year 2017; participating vessels were required to use EM on 100 percent of sector trips and groundfish discards were calculated based on the video footage. Vessels were exempted from their sector's ASM requirements. Thirteen vessels using a variety of gear types (*e.g.* hook, benthic longline, sink gillnet, bottom trawl) participated in the project and completed a total of 81 trips. The EFP was renewed in fishing year 2018. We developed and implemented a protocol for verifying, or auditing, vessels' self-reported discards from the electronic vessel trip report (eVTR) against video footage. Vessels were also granted exemptions to fish in closed areas during certain times of the year. A total of 258 trips suitable for quota monitoring were completed during fishing year 2018. In fishing year 2019, we renewed the EFP again and reduced the targeted level of audit to 50 percent of trips based on a statistical analysis of EFP trips from fishing years 2017 and 2018. EVTRs were used to calculate discards for trips that were not selected for audit.

The project partners have submitted a renewal request for fishing year 2020. The proposed participant list includes 15 vessels, all of which participated in this EFP in fishing year 2019. Together, these vessels are expected to take a total of 590 trips. The project partners expect that additional vessels may join the project during fishing year 2020.

Vessels participating in this EFP would be exempt from the regulations requiring them to adhere to their sector's ASM program, and instead would be required to use EM on 100 percent of groundfish trips. Camera systems would be used in lieu of human at-sea monitors, and in addition to Northeast Fishery Observer Program (NEFOP) observers. Vessels would adhere to a vessel-specific monitoring plan detailing at-sea catch handling protocols. Vessels would submit haul-level eVTRs with count and weight estimates for all groundfish discards. In fishing year 2020, individual vessels may test different catch handling and reporting methodologies (*e.g.,* volumetric sampling, sub-trip level eVTR), with our approval. Vessels would not be exempt from any other standard reporting and monitoring requirements.

The discard estimates provided in the eVTR would be used for catch accounting, and all catch of allocated groundfish would be deducted from the appropriate sector's allocation. The EM service provider would review the video footage and produce an EM summary report identifying, counting, and generating weight estimates for all groundfish discards. The provider would submit this report to NMFS. We would compare the eVTR and EM summary report to ensure the submissions match within an established tolerance. If the trips do not match, the eVTR would not be used for catch accounting for that trip. For trips that carry a NEFOP observer, the NEFOP data would be used for catch accounting.

In fishing year 2019, we targeted an audit level of 50 percent of trips. In fishing year 2020, we intend to develop performance-based audit standards and may adjust the targeted audit level for vessels up or down in an effort to test a performance-based audit. Developing and implementing a performance-based audit selection process would incentivize accurate reporting on eVTRs and good catch handling practices. Following the EM service provider's review of selected trips, the Northeast Fisheries Science Center would conduct a secondary review of the EM summary reports for a subset of trips, consistent with previous years.

Because participating vessels would be fully monitored and accountable, project partners requested exemptions to access closed areas, to incentivize participation and create additional fishing opportunities for healthy stocks.

Vessels would be allowed to use hook gear and sink gillnets in Closed Area II from April 16 through January 31, hook gear (*i.e.,* jig machines, handgear, benthic longlines) in the Western Gulf of Maine Closure Area, jig gear (*i.e.,* jig machines and handgear) in the Cashes Ledge Closure Area, excluding the Ammen Rock Habitat Management Area, and benthic longlines in the Fippinnies Ledge portion of the Cashes Ledge Closure Area (west of 69°09.1′ W). All catch of allocated groundfish would be deducted from the appropriate sector's allocation.

TABLE 1—ESTIMATES OF GROUNDFISH CATCH IN CLOSED AREAS

	WGOM closure (lb)	WGOM closure (mt)	Cashes ledge closure (lb)	Cashes ledge closure (mt)	CAII (lb)	CAII (mt)
American Plaice						
Atlantic Halibut			651	0	305	0
Atlantic Wolffish	87	0	318	0	10	0
CC/GOM Yellowtail Flounder						
GB East Cod					25,500	12
GB East Haddock					25,100	11
GB West Cod						
GB West Haddock					5,401	2
GB Winter Flounder					1,015	0
GB Yellowtail Flounder						
GOM Cod	6,322	3	16,888	8		
GOM Haddock	39,242	18	79,271	36		
GOM Winter Flounder	7	0	5	0		
N. Windowpane Flounder						
Ocean Pout					3	0
Pollock	17,630	8	19,861	9	13,633	6
Redfish	11	0				
S. Windowpane Flounder						
SNE/MA Winter Flounder						
SNE/MA Yellowtail Flounder						
White Hake	121	0	200	0	58	0
Witch Flounder						

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: April 3, 2020.

Hélène M.N. Scalliet,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–07392 Filed 4–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information and the National Telecommunications and Information Administration (NTIA) on spectrum management policy matters.

DATES: The meeting will be held April 22, 2020, from 1:00 p.m. to 4:00 p.m., Eastern Daylight Time (EDT).

ADDRESSES: This meeting will be conducted in an electronic format and open to the public via audio teleconference (866–652–3435 participant code 28570198). Public comments may be emailed to *dreed@ntia.gov* or mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: David J. Reed, Designated Federal Officer, at (202) 482–5955 or *dreed@ntia.gov;* and/or visit NTIA's website at *https://www.ntia.gov/category/csmac.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: License radio frequencies in a way that maximizes public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. *See* Charter at *https://www.ntia.doc.gov/files/ntia/publications/csmac_signed_charter_9-30-17.pdf.*

This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.gov/category/csmac.*

Matters To Be Considered: The Committee provides advice to the Assistant Secretary to assist in developing and maintaining spectrum management policies that enable the United States to maintain or strengthen its global leadership role in the introduction of communications technology, services, and innovation; thus expanding the economy, adding jobs, and increasing international trade, while at the same time providing for the expansion of existing technologies and supporting the country's homeland security, national defense, and other critical needs of government missions. NTIA will post a detailed agenda on its website, *http://www.ntia.gov/category/csmac,* prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may address the Committee regarding the agenda items. *See Open Meeting and Public Participation Policy,* available at *http://www.ntia.gov/category/csmac.*

Time and Date: The meeting will be held on April 22, 2020, from 1:00 p.m. to 4:00 p.m. EDT. The meeting time and the agenda topics are subject to change. Please refer to NTIA's website, *http://www.ntia.gov/category/csmac,* for the most up-to-date meeting agenda and access information.

Place: This meeting will be conducted in an electronic format and open to the public via audio teleconference. Individuals requiring accommodations are asked to notify Mr. Reed at (202) 482–5955 or *dreed@ntia.gov* at least ten (10) business days before the meeting.

Status: Interested parties are invited to join the teleconference and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of the meeting are strongly encouraged to submit their comments in Microsoft Word and/or PDF format via electronic mail to *dreed@ntia.gov.* Comments may also be sent via postal mail to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230. It would be helpful if paper submissions also include a compact disc (CD) that contains the comments in one or both of the file formats specified above. CDs should be labeled with the name and organizational affiliation of the filer. Comments must be received five (5) business days before the scheduled meeting date in order to provide sufficient time for review. Comments received after this date will be distributed to the Committee, but may not be reviewed prior to the meeting. Additionally, please note that there may be a delay in the distribution of comments submitted via postal mail to Committee members.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and reports are available on NTIA's website at *http://www.ntia.gov/category/csmac.*

Dated: April 3, 2020.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2020–07393 Filed 4–7–20; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–76]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–76 with attached Policy Justification and Sensitivity of Technology.

Dated: April 3, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

FEB 25 2020

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-76 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Jordan for defense articles and services estimated to cost $300 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

Transmittal No. 19–76

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Jordan

(ii) *Total Estimated Value*:

Major Defense Equipment *	$ 40 million
Other	$260 million
Total	$300 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*: Advanced Field Artillery Tactical Data System (AFATDS) including hardware, software, and associated services

Major Defense Equipment (MDE):

Up to seven hundred (700) AFATDS Software License Copies with a Tailored, International Ballistic Kernel

Non-MDE:

Also included are up to two hundred (200) each laptop and table computers, ancillary computer mounting hardware, battery kits and chargers, printers, scanners, network routers and communication hardware, modems, two hundred fifty (250) each diesel fueled 5 kilowatt auxiliary power units (APUs), one hundred (100) each diesel fueled electrical power generators, fifty (50) each model 7800-HF 150-Watt high frequency radios, five hundred (500) each model 7850-MB 50-Watt multiband (UHF & VHF) radios, five hundred fifty (550) each model 7850-MB IO-Watt multiband (UHF & VHF) radios, all the required cables and components, required engineering and installation services, operations, integration, and maintenance services, contractor furnished support, communications support equipment, tools and test equipment, training, U.S. Government technical/logistical Support, contractor technical support, spares and support equipment, and other related elements of logistical and program support services.

(iv) *Military Department*: Army (JO-B-YBJ)

(v) *Prior Related Cases, if any*: JO-B-WYB

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: **February 25, 2020**

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Jordan—Artillery Command, Control and Communications (C3) Equipment

The Government of Jordan has requested to buy up to seven hundred (700) Advanced Field Artillery Tactical Data System (AFATDS) software license copies with a tailored, international ballistic kernel. Also included are up to two hundred (200) each laptop and table computers, ancillary computer mounting hardware, battery kits and chargers, printers, scanners, network routers and communication hardware, modems, two hundred fifty (250) each diesel fueled 5 kilowatt auxiliary power units (APUs), one hundred (100) each diesel fueled electrical power generators, fifty (50) each model 7800-HF 150-Watt high frequency radios, five hundred (500) each model 7850-MB 50-Watt multiband (UHF & VHF) radios, five hundred fifty (550) each model 7850-MB IO-Watt multiband (UHF & VHF) radios, all the required cables and components, required engineering and installation services, operations, integration, and maintenance services, contractor furnished support, communications support equipment, tools and test equipment, training, U.S. Government technical/logistical Support, contractor technical support, spares and support equipment, and other related elements of logistical and program support services. The estimated cost is $300 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of an important Major Non-NATO ally in the region. This sale is consistent with U.S. initiatives to provide key partners in the region with modern systems that will enhance interoperability with U.S. forces and increase security.

The proposed upgrade will allow the Jordan Armed Forces (JAF) to fire Guided Multiple Launch Rocket System-Alternative Warhead (GMLRS-AW) rockets using a digital fire control system. The expansion will ensure uniformity among all indirect fire systems used by the JAF. The upgrade and expansion of the AFATDS fire control system will allow the JAF to defend its borders and ground forces with indirect fire weapon systems. This proposed sale will advance the JAF's efforts to modernize its military and to enhance interoperability with U.S., allied, and coalition military forces. Jordan will have no difficulty absorbing these defense articles and services into its armed forces.

The proposed sale will not alter the basic military balance in the region.

The prime contractors for the AFATDS and supporting equipment include Raytheon Company and the Harris Company. There are no known offset agreements in connection with this potential sale.

Implementation of this sale will not require the assignment of any U.S. Government or contractor representatives to Jordan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19-76

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. All equipment, documentation, software and associated information proposed in this sale is UNCLASSIFIED.

2. The AFATDS software and tailored, international ballistic kernel included in this proposed sale will be formally tested to verify release for export and to verify the excision of any and all elements not authorized for release or export to Jordan.

3. If a technologically advanced adversary were to obtain knowledge of the hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the Jordan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 2020–07403 Filed 4–7–20; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Air University Board of Visitors (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix) and 41 CFR 102–3.50(d). The charter and contact information for the Board's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The Board shall provide the Secretary of Defense and the Deputy Secretary of Defense, through the Secretary of the Air Force, with independent advice and recommendations on educational, doctrinal, and research policies and activities of Air University (''the University''). The Board shall: (a) Review and evaluate progress of the educational programs and the support activities of the University; (b) Review and evaluate the published statement of purpose, institutional polices, and financial resources of the University; and (c) Review and evaluate the educational effectiveness; quality of student learning; administrative and educational support services; and teaching, research, and public service of the University.

The Board shall be composed of no more than 15 members appointed in accordance with DoD policies and procedures, who are eminent authorities in the fields of air, space, cyberspace, defense, management, leadership, or academia.

Board members who are not full-time or permanent part-time Federal civilian officers, employees, or members of the Armed Forces will be appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. Board members who are full-time or permanent part-time Federal civilian officers, employees, or members of the Armed Forces will be appointed pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

All members of the Board are appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Board-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board. All written statements shall be submitted to the DFO for the Board, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: April 3, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–07401 Filed 4–7–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Wilderness Line Holdings, LLC EG20–61–000; Cranell Wind Farm, LLC EG20–62–000; Oklahoma Wind, LLC EG20–63–000; Sooner Wind, LLC EG20–64–000; La Chalupa, LLC EG20–65–000; White Cloud Wind Project, LLC EG20–66–000; Outlaw Wind Project, LLC EG20–67–000; Oberon Solar IB, LLC EG20–68–000; Prospero Energy Project, LLC EG20–69–000; Pleasants LLC EG20–70–000; Blooming Grove Wind Energy Center LLC EG20–71–000; Enel Green Power Roadrunner Solar Project II, LLC EG20–72–000; Conrad (Ampthill) Limited FC20–1–000]

Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utility Company Status

Take notice that during the month of March 2020, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2019).

Dated: April 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2020–07362 Filed 4–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1477–000]

3PR Trading, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of 3PR Trading, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 22, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07359 Filed 4–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–12–000]

Columbia Gas Transmission, LLC; Notice of Schedule for Environmental Review of the Leach Xpress Project Amendment

On November 6, 2019, Columbia Gas Transmission, LLC (Columbia Gas) filed an application under section 7(c) of the Natural Gas Act to amend the existing Order Issuing Certificates and Approving Abandonment issued on January 19, 2017 (Order) for the Leach XPress Project (LXP) in Docket No. CP15–514–000. In the LXP Amendment, Columbia Gas proposes to modify its operation of the Ceredo Compressor Station authorized in the Order and requests modifying the Order noise level requirement for the Ceredo and Crawford Compressor Stations. The proposed LXP Amendment would allow Columbia Gas to operate the Ceredo and Crawford Compressor Stations under the modified full load scenario, and ensure that the noise level requirement associated with the compressor stations would be consistent with the Commission's policy.

On November 19, 2019, the Federal Energy Regulatory Commission (FERC or Commission) issued its Notice of Application for the LXP Amendment. Among other things, that notice alerted agencies issuing federal authorization 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's staff's Environmental Assessment (EA) for the LXP Amendment. This instant notice identifies the FERC staff's planned schedule for completion of an EA for the LXP Amendment.

Schedule for Environmental Review

Issuance of EA—May 7, 2020
90-day Federal Authorization Decision Deadline—August 5, 2020

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the LXP Amendment's progress.

Project Description

Columbia Gas is proposing to modify its operation of the Ceredo Compressor Station authorized in the Order to reduce operational noise levels on noise sensitive areas by: (1) Modifying the full-load operation of the Ceredo Compressor Station to limit the use of the seven existing legacy reciprocating units operating prior to the LXP Order to four units at a given time; and (2) allowing for the use of additional horsepower (hp) at the Ceredo Compressor Station that is available from existing electric-driven compressor units installed since issuance of the LXP Order. Columbia Gas also requests amending the Order noise level requirement for the Ceredo and Crawford Compressor Stations to conform to the Commission staff recommended environmental condition 31 in the September 2016 final Environmental Impact Statement for the LXP rather than environmental condition 31 of the Order.

Background

On February 26, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Leach XPress Project Amendment and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received one comment letter from the U.S. Environmental Protection Agency raising issues including: Expected noise impacts and existing and potential alternative noise mitigation applicable to noise sensitive receivers in the vicinity of the compressor stations; and clarification of what facility modifications Columbia Gas carried out at the compressor stations under the LXP Order. All substantive comments received from the U.S. Environmental Protection Agency 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 LXP Amendment 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.,* CP20–12), 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: April 1, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–07375 Filed 4–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–14–000]

Commission Information Collection Activities (FERC–725T); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

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 soliciting public comment on the currently approved information collection, FERC–725T, Mandatory Reliability Standards for the Bulk-Power System: TRE Reliability Standards.

DATES: Comments on the collection of information are due June 8, 2020.

ADDRESSES: You may submit comments (identified by Docket No. IC20–14–000) 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, at Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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).

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.

SUPPLEMENTARY INFORMATION:

Title: FERC–725T, Mandatory Reliability Standards for the Bulk-Power System: TRE [1] Reliability Standards.

OMB Control No.: 1902–0273.

Type of Request: Three-year extension of the FERC–725T information collection requirements with no changes to the current reporting requirements.

Abstract: TRE Reliability Standards apply to entities registered as Generator Owners (GOs), Generator Operators (GOPs), and Balancing Authorities (BAs) within the Texas Reliability Entity region.

The information collection requirements entail the setting or configuration of the Control System software, identification and recording of events, data retention, and submitting frequency measurable events to the compliance enforcement authority (Regional Entity or NERC).

Submitting frequency measurable events. The BA has to identify and post information regarding Frequency Measurable Events (FME). Further, the BA has to calculate and report to the Compliance Enforcement Authority data related to Primary Frequency Response (PFR) performance of each generating unit/generating facility.

Data retention. The BA, GO, and GOP shall keep data or evidence to show compliance, as identified below, unless directed by its Compliance Enforcement Authority to retain specific evidence for a longer period of time as part of an investigation. Compliance audits are generally about three years apart.

- The BA shall retain a list of identified Frequency Measurable Events and shall retain FME information since its last compliance audit.
- The BA shall retain all monthly PFR performance reports since its last compliance audit.
- The BA shall retain all annual Interconnection minimum Frequency Response calculations, and related methodology and criteria documents, relating to time periods since its last compliance audit.
- The BA shall retain all data and calculations relating to the Interconnection's Frequency Response, and all evidence of actions taken to increase the Interconnection's Frequency Response, since its last compliance audit.
- Each GOP and GO shall retain evidence since its last compliance audit.

Type of Respondents: NERC Registered entities: Balancing Authorities, Generator Owners, Generator Operators.

Estimate of Annual Burden: [2] The Commission estimates the annual public reporting burden for the information collection as:

FERC–725T (MANDATORY RELIABILITY STANDARDS FOR THE BULK-POWER SYSTEM: TRE RELIABILITY STANDARDS)

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response [3] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Maintenance and Submission of Event Log Data.	[4] 1	1	1	16 hrs.; $821.44	16 hrs.; $821.44	821.44
Evidence Retention	[5] 130	1	130	2 hrs.; 102.68	260 hrs.; 13,348.4	102.68
Total			131		276 hrs.; 14,169.84	

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: April 1, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–07374 Filed 4–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1835–290]

Nebraska Public Power District; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for non-capacity license amendment for the North Platte/Keystone Diversion Dam Hydroelectric Project, located on the North/South Platte Rivers in Lincoln and Keith counties, Nebraska, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyzes the potential environmental effects of the proposed license amendment and concludes that issuing an order approving the proposal, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all

[1] Texas Reliability Entity.

[2] Burden is defined as 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, reference 5 Code of Federal Regulations 1320.3.

[3] The figures for May 2018 posted by the Bureau of Labor Statistics for the Utilities sector (available at *http://www.bls.gov/oes/current/naics2_22.htm*) and updated March 2019 for benefits information (at *http://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are:

—File Clerks (code 43–4071), $34.50.

—Electrical Engineer (code 17–2071), $68.17.

The average hourly burden cost for this collection is $51.34 [$34.50 + $68.17 = 51.335] and is rounded to $51.34.

[4] BA (balancing authority).

[5] BA (balancing authority), GO (generator owner), and GOP (generator operator).

interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''elibrary'' link. Enter the docket number excluding the last three digits in the document field to access the document. 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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3673 or TYY, (202) 502–8659.

For further information, contact Jon Cofrancesco at (202) 502–8951 or *jon.cofrancesco@ferc.gov.*

Dated: April 2, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–07376 Filed 4–7–20; 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 rate filings:

Docket Numbers: ER11–2154–011.
Applicants: Twin Eagle Resource Management, LLC.
Description: Notice of Change in Status of Twin Eagle Resource Management, LLC.
Filed Date: 3/30/20.
Accession Number: 20200330–5290.
Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER11–2154–012.
Applicants: Twin Eagle Resource Management, LLC.
Description: Notice of Change in Status of Twin Eagle Resource Management, LLC.
Filed Date: 4/2/20.
Accession Number: 20200402–5068.
Comments Due: 5 p.m. ET 4/23/20.

Docket Numbers: ER19–458–001.
Applicants: EDF Trading North America, LLC, AES Alamitos, LLC, AES Huntington Beach, LLC, AES Redondo Beach, LLC.
Description: Pre-Arranged/Pre-Agreed (Stipulation and Offer of Settlement) Filing of the Settling Parties.
Filed Date: 4/1/20.
Accession Number: 20200401–5434.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER19–1216–001.
Applicants: Northwest Ohio Wind, LLC.
Description: Report Filing: Refund Report (ER19–1216-) to be effective N/A.
Filed Date: 4/2/20.
Accession Number: 20200402–5125.
Comments Due: 5 p.m. ET 4/23/20.

Docket Numbers: ER20–783–001.
Applicants: Rosewater Wind Farm LLC.
Description: Compliance filing: Amendment to Compliance Filing and Revised Market-Based Rate Tariff to be effective 12/16/2019.
Filed Date: 4/2/20.
Accession Number: 20200402–5063.
Comments Due: 5 p.m. ET 4/23/20.

Docket Numbers: ER20–1417–000.
Applicants: Roundhouse Renewable Energy, LLC.
Description: Amendment to March 27, 2020 Roundhouse Renewable Energy, LLC tariff filing.
Filed Date: 4/1/20.
Accession Number: 20200401–5418.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1474–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–04–01_Revisions to Attachment FF regarding FTP Language to be effective 6/1/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5294.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1475–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of Service Agreement No. 690, No. D07 RE: Deactivation to be effective 6/1/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5308.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1476–000.
Applicants: Avista Corporation.
Description: § 205(d) Rate Filing: Avista Corp RS T0447 Communications Lease Agreement to be effective 6/1/2020.
Filed Date: 4/1/20.
Accession Number: 20200401–5318.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1477–000.
Applicants: 3PR Trading, Inc.
Description: Baseline eTariff Filing: baseline new to be effective 4/2/2020.
Filed Date: 4/2/20.
Accession Number: 20200402–5002.
Comments Due: 5 p.m. ET 4/23/20.

Docket Numbers: ER20–1478–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3647 AECC Addendum 2 to Attachment AO to be effective 4/1/2020.
Filed Date: 4/2/20.
Accession Number: 20200402–5005.
Comments Due: 5 p.m. ET 4/23/20.

Docket Numbers: ER20–1479–000.
Applicants: Public Service Company of New Mexico.
Description: Formula Rate Post-employment Benefits Other than Pensions filing of Public Service Company of New Mexico.
Filed Date: 4/1/20.
Accession Number: 20200401–5419.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1480–000.
Applicants: Vermont Electric Power Company, Inc.
Description: Order No. 864 Compliance Filing of Vermont Electric Power Company, Inc.
Filed Date: 4/1/20.
Accession Number: 20200401–5430.
Comments Due: 5 p.m. ET 4/22/20.

Docket Numbers: ER20–1481–000.
Applicants: AES Ohio Generation, LLC.
Description: Tariff Cancellation: AES Ohio Reactive Power Tariff Cancellation to be effective 6/1/2020.
Filed Date: 4/2/20.
Accession Number: 20200402–5034.
Comments Due: 5 p.m. ET 4/23/20.

Docket Numbers: ER20–1482–000.
Applicants: Oncor Electric Delivery Company LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 4/22/2020.
Filed Date: 4/2/20.
Accession Number: 20200402–5037.
Comments Due: 5 p.m. ET 4/23/20.

Docket Numbers: ER20–1483–000.
Applicants: Avista Corporation.
Description: § 205(d) Rate Filing: Avista Corp RS T1162 Interconnection and Operating Agreement to be effective 4/3/2020.
Filed Date: 4/2/20.
Accession Number: 20200402–5067.
Comments Due: 5 p.m. ET 4/23/20.

Docket Numbers: ER20–1485–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended GIA and Service Agmt Painted Hills & Cancel SA Nos. 877, 878, 879, 880 to be effective 6/2/2020.
Filed Date: 4/2/20.
Accession Number: 20200402–5070.

Comments Due: 5 p.m. ET 4/23/20.

Docket Numbers: ER20–1486–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3621SO The Empire District Electric Company GIA to be effective 3/19/2020.
Filed Date: 4/2/20.
Accession Number: 20200402–5071.
Comments Due: 5 p.m. ET 4/23/20.

Docket Numbers: ER20–1487–000.
Applicants: Frontier Windpower II, LLC.
Description: Baseline eTariff Filing: Initial Application for Market-Based Rate Authority to be effective 6/2/2020.
Filed Date: 4/2/20.
Accession Number: 20200402–5074.
Comments Due: 5 p.m. ET 4/23/20.

Docket Numbers: ER20–1488–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Second Revised ISA, SA No. 5461; Queue No. Y3–092/AB2–019 to be effective 3/3/2020.
Filed Date: 4/2/20.
Accession Number: 20200402–5101.
Comments Due: 5 p.m. ET 4/23/20.

Docket Numbers: ER20–1489–000.
Applicants: Puget Sound Energy, Inc.
Description: § 205(d) Rate Filing: PBOP—Revisions to Formula Rate Attachment H–1 to be effective 6/1/2020.
Filed Date: 4/2/20.
Accession Number: 20200402–5109.
Comments Due: 5 p.m. ET 4/23/20.

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: April 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07360 Filed 4–7–20; 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:

Docket Numbers: RP17–204–001.
Applicants: Pine Needle LNG Company, LLC.
Description: Motion to Amend Settlement and Request for Shortened Answer Period and Expedited Action of Pine Needle LNG Company, LLC under RP17–204.
Filed Date: 3/31/20.
Accession Number: 20200331–5476.
Comments Due: 5 p.m. ET 4/6/20.

Docket Numbers: RP20–708–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Compliance filing Penalty Revenue Crediting Report from July through December 2019.
Filed Date: 3/31/20.
Accession Number: 20200331–5004.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–709–000.
Applicants: Horizon Pipeline Company, L.L.C.
Description: Compliance filing Horizon Penalty Revenue Crediting Report for Year 2019.
Filed Date: 3/31/20.
Accession Number: 20200331–5005.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–710–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Mercuria 4/1/2020 to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5011.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–711–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—BP 4/1/2020 to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5012.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–712–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Keyspan 510369 4–1–2020 Releases to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5013.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–713–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—Chevron 911109 release eff 4–1–20 to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5015.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–714–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Bug Co Nat 799989 Release to Greenlight 801749 to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5016.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–715–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: FOSA Effective Date Clarification to be effective 5/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5017.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–716–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—Gulfport to EcoEnergy 8962999 eff 4–1–20 to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5026.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–717–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: § 4(d) Rate Filing: TPC 2020–03–31 Negotiated Rate Agreements to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5032.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–718–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Rate Schedules LSS and SS–2 Tracker Filing effective May 1, 2020 to be effective 5/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5053.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–719–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Columbia Gas 860005 4–1–2020 Releases to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5059.
Comments Due: 5 p.m. ET 4/13/20.
Docket Numbers: RP20–720–000.
Applicants: Pine Needle LNG Company, LLC.

Description: § 4(d) Rate Filing: 2020 Annual Fuel and Electric Power Tracker Filing to be effective 5/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5068.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–721–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Compliance filing 033120 Annual Fuel and Losses Retention Calculations.
Filed Date: 3/31/20.
Accession Number: 20200331–5072.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–722–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Apr 2020 to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5075.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–723–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—ConEd 510371 Apr2020 Releases to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5095.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–724–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Expired Negotiated Rate Agreement—3/31/2020 to be effective 5/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5100.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–725–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing (Upstream Energy) to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5111.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–727–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreement Update (SWG 2020) to be effective 5/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5146.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–728–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Nextera NRA releases to Colonial & UGI eff 4–1–2020 to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5160.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–729–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—UGI 8962716 to Eco 8963124 to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5194.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–730–000.
Applicants: Dauphin Island Gathering Partners.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—Cox 3–31–2020 to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5203.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–731–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2020–03–31 Negotiated Rate Agreements to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5218.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–732–000.
Applicants: BBT Midla, LLC.
Description: Compliance filing BBT (MidLa), LLC Docket No. CP15–523 Cost and Revenue Study.
Filed Date: 3/31/20.
Accession Number: 20200331–5227.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–733–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (FPL 41618, 41619 releases eff 4–1–20) to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5230.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–734–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (JayBee34446,34447,35450 to MacQuarie38592,38593,38594) to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5231.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–735–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Gulfport34939,35446 to Eco-Energy38613,38616,CIMA38595) to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5232.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–736–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Non-Conforming—Leidy Southeast Sequent to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5244.
Comments Due: 5 p.m. ET 4/13/20.

Docket Numbers: RP20–737–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20200331 Negotiated Rate to be effective 4/1/2020.
Filed Date: 3/31/20.
Accession Number: 20200331–5275.
Comments Due: 5 p.m. ET 4/13/20.

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 date(s). 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: April 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07364 Filed 4–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–13–000]

Before Commissioners: Neil Chatterjee, Chairman; Richard Glick, Bernard L. McNamee, and James P. Danly; Delegated Authority; Order Temporarily Delegating Further Authority

1. The Commission, by this order, temporarily delegates further authority to the Director, Office of Energy Market Regulation, or the Director's designee, to take action on uncontested requests for

waiver of certain regulatory obligations to address needs resulting from steps entities have taken to meet the emergency conditions caused by the Novel Coronavirus Disease (COVID–19), as described below, effective as of the date of this order. The authority delegated herein is effective until June 1, 2020.

I. Background

2. On March 13, 2020, the President issued a proclamation declaring a National Emergency concerning COVID–19. Entities regulated by the Commission have had to take unprecedented actions in response to the emergency conditions, including directing staff to work remotely for an extended period, which may disrupt, complicate, or otherwise change their normal course of business operations. The March 19, 2019 Notice Granting Extension of Time recognized that entities may seek waiver of the Commission's orders, regulations, tariffs and rate schedules, as appropriate, to address needs resulting from steps they have taken in response to COVID–19.[1] Regulated entities and the public have since filed waiver requests.[2] This has prompted the Commission to review its procedural regulations to ensure that the Commission's work is performed in an efficient manner.

II. Delegation of Agency Authority

A. Notice

3. Given the immediate need to efficiently process and act on waiver requests made in response to the emergency conditions created by COVID–19, public notice of this action, otherwise required by 5 U.S.C. 553(b) (2018), is impracticable. The Commission's requirement to protect the public interest creates an immediate need for this action.

B. Uncontested Waiver Requests

4. The Commission in this order temporarily delegates authority to the Director of the Office of Energy Market Regulation, or the Director's designee, to take appropriate action on uncontested requests or petitions filed pursuant to section 4 of the NGA, 15 U.S.C. 717c (2018), section 205 of the FPA, 16 U.S.C. 824d (2018), and section 6(3) of the ICA, 49 App. U.S.C. 6(3) (1988), requesting prospective waivers of requirements set forth in Commission orders, regulations, tariffs, rate schedules, and service agreements to address needs due to steps movants take in response to COVID–19.[3] This authority will remain in place until June 1, 2020. This delegation of authority will allow for more efficient processing of and action on these uncontested waiver requests. The need for efficient processing and action is particularly important given the emergency conditions related to COVID–19, as entities may need to seek waiver of various requirements with which they are unable to comply due to the extraordinary circumstances.[4]

The Commission orders:

(A) The Commission hereby delegates to the Director of the Office of Energy Market Regulation, or the Director's designee, further authority to act, effective as of the date of this order, until June 1, 2020, as discussed in the body of this order.

(B) The Secretary is hereby directed to promptly publish this order in the **Federal Register**.

By the Commission.

Issued: April 2, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07361 Filed 4–7–20; 8:45 am]

BILLING CODE 6717–01–P

[1] Notice Granting Extension of Time, Docket No. AD20–11–000, at 2 (Mar. 19, 2020).

[2] *See, e.g.,* PJM Interconnection, L.L.C., Request for Waiver of Tariff Provisions, Docket No. ER20–1392–000 (filed Mar. 25, 2020); New York Independent System Operator, Inc., Request for Tariff Waiver, Docket No. ER20–1419–000 (filed Mar. 27, 2020).

[3] This delegation does not permit violations of the filed rate doctrine and the rule against retroactive ratemaking, even in uncontested cases. If such questions arise, they will be considered by the Commission.

[4] *See also* Supplemental Notice Granting Extensions of Time for Non-Statutory Deadlines, Waiving Regulations, and Shortening Answer Period, Docket No. AD20–11–000 (Apr. 2, 2020).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10006–17–OMS]

Privacy Act of 1974; System of Records

AGENCY: Office of Mission Support, Environmental Protection Agency (EPA).

ACTION: Notice of a modified system of records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of Inspector General (OIG) is giving notice that it proposes to modify an existing system of records, pursuant to the provisions of the Privacy Act of 1974. Inspector General Enterprise Management System (IGEMS) Audit, Assignment, and Timesheet Modules is being modified to change the name of the system from Inspector General Enterprise Management System (IGEMS) Audit, Assignment, and Timesheet Modules to Inspector General Enterprise Management System (IGEMS) Audits, Assignments, and Project Management Actuals Modules. The module is modifying point of contact, system location, retention and disposal, system manager and address, method of retrieval, notification procedures, and the inclusion of the new routine uses identified per OMB M–17–12.

DATES: Persons wishing to comment on this system of records notice must do so by May 8, 2020. New or Modified routine uses for this modified system of records will be effective May 8, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2011–0359, by one of the following methods:

Regulations.gov: www.regulations.gov. Follow the online instructions for submitting comments.

Email: oei.docket@epa.gov.

Fax: 202–566–1752.

Mail: OMS Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2011–0359. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through *www.regulations.gov.* The *www.regulations.gov* website is an ''anonymous access'' system for EPA, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. Each agency determines submission requirements within their own internal processes and standards. EPA has no requirement of personal information. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OMS Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Wright, Acting Deputy Assistant Inspector General for Management, (202)–566–0847.

SUPPLEMENTARY INFORMATION:

I. General Information

The EPA OIG is giving notice that it intends to modify an existing system of records. The Inspector General Enterprise Management System (IGEMS) Audit, Assignment, and Timesheet Modules will be changed to Inspector General Enterprise Management System (IGEMS) Audits, Assignments, and Project Management Actuals Modules. The module is modifying point of contact, system location, retention and disposal, system manager and address, method of retrieval, and notification procedures. The System assists the OIG planning and managing audits, evaluations, investigations and other OIG activities. The privacy of individuals is protected through user authentication and system roles, permissions, and privileges. The system is operated and maintained by the Office of Inspector General, Office of Management, Information Technology Directorate (OM–ITD).

SYSTEM NAME AND NUMBER:

Inspector General Enterprise Management System (IGEMS) Audits, Assignment and Project Management Actuals Modules. EPA–42.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Inspector General, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SYSTEM MANAGER(S):

USEPA, Office of Management (Mail code 2410T), 1200 Pennsylvania Ave. NW, Washington, DC 20460, Attn: Assistant Inspector General for Management. Tel Number: 202–566–0847, Fax: 202–566–0857.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. app. 3.

PURPOSE OF THE SYSTEM:

To assist the OIG in planning and managing audits, evaluations, investigations, and other OIG activities. The ''Timesheets'' module is renamed to the Project Management Actuals (PMA) module. Planning and managing of projects is accomplished using assignment hours posted against the projects by individuals in OIG.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Office of Inspector General (OIG) employees; individuals who request audits; names of individual auditees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming audit requests, assignment sheets and reports, incoming special project requests, and memorandums or briefing materials, and OIG employee project management actuals which identify time spent on individual projects.

RECORD SOURCE CATEGORIES:

Record subject, OIG supervisors, and other EPA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The following new routine uses apply to this system because the use of the record is necessary for the efficient conduct of government operations. The routine uses are related to and compatible with the original purpose for which the information was collected. General routine uses A, B, C, D E, F, G, H, I, J, and K apply to this system (73 FR 2245). Records may also be disclosed:

1. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that there has been a breach of the system of records, (2) the Agency has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Agency (including its information systems, programs, and operations), the Federal Government, or national security, and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

2. To another Federal agency or Federal entity, when the Agency determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

In accordance with OIG Records Management Policy, computer records are maintained in a secure, password protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Audits in the Assignments and Project Management Actuals Modules of the Inspector General Enterprise Management System (IGEMS) are retrieved by assignment number, audit report number, the name of the assigned OIG auditor, or the name of the audit requestor.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records stored in this system are subject to EPA Records Schedule 1016, which covers records related to operations and programs of the EPA and its external business partners that ensure compliance with applicable laws and regulations and prevent waste, fraud, and abuse.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Computer records are maintained in a secure, password protected computer system. All records are maintained in secure, access-controlled areas or buildings. The IGEMS Assignment and Project Management Actuals (PMA) Modules are restricted to the staff of EPA OIG. Roles and permissions are based on either position of the employee, project membership or based on approved requests. The modules are found in IGEMS. IGEMS is accessible to EPA OIG employees only. It is an internal database accessible by use of strong passwords, which are renewed on a regular basis, and automated locking of screens after a defined number of minutes are enforced.

RECORD ACCESS PROCEDURES:

Persons seeking access to their own personal information in this system of records will be required to provide adequate identification (*e.g.,* driver's license, military identification card, employee badge or identification card). Additional identity verification procedures may be required as warranted. Requests must meet the requirements of EPA regulations at 40 CFR part 16.

CONTESTING RECORD PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are set out in EPA's Privacy Act regulations at 40 CFR part 16.

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to you must be sent to the Agency's Privacy Officer at: U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW (2831T) Washington, DC 20460; (202) 566–1668; Email: (*privacy@epa.gov*); Attn: Privacy Officer.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

76 FR 42706—Amend an existing system of records by changing the name of the system from the Inspector General Operations & Reporting (IGOR) System Audit, Assignment, and Timesheet Files (EPA–42) to the Inspector General Enterprise Management System (IGEMS) Audit, Assignment, and Timesheet Modules.

66 FR 49950—Established the Inspector General's Operation and Reporting (IGOR) System Audit, Assignment and Timesheet Files. The system is maintained by the EPA Office of Inspector General (OIG). Its purpose is to assist the OIG in planning audits, investigations, and other operations of the OIG; monitoring OIG performance of its activities; and reporting results.

Dated: February 3, 2020.

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2020–05912 Filed 4–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0035; FRL–10006–36]

Pyridate; Receipt of Applications for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Oregon and Washington State Departments of Agriculture, Office of the Indiana State Chemist and the Michigan Department of Agriculture and Rural Development for the use of pyridate (CAS No. 55512–33–9) for postemergence control of herbicide-resistant weeds such as redroot pigweed and other broadleaf weeds to treat up to 5,200 acres of mint (peppermint and spearmint) in Oregon, 16,000 in Washington, 11,200 acres in Indiana, and 1,250 acres in Michigan. The applicants propose the use of a pesticide that was voluntarily canceled in 2004 and is now considered to be unregistered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This notice is consistent with the requirements for an unregistered chemical. EPA is soliciting public comment before making the decision whether to grant these exemptions.

DATES: Comments must be received on or before April 23, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2020–0035, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Director Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the agency taking?

Under section 18 of the FIFRA (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Oregon Department of Agriculture (ODA), Washington State Department of Agriculture (WSDA), Office of the Indiana State Chemist (OISC) and the Michigan Department of Agriculture and Rural Development (MDARD) have requested the EPA Administrator to issue specific exemptions for the use of pyridate on mint for postemergence control of herbicide-resistant weeds such as redroot pigweed and other broadleaf weeds.

Information in accordance with 40 CFR part 166 was submitted as part of these requests. The applicants' submissions, which provide an explanation of the critical need for the emergency exemptions, as well as the proposed use pattern can be found in their section 18 emergency exemption application requests at *http://www.regulations.gov,* under the docket number EPA–HQ–OPP–2020–0035.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing FIFRA section 18 require publication of a notice of receipt for the specific exemption requests submitted by ODA, WSDA, OISC and MDARD because they propose the use of pyridate, which was voluntarily canceled in 2004 and is now unregistered under the FIFRA.

A PRIA section 3 application for this chemical and use is currently under review. This notice provides an opportunity for public comment on these applications. The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by ODA, WSDA, OISC, and MDARD as well as any subsequent specific exemption applications submitted by other state lead agencies.

Authority: 7 U.S.C. 136 *et seq.*

Dated: March 20, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2020–07318 Filed 4–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2018–0774; FRL–10007–87–OMS]

Information Collection Request Submittal to OMB for Review and Approval; Comment Request; Evaluating End User Satisfaction of EPA's Research Products (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Evaluating End User Satisfaction of EPA's Research Products (EPA ICR Number 2593.01, OMB Control Number 2080–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a new request. Public comments were previously requested via the **Federal Register** on September 13, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given in this notice, including the ICR's estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 8, 2020.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–ORD–2018–0774, to (1) EPA online using *www.regulations.gov* (EPA's preferred method), by email to *ow-docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Sean Paul, U.S. Environmental Protection Agency, Office of Program Accountability and Resource Management, Office of Research and Development, Mail Code 41182, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–7099; fax number: (202) 565–2910; email address: *paul.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The purpose of this information collection is to survey stakeholders currently using the EPA's Office of Research and Development's (ORD) scientific research products to increase transparency and public participation, and to ascertain the quality, usability, and timeliness of the research products. ORD will collect these data to inform the annual end of year performance reporting to the Office of Management and Budget (OMB) that will be published each year in the Annual Performance Report (APR), which is part of the President's Budget Request and mandated under the Government Performance and Results Act (GPRA). The survey results will be used to estimate the degree to which ORD research products meet customer needs and will enable the improvement of the development and delivery of products. Some of the information reported on the form is confidential, which will be withheld from the public pursuant to Section 107(1) of the Ethics in Government Act of 1978. Participation is voluntary.

Form numbers: None.

Respondents/affected entities: Life, physical and social science professionals.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 250 (total).

Frequency of response: Annually.

Total estimated burden: 83 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $4,785 (per year) which includes $0 annualized capital or O&M costs.

Changes in estimates: The new burden in this ICR survey of individuals currently using ORD's products, which is part of a new framework to evaluate ORD's scientific research products.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–07329 Filed 4–7–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; National Practitioner Data Bank Attestation of Reports by Hospitals, Medical Malpractice Payers, Health Plans, Health Centers, and Other Eligible Entities, OMB No. 0906–0028 Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this Notice has closed.

DATES: Comments on this ICR should be received no later than May 8, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: National Practitioner Data Bank Attestation of Reports by Hospitals, Medical Malpractice Payers, Health Plans, Health Centers, and Other Eligible Entities, OMB No. 0906–0028—Revision.

Abstract: The National Practitioner Data Bank (NPDB) proposes to continue collecting data from entities, such as hospitals, medical malpractice payers, health plans, and health centers that are subject to NPDB reporting requirements during registration renewal.[1] This will allow the NPDB to continue to assist these entities in understanding and meeting their reporting requirements.

NPDB plans to expand its population of focus to include other eligible entities,[2] including ambulatory surgery centers, group medical practices, skilled nursing facilities, mental health centers, and other registered entities. Beyond attesting to meeting NPDB reporting requirements, entities will also attest to querying and confidentiality compliance.

NPDB began operation on September 1, 1990. The statutory authorities establishing and governing the NPDB are Title IV of Public Law (Pub. L.) 99–660, the Health Care Quality Improvement Act of 1986, as amended, Section 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93, codified as Section 1921 of the Social Security Act, and Section 221(a) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191, codified as Section 1128E of the Social Security Act. Final regulations governing the NPDB are codified at 45 CFR part 60. Responsibility of the NPDB implementation and operation resides in the Bureau of Health Workforce, HRSA, HHS.

NPDB acts primarily as a flagging system; its principal purpose is to facilitate comprehensive review of practitioners' professional credentials and background. Information on medical malpractice payments, health-related civil judgments, adverse licensure actions, adverse clinical privileging actions, adverse professional society actions, and Medicare/Medicaid exclusions is collected from, and disseminated to, eligible entities such as licensing boards, hospitals, and other health care entities. It is intended that NPDB information should be considered with other relevant information in evaluating a practitioner's credentials.

NPDB outlines specific reporting requirements for hospitals, medical malpractice payers, health plans, health centers and other eligible entities; per 45 CFR part 60. These reporting requirements are further explained in Chapter E of the NPDB e-Guidebook, which can be found at *http://www.npdb.hrsa.gov/resources/aboutGuidebooks.jsp.*

Through a process called Attestation, hospitals, medical malpractice payers, health plans, health centers, and other eligible entities are required to attest that they understand and have met their responsibility to submit all required reports, queries, and maintain confidentiality adherence with NPDB compliance. The Attestation process is completely automated through the secure NPDB system (*http://www.npdb.hrsa.gov*), using both secure email messaging and system notifications to alert entities registered with the NPDB of their responsibility to attest. All entities with reporting requirements and querying access to the NPDB must register with the NPDB before gaining access to the secure NPDB system for all reporting and querying transactions.

The secure NPDB system currently used by hospitals, medical malpractice payers, health plans, health centers, and other entities to conduct reporting and querying will not undergo any changes, ensuring that these entities are familiar with the interface needed to complete the Attestation process. NPDB asks these entities to attest to their reporting, querying, and confidentiality

[1] Unless otherwise noted, the term ''health centers'' refers to health centers whose access and reporting obligations are addressed in the NPDB statutory and regulatory requirements for health care entities. In this document, ''health center'' refers to organizations that receive grants under the HRSA Health Center Program as authorized under section 330 of the Public Health Service Act, as amended (referred to as ''grantees'') and FQHC Look-Alike organizations, which meet all the Health Center Program requirements but do not receive Health Center Program grants. It does not refer to FQHCs that are sponsored by tribal or Urban Indian Health Organizations, except for those that receive Health Center Program grants.

[2] ''Other eligible entities'' that participate in the NPDB are defined in the provisions of Title IV, Section 1921, Section 1128E, and implementing regulations. In addition, a few federal agencies also participate with the NPDB through federal memorandums of understanding. Eligible entities are responsible for complying with all reporting and/or querying requirements that apply; some entities may qualify as more than one type of eligible entity. Each eligible entity must certify its eligibility in order to report to the NPDB, query the NPDB, or both. Information from the NPDB is available only to those entities specified as eligible in the statutes and regulations. Not all entities have the same reporting requirements or level of query access.

compliance every two years. If the organization is responsible for privileging or credentialing individuals who provide services for other sites, those sites are included in the Attestation process.

Users of the NPDB include reporters (entities that are required to submit reports) and queriers (entities that are authorized to request for information). Data collected through the Attestation process informs the NPDB operations and facilitate the structuring of compliance efforts in a manner that is the most effective. The Attestation process will also serve as a catalyst to collect meaningful data about reporting entities which can later be transformed into actionable information and serve as a platform for future initiatives. The Attestation forms collect the following information: Information regarding sub-sites and entity relationships; contact information for the Attesting official; and a statement attesting whether the organization adhered to all reporting, querying, and confidentiality requirements.

A 60-day notice published in the **Federal Register** on December 19, 2019, vol. 84, No. 244; pp. 69751–69753. There were no public comments.

Need and Proposed Use of the Information: The NPDB engages in compliance activities to ensure the accuracy and completeness of the information in the NPDB. Through the Attestation process, the NPDB can better determine which, hospitals, medical malpractice payers, health plans, health centers and other eligible entities, are meeting the reporting, querying, and confidentiality requirements, and which of these entities may require additional outreach and assistance. The biennial Attestation process strengthens the robustness of the data in the NPDB, improving the accuracy of the query responses for entities with access to NPDB reports.

Below is a summary of the proposed revisions:

1. Add Query and Confidentiality language to the instruments. Beyond attesting to meeting NPDB reporting requirements, entities will also attest to querying and confidentiality compliance.

2. Change Title of ICR.

Current Title: National Practitioner Data Bank Attestation of Reports by Hospitals, Medical Malpractice Payers, Health Plans, and Certain Other Health Care Entities

Proposed New Title: National Practitioner Data Bank Attestation of Reports by Hospitals, Medical Malpractice Payers, Health Plans, Health Centers, and Other Eligible Entities

3. Add NPDB Guidebook definition for Eligible Entities in footnote.

4. Discontinue use of the Generic Form. Currently Hospitals, Medical Malpractice Payers, and Health Plans use the Generic Form to attest. This revision includes making each attestation form specific to entity type based on reporting/querying requirements.

5. Revise attestation question so that all entities will receive the same question.

A. Current question for health centers

Has your organization reported all adverse actions taken from Month DD, YYYY to Month DD, YYYY affecting the clinical privileges of a physician or dentist as defined above?

- Yes, all required reports are submitted
- No, some required reports have not been submitted

If ''no'', why not? ________

B. Current question for hospitals, health plans, medical malpractice payers

Has your organization submitted all reports, as required by law, from <MM DD,YYYY>, to <MM DD, YYYY>?

- Yes, all required reports are submitted
- No, some required reports have not been submitted

If ''no'', why not? ________

C. New question for all registered entities

Has your organization complied with all NPDB regulatory requirements as outlined above?

- Yes
- No

If ''no'', why not?____

Likely Respondents: Hospitals, Medical Malpractice Payers, Health Plans, Health Centers, and Other Eligible Entities.

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 burden hours [3]
Authorized Agent Attestation	350	1	350	1	350
Health Center Attestation	650	1	650	1	650
Hospital Attestation	3,250	1	3,250	1	3,250
Medical Malpractice, Peer Review Organization, or Private Accreditation Organization Attestation	250	1	250	1	250
Other Eligible Entity Attestation: • Agencies administering federal programs, including contract entities. • Federal law enforcement officials and agencies (including DEA, HHS OIG, and federal prosecutors). • Federal licensing or certification agencies. • Health Plans. • Other health care entities with formal peer review. • Other Health care service providers. • Professional Societies with formal peer review.	7,100	1	7,100	1	7,100

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours [3]
• State agencies administering or supervising state programs. • State law or fraud enforcement agencies (including Medicaid fraud control units & state prosecutors).					
Total	11,600		11,600		11,600

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–07331 Filed 4–7–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Neuropathic Pain Mechanisms.

Date: April 16, 2020.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John Bishop, Ph.D. Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.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. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 3, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07405 Filed 4–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID 2020 Omnibus BAA (HHS–NIH–NIAID–BAA2020–1) Research Area 002: Advanced Development of Vaccine Candidates for Acute Flaccid Myelitis (AFM) Associated with Enterovirus D68.

Date: April 16, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41B, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Zhuqing (Charlie) Li, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41B, Bethesda, MD 20892–9823, (240) 669–5068, *zhuqing.li@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. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 1, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07327 Filed 4–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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.

[3] There are approximately 700 authorized agents; 1,300 health centers; 6,500 hospitals; 500 medical malpractice payers, peer review organizations, and private accreditation organizations; and 14,200 other eligible entities, for an estimated total of 23,200 registered entities currently in attestation or scheduled for attestation with the NPDB. However, the reporting entities may include multiple sites that are registered independently in the system, thereby increasing the total number of respondents. Given that entities will only be required to complete attestation biennially, these estimates are divided in half for the annualized burden hours.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning Grant (R34) and Implementation Cooperative Agreement (U01).

Date: April 30, 2020.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Mohammed S. Aiyegbo, Ph.D., Scientific Review Officer, AIDS Research Review Branch, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70, Rockville, MD 20852, 301–761–7106 *mohammed.aiyegbo@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 2, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07408 Filed 4–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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/or contract proposals 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 Child Health and Human Development Special Emphasis Panel; Senator Paul D. Wellstone Muscular Dystrophy Specialized Research Centers Review.

Date: April 24, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2121D, Bethesda, MD 20892.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Room 2121D, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: April 2, 2020.

Ronald J. Livingston, Jr.,

Program Analyst,Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07328 Filed 4–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council for Complementary and Integrative Health, Closed Session, June 05, 2020, 08:30 a.m. to 9:45 a.m. and Open Session, June 05, 2020, 10:00 a.m. to 04:00 p.m., National Institute of General Medical Sciences, Natcher Bldg., E1/E2, 45 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on January 22, 2020, 85 FR 14, page 3707.

This notice is being amended to change the time for the Closed Session to June 05, 2020, 08:30 a.m. to 10:00 a.m. and the time for the Open Session to June 05, 2020, 10:15 a.m. to 03:30 p.m., and to change the meeting location from the NIH Natcher Bldg., Bethesda, MD to a virtual meeting. The home page for the National Center for Complementary and Integrative Health is: *https://nccih.nih.gov/about/naccih,* where an agenda, NIH Videocast service, and any additional information for the meeting will be posted when available. Any member of the public may submit written comments no later than 15 days after the meeting. The meeting is partially closed to the public.

Dated: April 2, 2020.

Ronald J. Livingston, Jr.,

Program Analyst,Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07326 Filed 4–7–20; 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 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK IBDGC Ancillary Studies.

Date: May 28, 2020.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.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: April 3, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07413 Filed 4–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Women's Health Initiative Renewal.

Date: April 30, 2020.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIH RKL 1, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Bethesda, MD 20892, 301–827–7987, *susan.sunnarborg@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 3, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07407 Filed 4–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Muscular Dystrophy Coordinating Committee (MDCC).

The meeting will be open to the public. Individuals who plan to participate and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Muscular Dystrophy Coordinating Committee.

Date: June 8, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: The purpose of this meeting is to bring together committee members, representing government agencies, patient advocacy groups, other voluntary health organizations, and patients and their families to update one another on progress relevant to the Action Plan for the Muscular Dystrophies and to coordinate activities and discuss gaps and opportunities leading to better understanding of the muscular dystrophies, advances in treatments, and improvements in patients' and their families' lives. Prior to the meeting, an agenda will be posted to the MDCC meeting registration website: *https://meetings.ninds.nih.gov/meetings/MDCC2020*.

Registration: To register, please go to: *https://meetings.ninds.nih.gov/Home/Registration/26698*.

Webcast Live: https://nih.webex.com/nih/onstage/g.php?MTID=e1c2d0bed65aa419911386eaa2ea2bb42.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Glen Nuckolls, Ph.D., Program Director, NINDS/NIH, Neuroscience Center, 6001 Executive Blvd., Rm 2203, Bethesda, MD 20892, 301–496–5876, *nuckollg@ninds.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

More information can be found on the Muscular Dystrophy Coordinating Committee home page: *https://mdcc.nih.gov/*.

Dated: April 2, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07414 Filed 4–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: May 13, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergies and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Sandip Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergies and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42, Rockville, MD 20852, *sandip.bhattacharyya@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 2, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07409 Filed 4–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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/or contract proposals 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 Child Health and Human Development Initial Review Group; Pediatrics Subcommittee.

Date: June 4, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Child Health and Human Development, 6710B Rockledge Drive, Rm. 2125C, Bethesda, MD 20892–7002 (Telephone Conference Call).

Contact Person: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch (SRB), DER, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS 6710B Rockledge Drive, Rm 2125C, Bethesda, MD 20892–7002, 301–435–6916 *kielbj@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development, Initial Review Group; Reproduction, Andrology, and Gynecology Subcommittee.

Date: June 19, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Child Health and Human Development, 6710B Rockledge Drive, Rm. 2125B, Bethesda, MD 20892–7002 (internet Assisted and Telephone Conference Call).

Contact Person: Derek J. McLean, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Rm. 2125B, Bethesda, MD 20892–7002, (301) 443–5082, *derek.mclean@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: April 3, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07410 Filed 4–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Member Conflict: Mitochondrial Function and Neurodegeneration.

Date: April 23, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; R15: Cardiovascular and Respiratory Sciences.

Date: May 8, 2020.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Xiang-Ning Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 2, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07325 Filed 4–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering NIBIB National Advisory Council 05/20/2020.

Date: May 20, 2020.

Open: 12:00 p.m. to 2:30 p.m.

Agenda: Report from the Institute Director and other Institute Staff.

Place: National Institutes of Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Closed: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David T. George, Ph.D., Associate Director for Research Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 920, Bethesda, MD 20892, (301) 496–9474, *georged@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm,* where an agenda and any additional information for the meeting will be posted when available.

Dated: April 3, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–07406 Filed 4–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2003–14610]

Exemption From Renewal of the Hazardous Materials Endorsement Security Threat Assessment for Certain Individuals

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice; temporary exemption.

SUMMARY: TSA is granting a temporary exemption from requirements in 49 CFR part 1572 regarding expiration of TSA security threat assessments (STAs) for Hazardous Material Endorsement (HME)

holders. For the duration of this exemption, a State may grant an extension of up to 180 days for an HME that expired or would otherwise expire between March 1, 2020 and the end date of this exemption, even if the individual was unable to initiate or complete the required STA before the expiration date. If the state grants an extension, the individual with an expired HME must initiate the process of renewing his or her STA for an HME no later than 60 days before the end of the State-granted extension. TSA may extend this exemption at a future date depending on the status of the COVID–19 crisis.

DATES: This exemption becomes effective on April 2, 2020, and remains in effect through July 31, 2020, unless otherwise modified by TSA through a notice published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephanie Hamilton, 571–227–2851 or *HME.question@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 11, 2020, the World Health Organization declared the SARS-CoV–2 virus and Coronavirus Disease 2019 (COVID–19) to be a global pandemic. On March 13, 2020, the President declared a National Emergency.[1]

The USA PATRIOT Act of 2001 requires individuals who seek to transport hazardous materials via commercial motor vehicle to undergo an STA conducted by TSA.[2] As required by TSA's implementing regulations in 49 CFR part 1572, the STA for an HME consists of criminal, immigration, and security threat checks.

Under 49 CFR 1572.13(a), no State may issue or renew an HME for an individual's commercial driver's license (CDL), unless the State first receives a Determination of No Security Threat for the individual from TSA following a TSA-conducted STA. An individual seeking renewal of an HME must initiate an STA at least 60 days before expiration of his or her current HME.[3] The process of initiating an STA requires the individual to submit information either to the State licensing agency or a TSA enrollment center, including fingerprints and the information required by 49 CFR 1572.9,[4] at least 60 days before the expiration of the HME.[5]

It may be impracticable for some commercial drivers to renew their STAs during the current COVID–19 crisis. Measures to prevent the spread of COVID–19 may affect the ability of commercial drivers to present themselves in-person to a State licensing agency location or TSA enrollment center for the collection of fingerprints and applicant information. Without the new STA, TSA's regulations prevent States from renewing or extending the expiration of the individual's State-issued HME.[6]

Authority and Determination

TSA may grant an exemption from a regulation if TSA determines that the exemption is in the public interest.[7] TSA has determined that it is in the public interest to grant an exemption from certain process requirements in 49 CFR part 1572 related to STAs for HMEs, given the need for commercial drivers with an HME to continue to work without interruption during the current COVID–19 crisis. This action would not compromise the current level of transportation security resulting from the HME requirements because TSA maintains the ability to conduct recurrent security threat checks on HME holders and take action to revoke an HME if derogatory information becomes available, regardless of expiration date. TSA will use data previously submitted by these individuals with expired or expiring HMEs, to conduct recurrent vetting against terrorism watch lists and databases to ensure that these individuals continue to meet TSA requirements for having an HME.

This exemption permits States to extend the expiration date for an HME for up to 180 days for individuals with an HME that expires between March 1, 2020, and the end date of this exemption (eligible individuals), even if the individual did not initiate or complete submission of required information for an STA at least 60 days before expiration of the HME.[8] Consistent with the requirements in 49 CFR 1572.13(b), if the State grants an extension to an individual, the State must, if practicable, notify the individual that the State is extending the expiration date of the HME, the date that the extension will end, and the individual's responsibility to initiate the STA renewal process at least 60 days before the end of the extension. If it is not practicable for a State to give individualized notice, the State may publish general notice, for example, on the appropriate website. TSA assumes that the length of this exemption provides adequate time for States to make these notifications after resumption of some or all of their licensing operations.

The purpose of this exemption is to allow States to provide commercial drivers with up to four months of relief from actions necessary to meet TSA's STA renewal requirements during the COVID–19 crisis, and also allow for the 60 days TSA needs to complete processing of the individual's application for STA renewal once it is submitted. The exemption permits, but does not require, States to extend the expiration date for HMEs.

By permitting States to extend the expiration date of HMEs within the scope of this exemption, TSA better positions States to ensure that CDL holders with HMEs will be able to continue to provide their critical services during this COVID–19 crisis. TSA has determined that there is little or no risk to transportation security associated with the exemption, which is subject to the following conditions:

(1) The extensions will only be available with respect to eligible individuals, ensuring that TSA has relatively current information on the individual based on their last STA (No Determination of Security Threat) and can continue to conduct recurrent-vetting;

(2) The extensions will be for a set, limited time, dependent on the duration and scope of the COVID–19 crisis, and subject to possible modification by TSA before the closure of the effective period; and

(3) TSA will continue to recurrently vet these individuals against Federal terrorism and national security-related watch lists and databases during the period of the extensions and retain its full authority to immediately revoke or suspend an individual's STA (Determination of No Security Threat) and to order a State to revoke an individual's HME.[9]

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[1] *See* Proclamation 9994, *Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak* (Mar. 13, 2020). Published at 85 FR 15337 (Mar. 18, 2020).

[2] Pub. L. 107–56 (Oct. 26, 2001; 115 Stat. 396), § 1012(a)(1), *codified as amended at* 49 U.S.C. 5103a.

[3] 49 CFR 1572.13(b).

[4] 49 CFR 1572.15.

[5] 49 CFR 1572.13(b).

[6] 49 CFR 1572.13(a).

[7] *See* 49 U.S.C. 114(q). The Administrator of TSA delegated this authority to the Executive Assistant Administrator for Operations Security, effective March 26, 2020, during the period of the National Emergency cited *supra,* n. 1.

[8] The exemption remains in effect through August 1, 2020, unless otherwise modified by TSA through a notice published in the **Federal Register**. TSA considered tying the duration of the exemption to the duration of a public health emergency declaration, but believes that 120 days, with the option for further modification as noted above, provides clearer notice to and better certainty for States administering the program.

[9] *See* 49 CFR 1572.5(b) and 1572.13.

Exemption

State Exemption. During the effective period of this exemption, States are exempt from the requirement in 49 CFR 1572.13(a) prohibiting renewal of an eligible individual's HME for a CDL, unless the State receives a new STA (Determination of No Security Threat) from TSA. For the duration of this exemption, a State may extend the expiration date of an eligible individual's HME for a period of no more than 180 days without a new STA. The State must notify each eligible individual that he or she is subject to an STA for renewal of the HME and that he or she must initiate the STA at least 60 days before the extended expiration date of the HME. If it is not practicable for a State to give individualized notice to drivers, the State may publish general notice, for example, on the appropriate website. TSA will continue to recurrently vet these individuals against terrorism and other governmental watch lists and databases and reserves authority under 49 CFR 1572.5(b) and 1572.13 to direct a State to revoke an individual's HME immediately and at any time.

For purposes of this exemption, an *eligible individual* is defined as an individual who held a valid, unexpired HME with an STA (Determination of No Security Threat) on or after March 1, 2020, which HME has expired or would otherwise expire between that date and the close of the effective period of this exemption.

Limits of Exemption: This exemption does not apply to new HMEs nor does it affect any other requirements applicable to obtaining a commercial driver's license under 49 CFR parts 383 and 384.

Dated: April 2, 2020.

Stacey Fitzmaurice,

Executive Assistant Administrator for Operations Support.

[FR Doc. 2020–07340 Filed 4–7–20; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FAC–2020–N005; FXFR131109WFHS0–190–FF09F12000; OMB Control Number 1018–0078]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Injurious Wildlife; Importation Certification for Live Fish and Fish Eggs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service, are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before May 8, 2020.

ADDRESSES: Send written comments on this information collection request to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO1N), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0078 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On October 3, 2019, we published a **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information (84 FR 52892). In that notice, we solicited comments for 60 days, ending on December 2, 2019. We received no comments in response to that notice.

We are again soliciting comments on the information collection request (ICR) that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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.

Abstract: The Lacey Act (Act, 18 U.S.C. 42) prohibits the importation of any animal deemed to be and prescribed by regulation to be injurious to:

- Human beings;
- The interests of agriculture, horticulture, and forestry; or
- Wildlife or the wildlife resources of the United States.

Implementation and enforcement of the Lacy Act is the responsibility of the Department of the Interior. The 50 CFR 16.13 regulations allow for the importation of dead uneviscerated salmonids (family Salmonidae), live salmonids, live fertilized eggs, or gametes of salmonid fish into the United States. To effectively carry out our responsibilities and protect the aquatic resources of the United States, it is necessary to collect information regarding the source, destination, and health status of salmonid fish and their reproductive parts. In order to evaluate import requests that contain this data, it is imperative that the information collected is accurate. Those individuals who provide the fish health data and sign the health certificate must demonstrate professional qualifications, and be approved as Title 50 Certifiers by the Fish and Wildlife Service through an application process.

We use three forms to collect this Title 50 Certifier application information:

(1) FWS Form 3–2273 (Title 50 Certifying Official Form). New applicants and those seeking recertification as a title 50 certifying official provide information so that we can assess their qualifications.

(2) FWS Form 3–2274 (U.S. Title 50 Certification Form). Certifying officials use this form to affirm the health status of the fish or fish reproductive products to be imported.

(3) FWS Form 3–2275 (Title 50 Importation Request Form). We use the information on this form to ensure the safety of the shipment and to track and control importations.

With this submission, we updated FWS Forms 3–2273 and 3–2275 to clarify the information collected. We did not make any updates to Form 3–2274. We also plan to begin publishing, with OMB approval, the results of this information collection for Form 3–2273 on a publically accessible, Service-managed web page to inform importers of Certified Signing Officials by country of origin.

Title of Collection: Injurious Wildlife; Importation Certification for Live Fish and Fish Eggs (50 CFR 16.13).

OMB Control Number: 1018–0078.

Form Numbers: FWS Forms 3–2273, 3–2274, and 3–2275.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Aquatic animal health professionals seeking to be certified title 50 inspectors; certified title 50 inspectors who perform health certifications on live salmonids; and any entity wishing to import live salmonids or salmonid reproductive products into the United States.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Annual number of respondents	Total annual responses	Completion time per response	Total annual burden hours
FWS Form 3–2273 (Title 50 Certifying Official Form):				
Private Sector	9	9	1 hour	9
Government	7	7	1 hour	7
FWS Form 3–2274 (U.S. Title 50 Health Certification Form):				
Private Sector	10	20	30 minutes	10
Government	15	30	30 minutes	15
FWS Form 3–2275 (Title 50 Importation Request Form):				
Private Sector	10	20	15 minutes	5
Government	15	30	15 minutes	8
Totals	66	116		54

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: April 3, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–07382 Filed 4–7–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2020–N060; FXES11130800000–201–FF08E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before May 8, 2020.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TE–XXXXXX; see the table in **SUPPLEMENTARY INFORMATION**).

- *Email: permitsr8es@fws.gov.*
- *U.S. Mail:* Robert Krijgsman, Endangered Species Program Manager, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Robert Krijgsman, via phone at 760–431–9440, via email at *permitsr8es@fws.gov,* or via the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
TE–20513C	Katherine McLean, Concord, California.	• California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segments (DPSs)) (*Ambystoma californiense*).	CA	Survey, capture, handle, and release.	Amend.
TE–48170A	Lisa Herrera, Santa Maria, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • Vernal pool tadpole shrimp (*Lepidurus packardi*).	CA	Survey, capture, handle, release, and collect vouchers.	Renew and amend.
TE–70823D	Karla Flores, Fullerton, California.	• San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*).	CA	Capture, handle, and release.	Renew.
TE–98574C	River Design Group, Inc., Corvallis, Oregon.	• Lost River sucker (*Deltistes luxatus*) • Shortnose sucker (*Chasmistes brevirostris*)	CA, OR	Capture, electrofish, and release.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Angela Picco,

Acting Chief of Ecological Services, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2020–07365 Filed 4–7–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–ES–2020–N006; FF07CAMM00–178–FXES111607MRG01; OMB Control Number 1018–0070]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Incidental Take of Marine Mammals During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 8, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO/1N), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0070 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On November 7, 2019, we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, ending on January 6, 2020 (84 FR 60107). We received the following comments in response to that **Federal Register** notice:

Comment 1: Comment from Jean Public, received via email on November 7, 2019. The commenter stated she was against killing polar bears but did not address the information collection requirements outlined in the notice.

Agency Response to Comment 1: No action required.

Comment 2: Comment from Peter O. Thomas, Ph.D., Executive Director, the Marine Mammal Commission (Commission), received via email on January 3, 2020. The Commission believes the information collection is necessary and appropriate, and agrees the burden on respondents is reasonable.

The Commission encouraged the Service to direct applicants and letter of authorization (LOA) holders to submit information and reports, including marine mammal observational data sheets and raw sightings data, in electronic format. The Commission also encouraged the Service to make applications, LOAs, and reports submitted in compliance with section 101(a)(5) of the Marine Mammal Protection Act (MMPA) and its implementing regulations at 50 CFR part 18 available to the public in a timely manner on its website.

Agency Response to Comment 2: The Service currently provides for the electronic submission of information and reports and accepts such electronic information from applicants and LOA holders. We also allow for the submission of such information in paper format because electronic communications can, occasionally, be challenging in remote areas of Alaska. The Service also endeavors to provide information to the public on at least an annual basis both on its website and through **Federal Register** notices.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be 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.

Abstract: This information collection includes requirements associated with specified oil and gas industry activities and their incidental taking of polar bears, Pacific walruses, and northern sea otters in Alaska. The Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), imposed, with certain exceptions, a moratorium on the taking of marine mammals. Section 101(a)(5)(A) of the MMPA directs the Secretary of the Interior to allow, upon request by citizens of the United States, the taking of small numbers of marine mammals incidental to specified activities (other than commercial fishing) if the Secretary makes certain findings and prescribes specific regulations that, among other things, establish permissible methods of taking.

Applicants seeking to conduct activities must request a Letter of Authorization (LOA) for the specific activity and submit on-site monitoring reports and a final report of the activity to the Secretary. This is a nonform collection. Respondents must comply with the regulations at 50 CFR 18.27, which outline the procedures and requirements for submitting a request. Specific regulations governing authorized incidental take of marine mammals activities are contained in 50 CFR 18, subparts J (Beaufort Sea) and K (Cook Inlet). These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine if it is appropriate to issue specific regulations and, subsequently, LOAs.

We use the information to verify the findings required to issue incidental take regulations, to decide if we should issue an LOA, and (if an LOA is issued) what conditions should be included in the LOA. In addition, we analyze the information to determine impacts to polar bears, Pacific walruses, northern sea otters, and the availability of those marine mammals for subsistence purposes of Alaska Natives.

Title of Collection: Incidental Take of Marine Mammals During Specified Activities, 50 CFR 18.27 and 50 CFR 18, Subparts J and K.

OMB Control Number: 1018–0070.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Oil and gas industry companies.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Type of action	Number of annual respondents	Number of responses each	Total annual responses	Average completion time (hours)	Total annual burden hours
Polar Bear Den Detection Report:					
Private Sector	4	1	4	50	200
Incidental Take of Marine Mammals—Final Monitoring Report:					
Private Sector	20	1.25	25	10	250
Incidental Take of Marine Mammals—Onsite Monitoring and Observation Reports:					
Private Sector	20	15	300	1.5	450
Incidental Take of Marine Mammals—Application for Regulations: [1]					
Private Sector	20	0.1	2	150	300
Incidental Take of Marine Mammals—LOA Requests:					
Private Sector	20	1.25	25	24	600
Total	84		356		1,800

[1] Occurs once every 5 years.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: April 3, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–07385 Filed 4–7–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-30039; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before March 14, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by April 23, 2020.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before March 14, 2020. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers:

CALIFORNIA

Los Angeles County

Lyon, W. Parker, House (Cultural Resources of the Recent Past, City of Pasadena), 280 California Terrace, Pasadena, MP100005212

CONNECTICUT

New Haven County

East Haven High School, 200 Tyler St., East Haven, SG100005190

KENTUCKY

Muhlenberg County

Green, Professor William, House, 105 Paradise St., Greenville, SG100005194

MONTANA

Lewis and Clark County

Silver City Cemetery, Approximately 12 miles north-northwest of Helena, MT, Silver City vicinity, SG100005209

NORTH CAROLINA

Alamance County

Granite-Cora-Holt Mills Historic District, 122, 180, 218, 222, 224, and 226 East Main St.; 100, 102, 104, 106, 108, and 290 Cone Dr.; 115, 121, and 205 Stone St., Haw River, SG100005195

Chatham County

Bynum Bridge, Old Bynum Road, connecting SR 1871 and SR 1713 over Haw River, Bynum, SG100005196

Iredell County

Mooresville Historic District (Boundary Increase), (Iredell County MRA), Roughly includes properties fronting West Center Ave. from North Academy St. to Sherrill St.; Charlotte St.; 300 blk. of West McLelland Ave.; and properties fronting South Academy St. from West McLelland Ave. to Wilson St., Mooresville, BC100005197

Reid Memorial Presbyterian Church, 336 North Broad St., Mooresville, SG100005198

Orange County

Cedar Grove School, 5800 NC 86 North, Cedar Grove vicinity, SG100005201

Schley Grange Hall, 3416 Schley Rd., Schley vicinity, SG100005203

OHIO

Cuyahoga County

Stadium Square Historic District, South Taylor Rd., Superior Park Dr., Cleveland Heights, SG100005214

Logan County

Downtown Bellefontaine Historic District, Roughly bounded by Elm St., Sandusky Ave., Madriver St., and Auburn Ave., Bellefontaine, SG100005213

PENNSYLVANIA

Franklin County

Waynesboro Historic District, Main St. corridor between Franklin St., and Clayton Ave., and Clayton Ave. between Main St. and 5th St., including adjacent blocks and cross streets, Waynesboro, SG100005205

Lancaster County

Swarr, John and Elizabeth, House, 3000 Crossings Blvd., Manheim Township, SG100005207

Washington County

Washington Commercial Historic District, Roughly bounded by Spruce Ave., Park Ave., Shaffer Ave., Bownson Ave., and Franklin St., Washington, SG100005206

WYOMING

Uinta County

Black and Orange Cabins (Motor Courts and Motels in Wyoming, 1913–1975 MPS), 37000 Business Rte. I 80, Fort Bridger, MP100005191

Additional documentation has been received for the following resources:

KENTUCKY

Jefferson County

Cherokee Triangle Area Residential District (Additional Documentation), Roughly bounded by Bardstown Rd., Sherwood Rd., Broadway, east to jct. of Grinstead Dr. and Cherokee Pkwy., Louisville, AD76000902

Castleman, John B., Monument (Additional Documentation), (Civil War Monuments of Kentucky MPS), Jct. of Cherokee Rd. and Willow Ave., Louisville, AD97000690

NORTH CAROLINA

Iredell County

Mitchell College Historic District (Additional Documentation II), (Iredell County MRA), NC 90 and U.S. 70, Statesville, AD80002875

New Hanover County

Masonboro Sound Historic District (Additional Documentation), East side Magnolia Dr. and 7301–7601, 7424 and 7506 Masonboro Sound Rd., Wilmington vicinity, AD92001334

Wake County

Longview Gardens Historic District (Additional Documentation), Bounded roughly by King Charles Rd., Poole Rd., Donald Ross Dr., Albemarle Ave., Longview Lake Dr., and New Bern Ave., Raleigh, AD10001113

OHIO

Cuyahoga County

East Boulevard Historic District (Additional Documentation), Roughly bounded by East Blvd., St. Clair Ave., East 99th St. and University Cir., Cleveland, AD95001366

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

CALIFORNIA

Alameda County

Livermore Veterans Administration Hospital, Building 62 (United States Third Generation Veterans Hospitals, 1946–1958 MPS), 4951 Arroyo Rd., Livermore Division Campus, Livermore, MP100005208

Authority: Section 60.13 of 36 CFR part 60.

Dated: March 16, 2020.

Julie H. Ernstein,

Supervisory Archeologist, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2020–07351 Filed 4–7–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–618–619 and 731–TA–1441–1442 (Final)]

Carbon and Alloy Steel Threaded Rod From China and India; 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 carbon and alloy steel threaded rod (''threaded rod'') from China and India, provided for in subheadings 7318.15.50, 7318.15.20, and 7318.19.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''),[2] and to be subsidized by the governments of China and India.[3]

Background

The Commission, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), instituted these investigations effective February 21, 2019, following receipt of petitions regarding imports of threaded rod from China, India, Taiwan, and Thailand filed with the Commission and Commerce by Vulcan Threaded Products Inc. (''Vulcan''), Pelham, Alabama. The Commission established a general schedule for the conduct of the final phase of the investigations following notification of a preliminary determination by Commerce that imports of threaded rod from Thailand were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 27, 2019 (84 FR 44916). The hearing was held in Washington, DC, on October 15, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission subsequently issued its final affirmative determination regarding dumped imports from Thailand on December 5, 2019 (84 FR 67476, December 10, 2019).

Following notification of a final determination by Commerce that imports of threaded rod from Taiwan were being sold in the United States at LTFV,[4] notice of the supplemental scheduling of the final phase of the Commission's antidumping duty investigation with respect to Taiwan was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 16, 2019 (84 FR 68473). The Commission subsequently issued its final affirmative determination regarding dumped imports from Taiwan on January 23, 2020 (85 FR 5237, January 29, 2020).

Following notification of a final determination by Commerce that imports of threaded rod from China and India were being sold in the United States at LTFV [5] and subsidized by the governments of China and India,[6] notice of the supplemental scheduling of the final phase of the Commission's antidumping and countervailing duty investigations with respect to China and India was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 26, 2020 (85 FR 11101).

The Commission made these determinations with respect to imports from China and India 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 April 3, 2020. The views of the Commission are contained in USITC Publication 5040 (April 2020), entitled *Carbon and Alloy Steel Threaded Rod from China and India: Investigation Nos. 701–TA–618–619 and 731–TA–1441–1442 (Final).*

By order of the Commission.

Issued: April 3, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–07404 Filed 4–7–20; 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)).

[2] 85 FR 8818 and 85 FR 8821 (February 18, 2020).

[3] 85 FR 8828 and 85 FR 8833 (February 18, 2020).

[4] 84 FR 67258 (December 9, 2019).

[5] 85 FR 8818 and 85 FR 8821 (February 18, 2020).

[6] 85 FR 8828 and 85 FR 8833 (February 18, 2020).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1143]

Certain Pickup Truck Folding Bed Cover Systems and Components Thereof; Commission Issuance of Limited Exclusion Order Against Infringing Products of Respondent Found in Default; Issuance of Cease and Desist Order Against Defaulting Respondent; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order (''LEO'') against infringing products from Ningbo Huadian Cross Country Automobile Accessories Co., Ltd. (''Ningbo'') of Ningbo, China and a cease and desist order (''CDO'') against Ningbo. The investigation is terminated.

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 February 15, 2019, based on a complaint filed on behalf of Extang Corporation and Laurmark Enterprises, Inc. d/b/a BAK Industries (collectively, ''Complainants''), both of Ann Arbor, Michigan. 84 FR 4534–35 (Feb. 15, 2019). The complaint alleges violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''Section 337''), based upon the importation into the United States, sale for importation, and the sale within the United States after importation of certain pickup truck folding bed cover systems and components thereof by reason of infringement of certain claims of U.S. Patent Nos. D620,877; 7,188,888 (''the '888 patent''); 7,484,788; 8,061,758; 8,182,021 (''the '021 patent''); and 8,690,224; and U.S. Trademark Registration Nos. 5,104,393 (''the '393 trademark'') and 3,904,016 (''the '016 trademark''). The Commission's notice of investigation names eleven respondents: Ningbo; DT Trading Inc. of Alhambra, California; JL Concepts Inc. and Stehlen Automotive, both of Walnut, California; Wenzhou Kouvi Hardware Products Co., Ltd. of Zhejiang Province, China; SyneticUSA of Pico Rivera, California; Topline Autoparts, Inc. and Velocity Concepts Inc., both of Hacienda Heights, California; Apex Auto Parts Mfg. Inc. and Syppo Marketing, Inc., both of City of Industry, California; and Sunwood Industries Co., Ltd. (''Sunwood'') of Jiangsu, China. The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. The Commission previously found Ningbo in default. Order No. 23 (May 3, 2019), *unreviewed by* Comm'n Notice (May 29, 2019). Apart from Ningbo, all of the respondents were terminated from the investigation via consent orders. *See* Order Nos. 13–19 (Apr. 12, 2019), *unreviewed by* Comm'n Notice (May 8, 2019); Order Nos. 20–21 (Apr. 26, 2019), *unreviewed by* Comm'n Notice (May 15, 2019); Order No. 27 (July 3, 2019), *unreviewed by* Comm'n Notice (July 29, 2019).

On March 12, 2019, Complainants filed a motion, pursuant to Commission Rule 210.16 (19 CFR 210.16), requesting: (1) An order directing, *inter alia,* Ningbo to show cause why it should not be found in default for failure to respond to the complaint and notice of investigation as required by Commission Rule 210.13 (19 CFR 210.13); and (2) the issuance of an initial determination (''ID'') finding, *inter alia,* Ningbo in default upon its failure to show cause. On March 19, 2019, the presiding administrative law judge (''ALJ'') issued Order No. 9 which required, *inter alia,* Ningbo to show cause no later than April 1, 2019, as to why it should not be held in default and have judgment rendered against it pursuant to Commission Rule 210.16 (19 CFR 210.16). No response was received from Ningbo to the motion or show cause order.

The ALJ issued an ID (Order No. 23) on May 3, 2019, finding Ningbo in default, pursuant to Commission Rule 210.16 (19 CFR 210.16), because it did not respond to the complaint, notice of investigation, and Order No. 9. Subsequently, the ALJ issued Order No. 27, which entered a consent order with respect to Sunwood. Order No. 27 also terminated the investigation before the ALJ because Sunwood was the last participating respondent. The Commission determined not to review Order No. 27 and requested written submissions on the issues of remedy, the public interest, and bonding. 84 FR 37673–74 (August 1, 2019).

Complainants and OUII submitted briefing responsive to the Commission's request on August 12, 2019, and OUII submitted a reply brief on August 19, 2019. Complainants and OUII both argued that the Commission should issue an LEO directed to Ningbo's infringing products and a CDO directed to Ningbo.

Having reviewed the record in the investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined to issue relief directed solely to the defaulting respondent, Ningbo, pursuant to Section 337(g)(1), 19 U.S.C. 1337(g)(1). The Commission finds that the statutory requirements of Section 337(g)(1)(A)–(E) (19 U.S.C. 1337(g)(1)(A)–(E)) are met with respect to the defaulting respondent. Pursuant to Section 337(g)(1) and Commission Rule 210.16(c) (19 CFR 210.16(c)), the Commission presumes the facts alleged in the complaint to be true. Based on the record in this investigation and the written submissions from the parties, the Commission has determined to issue an LEO directed to the defaulting respondent prohibiting the unlicensed entry of folding cover assemblies for pickup truck cargo boxes and components thereof that infringe one or more of claim 11 of the '888 patent, claim 18 of the '021 patent, the '393 trademark, and the '016 trademark, and that are manufactured abroad by or on behalf of, or imported by or on behalf of Ningbo, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission has also determined to issue a CDO prohibiting Ningbo from conducting any of the following activities in the United States: Importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for folding cover assemblies for pickup truck cargo boxes and components thereof that infringe one or more of claim 11 of the '888 patent, claim 18 of the '021 patent, the '393 trademark, and the '016 trademark. *See Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same,* Inv. No. 337–TA–959, Comm'n Op. (Feb. 13, 2017) (public version) (including Chairman Schmidtlein's Separate Views on issuing cease and desist orders governed by Section 337(g)(1)).

The Commission has further determined that the public interest factors enumerated in Section 337(g)(1) (19 U.S.C. 1337(g)(1)) do not preclude issuance of the LEO or CDO. Finally, the Commission has determined that a bond in the amount of 100 percent of the entered value of the covered products is required during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission has terminated this 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: October 23, 2019.

Lisa Barton,

Secretary to the Commission.

Editorial note: This document was received for publication by the Office of the Federal Register on April 2, 2020.

[FR Doc. 2020–07336 Filed 4–7–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1189]

Certain Dissolving Microneedle Patches for Cosmetic and Pharmaceutical Use; Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Withdrawal of the Complaint; 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 determined not to review the Administrative Law Judge's (''ALJ'') initial determination (''ID'') (Order No. 7) terminating the investigation in its entirety based on withdrawal of the complaint. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: On January 15, 2020, the Commission instituted this investigation based on a complaint, as supplemented and amended, filed on behalf of TheraJect, Inc. of Fremont, California. 85 FR 2439–40 (Jan. 15, 2020). The amended complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain dissolving microneedle patches for cosmetic and pharmaceutical use by reason of infringement of one or more of claims of U.S. Patent No. 6,945,952. *Id.* The amended complaint also alleges that a domestic industry is in the process of being established. The Commission's notice of investigation names one respondent, Raphas Co., Ltd. of Seoul, South Korea. *Id.* The Office of Unfair Import Investigations is also named as a party in this investigation. *Id.*

On March 9, 2020, the complainant filed an unopposed motion to terminate the investigation in its entirety.

On March 18, 2020, the ALJ issued the subject ID (Order No. 7) pursuant to 19 CFR 210.21(a)(1), granting Complainant's motion. ID at 1. The ID finds that the motion for termination of this investigation complies with the Commission's rules. *Id.* at 1–2. The ID further finds that there are no extraordinary circumstances that warrant denying the motion. *Id.* at 2. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID. The investigation is terminated.

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: April 3, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–07366 Filed 4–7–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Atomic Energy Act and Comprehensive Environmental Response, Compensation and Liability Act

On April 1, 2020, the Department of Justice lodged a proposed Settlement Agreement between the United States, on behalf of the Nuclear Regulatory Commission (''NRC'') and the Environmental Protection Agency (''EPA''), the Oklahoma Department of Environmental Quality (''ODEQ''), Fansteel, Inc. (''Debtor'' or ''Fansteel''), and FMRI, Inc. with the United States Bankruptcy Court for the District of Iowa in the case entitled *In re Fansteel, Inc.,* Case No. 16–01823–als11 (Bankr. S.D. Iowa).

The United States, on behalf of the NRC, filed a protective proof of claim on January 17, 2017, in this bankruptcy action, which, *inter alia,* asserted that Fansteel is liable to the United States to comply with Sections 62, 63, and 161 of the Atomic Energy Act, 42 U.S.C. 2092, 2093, 2201, applicable regulations under 10 CFR parts 20 and 40, 10 CFR 40.36, NRC license SMB–911, and the Amended Decommissioning Plan for the Muskogee Property, the facility owned by Debtor and operated by FMRI, a wholly owned subsidiary of the Debtor, and to perform the decommissioning and remediation of that Property.

Under the Settlement Agreement: (1) The Debtor will transfer Parcel D of the Muskogee property to FMRI; (2) FMRI will use funds received from the Decommissioning Trust under the Amended Decommissioning Plan, from the Plan Administrator under Fansteel's Plan of Reorganization, or from other sources for activities necessary to maintain health and safety, fulfill obligations mandated by the NRC License and Amended Decommissioning Plan, or conduct response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'), 42 U.S.C. 9601–9675, or the Oklahoma Environmental Quality Code 27A, Oklahoma Statutes § 2–1–101 *et seq.,* at the Muskogee Property; (3) the Debtor will transfer any and all causes of action the Debtor may have against potentially responsible parties at the Muskogee Property under CERCLA and Oklahoma law to FMRI; (4) the Debtor and the ''Environmental Authorities'' (NRC, EPA, and ODEQ) will allocate between them as provided in the Settlement Agreement any Net Proceeds received from the sale of Parcel B, any settlement reached with the Port of Muskogee regarding environmental liability for the Muskogee Property, and any other Net Proceeds received; (5) the Environmental Authorities will receive one hundred percent (100%) of any net insurance proceeds for losses related to environmental liabilities with respect to the Muskogee Property; and (6) the Environmental Authorities and FMRI will share on a fifty/fifty percent (50%/50%) basis as provided in the Settlement Agreement the proceeds from any settlement or adjudication of the third party environmental claims transferred from the Debtor to FMRI.

The publication of this notice opens a period for public comment on the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re Fansteel, Inc.,* Case No. 16–01823 als–11 (Bankr. S.D. Iowa) and DJ #90–10–07797/2. All comments must be submitted no later than fifteen (15) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the proposed Settlement Agreement may be examined and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–07324 Filed 4–7–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration Proposed Disposal and Reuse of Excess Property; Joliet Job Corps Center, Joliet, IL

ACTION: Final finding of no significant impact, Joliet Job Corps Center proposed disposal and reuse of excess property, located at 1101 Mills Road, Joliet, Illinois.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, ETA, gives final notice of the proposed disposal and reuse of a 25-acre area of excess property at the Joliet Job Corps Center, and that this project will not have a significant adverse impact on the environment.

DATES: These findings are applicable as of April 8, 2020.

ADDRESSES: For further information contact Delilah LumHo, Department of Labor, 200 Constitution Avenue NW, Room N–4460, Washington, DC 20210; Telephone (202) 693–8010 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: A public notice of availability of the draft environmental assessment (EA) was published in the Herald-News serving Joliet and Will County, Illinois, on December 3, 2019. The review period extended for 15 days, ending on December 18, 2019. No public comments were received. No changes to the findings of the EA have been made.

Implementation of the proposed action alternative will not have significant impacts on the human environment. The determination is sustained by the analysis in the EA, agency consultation, the inclusion and consideration of public review, and the capability of mitigations to reduce or avoid impacts. Any adverse environmental effects that could occur are no more than moderate in intensity, duration, and context and less-than-significant. As described in the EA, there are no highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence. There are no previous, planned, or implemented actions, which, in combination with the proposed action alternative, would have significant effects on the human environment. Requirements of NEPA have been satisfied, and preparation of an Environmental Impact Statement is not required.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–07114 Filed 4–7–20; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Final Finding of No Significant Impact, Roswell Job Corps Center Proposed Disposal and Reuse of Excess Property, Located at 57 G Street, Roswell, New Mexico

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration Pursuant to the Council on Environmental Quality Regulations implementing procedural provisions of the National Environmental Policy Act (NEPA), gives final notice of the proposed disposal and reuse of a 13.6-acre area of excess property at the Roswell Job Corps Center, and that this project will not have a significant adverse impact on the environment.

DATES: These findings are applicable as of April 8, 2020.

ADDRESSES: For further information contact Delilah LumHo, Department of Labor, 200 Constitution Avenue NW, Room N–4460, Washington, DC 20210; Telephone (202) 693–8010 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: A public notice of availability of the draft environmental assessment (EA) was published in the Roswell Daily Record in Roswell, New Mexico, on December 3, 2019. The review period extended for 15 days, ending on December 18, 2019. No public comments were received. No changes to the findings of the EA has been made.

Implementation of the proposed action alternative will not have significant impacts on the human environment. The determination is sustained by the analysis in the EA, agency, and Native American tribal consultation, the inclusion and consideration of public review, and the capability of mitigations to reduce or avoid impacts. Any adverse environmental effects that could occur are no more than minor in intensity, duration and context and less-than-significant. As described in the EA, there are no highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence. There are no previous, planned, or implemented actions, which, in combination with the proposed action alternative, would have significant effects on the human environment. Requirements of NEPA have been satisfied, and preparation of an Environmental Impact Statement is not required.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–07113 Filed 4–7–20; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request; Employer's First Report of Injury or Occupational Disease (LS–202), Employer's Supplementary Report of Accident or Occupational Illness (LS–210)

AGENCY: Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information

collection request (ICR) titled, ''Employer's First Report of Injury or Occupational Disease (LS–202), Employer's Supplementary Report of Accident or Occupational Illness (LS–210)''. 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 June 8, 2020.

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 for free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; or by email at *suggs.anjanette@dol.gov.* Please note that comments submitted after the comment period will not be considered.

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program 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 OMB for final approval. This program 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.

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States and adjoining area customarily used by an employee in loading, unloading, repairing, or building a vessel. The LS–202 is used by employers initially to report injuries that have occurred which are covered under the Longshore Act and its related statutes. The LS–210 is used to report additional periods of lost time from work.

Legal authority for this information collection is found at 33 U.S.C. 930(a) and (b).

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 the OMB under the PRA approves it 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. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB No. 1240–0003.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The 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-Office of Workers' Compensation Programs, DLHWC.

Type of Review: Revision of currently approved collection.

Title of Collection: Employer's First Report of Injury or Occupational Disease (LS–202), Employer's Supplementary Report of Accident or Occupational Illness (LS–210).

Form: LS–202, LS–210.

OMB Control Number: 1240–0003.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 24,631.

Frequency: On occasion.

Total Estimated Annual Responses: 24,631.

Estimated Average Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 6,158 hours.

Total Estimated Annual Other Cost Burden: $7,143.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2020–07358 Filed 4–7–20; 8:45 am]

BILLING CODE 4510–CF–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2020–032]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed extension request.

SUMMARY: NARA proposes to request an extension from the Office of Management and Budget (OMB) of approval to use three information collections. The first is prepared by organizations that want to make paper-to-paper copies of archival holdings with their personal copiers at the National Archives at the College Park facility. The second is used to advise requesters of the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law, and the information to be provided so that records may be identified. The third information collection is used by veterans, dependents, and other authorized individuals to request information from or copies of documents in military personnel, military medical, and dependent medical records. We invite you to comment on this proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: We must receive written comments on or before June 8, 2020.

ADDRESSES: Send comments by email to *tamee.fechhelm@nara.gov,* by mail to

Paperwork Reduction Act Comments (MP), Room 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, or by fax to 301.837.7409.

FOR FURTHER INFORMATION CONTACT: Tamee Fechhelm, by telephone at 301.837.1694 or by fax at 301.837.7409, with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for NARA to properly perform its functions; (b) our estimates of the burden of the proposed information collections and their accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether these collections affect small businesses. We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record. In this notice, we solicit comments concerning the following information collections:

1. *Title:* Request to use personal paper-to-paper copiers at the National Archives at College Park facility.

OMB number: 3095–0035.

Agency form number: None.

Type of review: Regular.

Affected public: Business or other for-profit.

Estimated number of respondents: 5.

Estimated time per response: 3 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 15 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.86. Respondents are organizations that want to make paper-to-paper copies of archival holdings with their personal copiers. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.86 and to schedule the limited space available.

2. *Title:* Court Order Requirements.

OMB number: 3095–0038.

Agency form number: NA Form 13027.

Type of review: Regular.

Affected public: Veterans and former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 5,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,250 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT), the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel. The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that we may identify the records.

3. *Title:* Authorization for Release of Military Medical Patient Records; Request for Information Needed to Locate Medical Records; Request for Information Needed to Reconstruct Medical Data; Questionnaire about Military Service; and Check the Status of a Clinical & Medical Treatment Records Request.

OMB number: 3095–0039.

Agency form numbers: NA Forms 13036, 13042, 13055, 13075, and 13177.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 79,800.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when a respondent wishes to request information from a military personnel, military medical, or dependent medical record).

Estimated total annual burden hours: 6,650 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NRPC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals' requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA.

Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record. For those who have already made a request, and want to check the status, they can use NA Form 13177, Check the Status of a Clinical & Medical Treatment Records Request.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2020–07372 Filed 4–7–20; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2020–031]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA has submitted to OMB for approval the information collections described in this notice. We invite you to comment on them.

DATES: OMB must receive written comments on or before May 8, 2020.

ADDRESSES: Send written comments and recommendations for the proposed information collection to *www.reginfo.gov/public/do/PRAMain* by May 8, 2020. You can find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Tamee Fechhelm, by telephone at 301.837.1694 or by fax at 301.837.7409, with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on October 10, 2019 (85 FR 54646) and we received no comments. We have therefore submitted the described information collection to OMB for approval.

You should address one or more of the following points in any comments or suggestions you submit: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether the collection affects small businesses.

In this notice, we solicit comments concerning the following information collection:

Title: Limited Facility Report.

OMB number: 3095–0073.

Agency form number: NA Form 16016.

Type of review: Regular.

Affected public: Not-for-profit institutions.

Estimated number of respondents: 75.

Estimated time per response: 60 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 75 hours.

Abstract: NARA administers the National Archives Traveling Exhibits Services (NATES) in accordance with 44 U.S.C. 2108–9 to present exhibitions of our holdings and to enter into agreements under 44 U.S.C. 2305 for the support of such exhibitions.

Requesters use NA Form 16016, Limited Facility Report, to apply for an exhibit and to identify a venue's facility and environmental conditions. We provide the form, requirements for exhibition security, and regulations to the applicant. We need the information contained on this form to determine whether the proposed facility meets the criteria under NARA Directive 1612, Exhibition Loans and Traveling Exhibitions, so we can assess the holdings being requested for the exhibit and ensure the requested exhibition will not harm them.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2020–07371 Filed 4–7–20; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Geosciences (1755).

Date and Time: May 7, 2020; 1:00 p.m.–2:00 p.m. EDT.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Meeting Access: Connection information will be made available on the AC GEO website at least two weeks prior to the meeting at: (*https://www.nsf.gov/geo/advisory.jsp*).

Type of Meeting: Open.

Contact Person: Melissa Lane, National Science Foundation, Room C 8000, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight on support for geoscience research and education including atmospheric, geo-space, earth, ocean and polar sciences.

Agenda

Thursday, May 7, 2020

- Review of Charter for an AC GEO Subcommittee on the Division of Earth Sciences Geophysical Facility Portfolio Review

Dated: April 2, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–07317 Filed 4–7–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4; Removal of the Preoperational Passive Residual Heat Removal Heat Exchanger Natural Circulation Test

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 177 and 176 to Combined Licenses (COLs), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively SNC); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia. The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on March 19, 2020.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was designated License Amendment Request (LAR) 19–017 and submitted by letter dated September 6, 2019, and supplemented by letter dated January 31, 2020 (ADAMS Accession Nos. ML19249C738 and ML20031E665, respectively).

FOR FURTHER INFORMATION CONTACT: Donald Habib, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1035; email: *Donald.Habib@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing License Amendment Nos. 177 and 176 to COLs NPF–91 and NPF–92, respectively, and is granting an exemption from Tier 1 information in the plant-specific DCD for the AP1000. The AP1000 DCD is incorporated by reference in Appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR). The exemption, granted pursuant to paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' of 10 CFR part 52, appendix D, allows the licensee to depart from the Tier 1 information. With the requested amendment, SNC sought proposed changes to remove the preoperational passive residual heat removal (PRHR) heat exchanger natural circulation test from the scope of the VEGP Units 3 and 4 Initial Test Program (ITP). The proposed changes would revise licensing basis documents, including the Updated Final Safety Analyses Report (UFSAR) Subsections 1.9.4.2.1, 3.9.1.1.1.17, 6.3.6.1.2, and 14.2.9.1.3. In addition, COL Appendix C (and plant-specific Tier 1) Inspections, Tests, Analyses and Acceptance Criteria (ITAAC) 2.2.03.08b.01 (No. 175) would be revised to replace the PRHR heat exchanger natural circulation test with the PRHR heat exchanger forced flow test, which is described in UFSAR Subsection 14.2.9.1.3.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML20063L482.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to SNC for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML20045F061 and ML20045F070, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML20045F082 and ML20045F124, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated September 6, 2019, as supplemented by letter dated January 31, 2020, Southern Nuclear Operating Company (SNC) requested from the Nuclear Regulatory Commission (NRC or Commission) an exemption to allow departures from Tier 1 information in the certified Design Control Document (DCD) incorporated by reference in 10 CFR part 52, appendix D, ''Design Certification Rule for the AP1000 Design,'' as part of license amendment request (LAR) 19–017, ''Removal of the Preoperational Passive Residual Heat Removal Heat Exchanger Natural Circulation Test.''

For the reasons set forth in Section 3.2 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML20063L482, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, SNC is granted an exemption from the certified DCD Tier 1 information, with corresponding information in COL Appendix C of the Facility Combined License as described in the licensee's request dated September 6, 2019, as supplemented by letter dated January 31, 2020. This exemption is related to, and necessary for the granting of License Amendment No. 177 [for Unit 3, 176 for Unit 4] which is being issued concurrently with this exemption.

3. As explained in Section 6.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML20063L482), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated September 6, 2019, as supplemented by letter dated January 31, 2020 (ADAMS Accession Nos. ML19249C738 and ML20031E665, respectively), SNC requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on February 11, 2020 (85 FR 7796). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that SNC requested on September 6, 2019 and January 31, 2020.

The exemption and amendment were issued on March 19, 2020, as part of a combined package to SNC (ADAMS Accession No. ML20045F029).

Dated: April 3, 2020.

For the Nuclear Regulatory Commission.

Victor E. Hall,

Chief, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–07380 Filed 4–7–20; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88546; File No. SR–NYSE–2020–28]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Commentary .03 to Rule 7.35A To Provide That, for a Temporary Period, the Exchange Would Permit a DMM Limited Entry To the Trading Floor To Effect Manually a Core Open Auction in Connection With a Listed Company's Post-IPO Public Offering

April 2, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 2, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .03 to Rule 7.35A to provide that, for a temporary period that begins April 2, 2020, and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange would permit a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering. 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 add Commentary .03 to Rule 7.35A to provide that, for a temporary period that begins April 2, 2020, and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange would permit a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering.

Background

Since March 9, 2020, markets worldwide have been experiencing unprecedented market-wide declines and volatility because of the ongoing spread of COVID–19. Beginning on March 16, 2020, to slow the spread of COVID–19 through social-distancing measures, significant limitations were placed on large gatherings throughout the country.

On March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.[4] Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

On March 26, 2020, the Exchange amended Rule 7.35A to add Commentary .02,[5] which provides:

> For a temporary period that begins on March 26, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange will permit a DMM limited entry to the Trading Floor to effect an IPO Auction manually. For such an IPO Auction, the Exchange will disseminate the following Auction Imbalance Information provided by the DMM via Trader Update: The Imbalance Reference Price; the Paired Quantity; the Unpaired Quantity; and the Side of the Unpaired Quantity. The Exchange will publish such Trader Update(s) promptly after each publication by the DMM of a pre-opening indication for such security. The Trader Update will also include the pre-opening indication range.

As described in the Rule 7.35A Filing, the Exchange added this Commentary because, while the Trading Floor is temporarily closed, Designated Market Makers (''DMMs'') cannot engage in any manual actions, such as facilitating an Auction manually or publishing pre-opening indications before a Core Open or Trading Halt Auction. Commentary .02 to Rule 7.35A permits entry to the Trading Floor to a single employee from the DMM member organization assigned to such security so that this DMM can access the Floor-based systems used to effect an Auction manually, and specifies the information that would be included in a Trader Update in advance of such IPO Auction.

On March 27, 2020, the Exchange effected an IPO Auction pursuant to Commentary .02 to Rule 7.35A.

[4] The Exchange's current rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. *See* Press Release, dated March 18, 2020, available here: *https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110.*

[5] *See* Securities Exchange Act Release No. 88488 (March 26, 2020) (SR–NYSE–2020–23), 85 FR 18286 (April 1, 2020) (Notice of filing and immediate effectiveness of proposed rule change) (''Rule 7.35A Filing'').

Proposed Rule Change

The Exchange proposes to add Commentary .03 to Rule 7.35A to permit a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering, for a temporary period that begins April 2, 2020, and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020.

As proposed, during this temporary period, the Exchange would permit a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering. Such Core Open Auction would be effected in a manner similar to how an IPO Auction would be conducted under Commentary .02 to Rule 7.35A: A Floor Governor would be present on the Trading Floor to approve the publication of pre-opening indications [6] and Exchange staff would be in communication with the lead underwriter and would convey to the DMM information that the underwriter would normally convey to the DMM via a Floor broker, such as when the underwriter has entered all interest for such auction.

Unlike an IPO Auction, this type of Core Open Auction is eligible to be effected electronically by a DMM. In addition, the Exchange publishes Auction Imbalance Information in advance of a Core Open Auction for a post-IPO public offering. However, similar to IPO Auctions, when the Trading Floor is open, DMMs generally facilitate a post-IPO public offering manually so that information about the pricing of an Auction can be communicated from an underwriter to the DMM via a Floor broker. This information is helpful for the DMM to determine when to facilitate such Core Open Auction and at what price. By contrast, if a DMM were to facilitate such Core Open Auctions electronically, the DMM would not be able to take this information into account when pricing the Auction, and the DMM would not have any flexibility with respect to the timing of such Core Open Auctions. Accordingly, for reasons similar to those set forth in the Rule 7.35A Filing regarding providing limited access to the Trading Floor for IPO Auctions to be effected manually, the Exchange believes it would promote fair and orderly markets to provide a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering for the temporary period during which the Trading Floor is closed.

To effect these changes, the Exchange proposes to add Commentary .03 to Rule 7.35A, which would provide as follows:

> For a temporary period that begins on April 2, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange will permit a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering.

On April 1, 2020, the CEO of the Exchange determined pursuant to Rule 7.1(c) that, for the period while the Trading Floor is temporarily closed as a precautionary measure to prevent the spread of COVID–19, the Trading Floor will be partially reopened on trading days when a Core Open Auction is scheduled in connection with a listed company's post-IPO public offering, to allow a DMM on the Trading Floor for the limited purpose of effecting such Core Open Auctions manually. During this temporary reopening, the Trading Floor will not be open to Floor brokers or for the DMM to perform any functions other than effecting the Core Open Auction manually. Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

The Exchange would be able to implement the proposed rule change immediately upon effectiveness of this proposed rule change.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

As a result of uncertainty related to the ongoing spread of COVID–19, the U.S. equities markets are experiencing unprecedented market volatility. In addition, social-distancing measures have been implemented throughout the country, including in New York City, to reduce the spread of COVID–19. Directly related to such social-distancing measures, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote fair and orderly Core Open Auctions in connection with a listed company's post-IPO public offering. The Exchange believes that it would promote fair and orderly markets to provide the DMM with mechanisms to facilitate such Core Open Auctions manually because it would provide flexibility for the DMM to consider information from the underwriter when determining when to conduct the Core Open Auction and at what price.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of the reopening of the Trading Floor facilities or the close of the Exchange on May 15, 2020, market participants will have advance notice that a Core Open Auction in connection with a post-IPO public offering may be effected manually by the DMM during this period, and therefore may not be conducted at 9:30 a.m.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to ensure fair and orderly Core Open Auctions in connection with a post-IPO public offering by providing a DMM with limited entry to the Trading Floor to effect such Core Open Auction manually during a temporary period when the Exchange Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID–19 virus.

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.

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[6] *See* Rule 7.35A(d)(4)(A) (''Publication of a pre-opening indication requires the supervision and approval of a Floor Governor.'') The Exchange will arrange for a qualified ICE employee that has been designated as a Floor Governor to perform this function. *See* Rule 46(b)(v).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately.

During the temporary period when the Exchange's Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID–19 virus time, the Exchange has proposed to provide a DMM with limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering. The Exchange contends that this proposed rule change would promote fair and orderly markets because it would provide flexibility for the DMM to consider information from the underwriter when determining when to conduct the Core Open Auction and at what price. The Exchange also asserts that, by clearly stating that this relief will be in effect through the earlier of the reopening of the Trading Floor facilities or the close of the Exchange on May 15, 2020, market participants will have advance notice that a Core Open Auction in connection with a post-IPO public offering may be effected manually by the DMM during this period, and therefore may not be conducted at 9:30 a.m. In addition, the Exchange represents that a post-IPO public offering in an Exchange-listed security has been priced to proceed for the Core Open Auction on April 2, 2020, and that the Exchange is able to implement this proposed rule change immediately. The Commission notes that the proposed rule change provides the DMM with limited entry to effect manually Core Open Auctions in connection with post-IPO public offerings, which is similar to what is currently provided for DMMs effecting IPO Auctions under Commentary .02 of NYSE Rule 7.35A. The Commission also notes that the proposed rule change would provide DMMs the ability to consider information from the underwriter when determining when to conduct the Core Open Auction and at what price, and would inform market participants on how and when a Core Open Auction in connection with a post-IPO public offering may be effected manually by the DMM during this period. Moreover, the Commission notes that the proposal is a temporary measure designed to respond to current, unprecedented market conditions. Finally, the Commission notes that waiving the 30-day operative would allow the Exchange to implement the proposed rule change immediately, and thereby enable it to enact the proposed procedures for the post-IPO public offering in an Exchange-listed security that has been priced to proceed for the Core Open Auction on April 2, 2020. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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–NYSE–2020–28 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–NYSE–2020–28. 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–NYSE–2020–28, and should be submitted on or before April 29, 2020.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived that requirement for this proposed rule change.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07335 Filed 4–7–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88545; File No. SR–ICC–2020–004]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC CDS Instrument On-Boarding Policies and Procedures

April 2, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4,[2] notice is hereby given that on March 30, 2020, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change, security-based swap submission, or advance notice as described in Items I, II and III below, which Items have been prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to update and formalize the ICC CDS Instrument On-boarding Policies and Procedures (''Instrument On-boarding Policy''). These revisions do not require any changes to the ICC Clearing Rules (the ''Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

(a) Purpose

ICC proposes to update and formalize the Instrument On-boarding Policy. ICC believes such changes will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to formalize the Instrument On-boarding Policy following Commission approval of the proposed rule change. The proposed rule change is described in detail as follows.

The Instrument On-boarding Policy provides an overview of ICC's on-boarding process for new instruments, which includes selecting new instruments for clearing, configuring internal systems, notifying and receiving feedback from stakeholders, and ensuring operational readiness by ICC and its Clearing Participants (''CPs''). Specifically, the on-boarding process includes the following components that are described in detail in the document: instrument selection, on-boarding governance, operational setup, risk evaluation, pricing evaluation, and dress rehearsal.

The Instrument On-boarding Policy contains procedures for instrument selection. The document memorializes the guiding principles that ICC maintains for considering instruments for clearing, which contemplate various factors such as instrument open interest and volume, whether instruments can be cleared through existing systems and processes, and industry wide initiatives and protocols. Additionally, the document details how ICC identifies an initial universe of proposed instruments and applies the guiding principles to this universe, including the analysis performed by ICC to identify the specific list of instruments that meet the guiding principles from such universe of proposed instruments.

Further, the Instrument On-boarding Policy documents the governance process that follows the determination that the proposed instruments meet ICC's guiding principles. The Instrument On-boarding Policy sets forth the roles and responsibilities of various stakeholders as part of the on-boarding governance process, including the role of the ICC Legal Department in determining appropriate governance actions and the role of relevant committees and working groups in reviewing certain analyses. Moreover, proposed instruments are classified into four categories: (1) A new instrument that falls under a previously approved instrument type, such as a previously approved CDS corporate single name instrument type (*e.g.,* North American Corporate Single Names) or a previously approved CDS sovereign single name instrument type (*e.g.,* Emerging Market Sovereign Single Names); (2) a new instrument that falls under a new instrument type that is not considered in the ICC Rules; (3) a new instrument that falls under a new product category (*e.g.,* CDS on indices and CDS on single names) that is not considered in the ICC Rules; and (4) a new instrument that falls out of scope of the standard on-boarding process, relating to, for example, index roll dates and credit events. For each category, the Instrument On-boarding Policy explains the governance process, including notification to and review and approval by relevant stakeholders such as the Board, committees and working groups, and regulators.

The Instrument On-boarding Policy illustrates the operational configuration necessary to allow ICC's clearing, risk management and pricing systems to evaluate and accept transactions, process and net transactions in the proposed instruments and price the proposed instruments. For this operational setup, the document notes a particular product attribute that must be defined, specific lists or documents that are maintained, and certain information that is loaded into ICC's databases and risk systems.

Regarding risk and pricing evaluation, ICC ensures that its risk models adequately capture the risks associated with the new instruments and that the price dynamics of the new instruments are appropriately captured by the end-of-day price discovery process. The Instrument On-boarding Policy describes the performance of back-testing and stress-testing to demonstrate that the risks associated with the proposed instruments are appropriately accounted for by ICC's risk models and that Initial Margin and Guaranty Fund requirements will provide adequate protection to ICC and its CPs. For the pricing evaluation, the Instrument On-boarding Policy further discusses how ICC ensures that its end-of-day price discovery process operates effectively with the proposed instruments.

Before launch, ICC performs a dress rehearsal, lasting at least two weeks,

[16] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

during which the end-of-day price discovery process is executed each business day. During the dress rehearsal, ICC collects price submissions and fine tunes pricing parameters, if required. Once ICC has successfully completed the steps in the on-boarding process and received any required regulatory approvals, the Instrument On-boarding Policy allows ICC to deem an instrument eligible for clearing.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; in general, to protect investors and the public interest; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F) [4], because the proposed rule change enhances ICC's ability to manage the risk to ICC of new instruments by describing the on-boarding process in detail, including the steps to take prior to clearing new instruments, and by documenting the roles and responsibilities of relevant stakeholders, such as the Board, committees and working groups, and ICC personnel. As discussed above, the Instrument On-boarding Policy details the components of the on-boarding process, such as instrument selection, on-boarding governance, operational setup, risk and pricing evaluation, and dress rehearsal. ICC believes that the formalization of this document augments ICC's ability to assess and manage the risk to ICC of new instruments and avoid disruptions to operations, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and the protection of investors and the public interest. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.[5]

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad–22.[6] Rule 17Ad–22(b)(3) [7] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. The Instrument On-boarding Policy describes the guiding principles that ICC maintains to ensure that it selects instruments in a prudent manner, considering various factors such as instrument open interest and volume, whether instruments can be cleared through existing systems and processes, and industry wide initiatives and protocols. The document also illustrates the risk and pricing evaluation components of the on-boarding process whereby ICC ensures that its risk models adequately capture the risks associated with new instruments and that the price dynamics of new instruments are appropriately captured by the end–of-day price discovery process. As such, ICC believes that the Instrument On-boarding Policy enhances its ability to manage and assess the risk to ICC of new instruments and avoid disruptions to operations, thereby ensuring that ICC continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3).[8]

Rule 17Ad–22(d)(4) [9] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to, in relevant part, identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures and implement systems that are reliable, resilient and secure, and have adequate scalable capacity. The Instrument On-boarding Policy discusses the sequence and timing for the introduction of new instruments to ensure that ICC and its CPs are operationally ready and that ICC proceeds in a controlled manner to minimize operational risk. Moreover, the document details the testing and preparation that ICC must complete prior to the launch of new instruments for clearing, such as the dress rehearsal that lasts at least two weeks, during which the end–of-day price discovery process is executed, price submissions are collected, and pricing parameters are fine tuned (if required). ICC believes that such testing and preparation will reduce the likelihood of a disruption in operations from a new instrument and will improve ICC's ability to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures and implement systems that are reliable, resilient and secure, and have adequate scalable capacity, consistent with the requirements of Rule 17Ad–22(d)(4).[10]

Rule 17Ad–22(d)(8) [11] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act [12] applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of ICC's risk management procedures. The Instrument On-boarding Policy describes the roles and responsibilities of relevant stakeholders, such as the Board, relevant committees and working groups, and ICC personnel. Additionally, the governance process documented in the Instrument On-boarding Policy allows for feedback from, and notification to, relevant stakeholders, including CPs and regulators. These governance arrangements are clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of the Board, relevant committees and working groups is clearly documented, and also promote the effectiveness of ICC's risk management procedures by detailing the responsibilities of relevant stakeholders throughout the on-boarding process, consistent with the requirements of Rule 17Ad–22(d)(8).[13]

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] *Id.*

[5] *Id.*

[6] 17 CFR 240.17Ad–22.

[7] 17 CFR 240.17Ad–22(b)(3).

[8] *Id.*

[9] 17 CFR 240.17Ad–22(d)(4).

[10] *Id.*

[11] 17 CFR 240.17Ad–22(d)(8).

[12] 15 U.S.C. 78q–1.

[13] 17 CFR 240.17Ad–22(d)(8).

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed rule change to formalize the Instrument On-boarding Policy will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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, security-based swap submission, or advance notice 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–ICC–2020–004 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2020–004. 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, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2020–004 and should be submitted on or before April 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DesLesDernier,

Assistant Secretary.

[FR Doc. 2020–07334 Filed 4–7–20; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88542; File No. SR–BOX–2020–04]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Amend the Provisions of the Limited Liability Company Agreement and Bylaws To Accommodate the Exchange's Regulation of Multiple Facilities

April 2, 2020.

On February 4, 2020, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the provisions of the Exchange's limited liability company agreement and bylaws to accommodate the Exchange's potential regulation of multiple facilities. The proposed rule change was published for comment in the **Federal Register** on February 25, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 10, 2020.

The Commission hereby is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates May 25, 2020 as the date by which the Commission shall either

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88236 (February 19, 2020), 85 FR 10765.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–BOX–2020–04).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07332 Filed 4–7–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88543; File No. SR–MIAX–2020–06]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Temporarily Extend Certain Filing Requirements

April 2, 2020.

Pursuant to the provisions of 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 March 30, 2020, Miami International Securities Exchange, LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to temporarily extend the filing requirements for certain written reports, currently due April 1, 2020 pursuant to Exchange Rule 1308, Supervision of Accounts, to June 1, 2020.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, 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

Given current market conditions, the Exchange proposes to provide its members temporary relief from filing certain supervision-related reports pursuant to Exchange Rule 1308 (Supervision of Accounts).[3]

In December 2019, COVID–19 began to spread and disrupt company operations and supply chains and impact consumers and investors, resulting in a dramatic slowdown in production and spending.[4] By March 11, 2020, the World Health Organization characterized COVID–19 as a pandemic.[5] To slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses. These measures have affected the U.S. markets.[6] In the United States, Level 1 market wide circuit breaker halts were triggered on March 9, March 12, March 16, and March 18, 2020. While markets have seen significant declines, governments around the world are undertaking efforts to stabilize the economy and assist affected companies and their employees.[7]

Amidst this market uncertainty, the Exchange is seeking to address potential challenges that members may face in timely meeting their obligations to submit to the Exchange annual supervision-related reports under Exchange Rule 1308(g) and (h) (''Supervision Reporting Requirements''), especially in light of unforeseen and uncertain demands on resources required to respond to COVID–19. Exchange Rule 1308(g) requires each Exchange member that conducts a non-member customer business to submit to the Exchange a written report on the member's supervision and compliance effort during the preceding year and on the adequacy of the member's ongoing compliance processes and procedures. Each member that conducts a public customer options business is also required to specifically include its options compliance program in the report.[8] The Exchange Rule 1308(g) report is due on April 1 of each year. Exchange Rule 1308(h) requires that each member submit, by April 1 of each year, a copy of the Rule 1308(g) report to one or more control persons or, if the member has no control person, to the audit committee of its board of directors or its equivalent committee or group.[9]

Accordingly, the Exchange proposes to provide temporary relief for members from the Supervision Reporting Requirements by extending the April 1, 2020 filing deadlines described above to June 1, 2020. The Exchange believes that this temporary relief will permit members to focus on running their businesses and the immediate health crisis caused by the COVID–19 pandemic, including its impact on their employees, customers, and communities.

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that MIAX Rule 1308 is incorporated by reference into the rulebooks of MIAX PEARL, LLC (''PEARL'') and MIAX Emerald, LLC (''Emerald''). As such, the amendments to MIAX Rule 1308 proposed herein will also impact PEARL and Emerald Rules 1308.

[4] *See, e.g.,* Chairman Jay Clayton, Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure (Jan. 30, 2020), available at *https://www.sec.gov/news/publicstatement/clayton-mda-2020-01-30.* (''Yesterday, I asked the staff to monitor and, to the extent necessary or appropriate, provide guidance and other assistance to issuers and other market participants regarding disclosures related to the current and potential effects of the coronavirus. We recognize that such effects may be difficult to assess or predict with meaningful precision both generally and as an industry- or issuer-specific basis. This is an uncertain issue where actual effects will depend on many factors beyond the control and knowledge of issuers.'').

[5] *See* WHO Director-General's Opening Remarks at the Media Briefing on COVID–19 (March 11, 2020), available at *https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarksat-the-media-briefing-on-covid-19-11-march-2020.*

[6] ''Analysts showed that we saw the fastest 'correction' in history (down 10% from a high), occurring in a matter of days. In the last week of February, the Dow fell 12.36% with notional trading of $3.6 trillion.'' *See* Phil Mackintosh, Putting the Recent Volatility in Perspective, available at *https://www.nasdaq.com/articles/putting-the-recent-volatility-in-perspective2020-03-05.*

[7] *See, e.g.,* the list of actions undertaken by the Board of Governors of the Federal Reserve System at *https://www.federalreserve.gov/covid-19.htm. See also* Families First Coronavirus Response Act, Public Law 116–127.

[8] The report shall include, but not be limited to, the information set out in Exchange Rule 1308(g)(1)–(6).

[9] *See* Exchange Rule 1308(h) for the meaning of the term ''control person'' and requirements in the case of a control person that is an organization.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(5) of the Act [11] in particular, in that it is designed to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general to protect investors and the public interest. As a result of uncertainty related to the ongoing spread of the COVID–19 virus, the U.S. exchanges are experiencing unprecedented market volatility. The proposed rule change would allow the Exchange to provide temporary relief for members from the Supervision Reporting Requirements, which currently requires members to provide written reports to the Exchange by April 1, 2020, and extend that deadline to June 1, 2020. The Exchange believes that this temporary relief is necessary and appropriate in the public interest, and consistent with the protection of investors, given the unforeseen and uncertain challenges, including business continuity implementation and market volatility, posed by COVID–19 to members that must comply with the Supervision Reporting Requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to provide temporary relief for all members that are required to comply with the Supervision Reporting Requirements.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission notes that the proposed rule change would allow the Exchange, in light of the COVID–19 pandemic, to provide temporary relief for members by extending the deadline for written reports pursuant to the Supervision Reporting Requirements from April 1, 2020 to June 1, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2020–06 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–MIAX–2020–06. 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–MIAX–2020–06 and should be submitted on or before April 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07333 Filed 4–7–20; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16357 and #16358; SOUTH CAROLINA Disaster Number SC–00068]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of SOUTH CAROLINA (FEMA–4479–DR), dated 03/17/2020.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 02/06/2020 through 02/13/2020.

DATES: Issued on 03/30/2020.

Physical Loan Application Deadline Date: 05/18/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 12/17/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of SOUTH CAROLINA, dated 03/17/2020, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Bamberg, Barnwell, Hampton.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administratorfor Disaster Assistance.

[FR Doc. 2020–07344 Filed 4–7–20; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2019–0056]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Office of Child Support Enforcement (OCSE). OCSE will provide SSA with quarterly wage and unemployment insurance information located in the National Directory of New Hires to allow SSA to determine eligibility of applicants for Extra Help (low-income subsidy assistance) under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. This agreement assists SSA in determining eligibility of applicants for Extra Help; redetermining eligibility of existing Extra Help beneficiaries during periodic screening, and administering the Extra Help program.

DATES: The deadline to submit comments on the proposed matching program is 30 days from the date of publication of this notice in the **Federal Register**. The matching program will be applicable on May 27, 2020, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869, writing to Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* All comments received will be available for public inspection by contacting Mr. Ramsey at this street address.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Andrea Huseth, Supervisory Team Lead, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (410) 965–6868, or send an email to *Andrea.Huseth@ssa.gov.*

SUPPLEMENTARY INFORMATION: None.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies: SSA and OCSE.

Authority for Conducting the Matching Program: The legal authority for disclosures under this agreement are the Social Security Act (Act) and the Privacy Act of 1974, as amended. Subsection 453(j)(4) of the Act provides that OCSE shall provide the Commissioner of SSA with all information in the National Directory of New Hires (NDNH). 42 U.S.C. 653(j)(4). SSA has authority to use data to determine entitlement to and eligibility for programs it administers pursuant to sections 453(j)(4), 1631(e)(1)(B) and (f), and 1860D–14(a)(3) of the Act. 42 U.S.C. 653(j)(4), 1383(e)(1)(B) and (f), and 1395w–114(a)(3). Disclosures under this agreement shall be made in accordance with 5 U.S.C. 552a(b)(3), and in compliance with the matching procedures in 5 U.S.C. 552a(o), (p), and (r).

The Act provides that the determination of whether a Part D eligible individual residing in a state is a subsidy eligible individual shall be determined under the state plan for medical assistance or by the Commissioner of Social Security. 42 U.S.C. 1395w–114(a)(3)(B)(i).

SSA has independent authority to collect this information regarding Medicare Parts A–D eligibility and premium calculations via sections 202–205, 223, 226, 228, 1611, 1631, 1818, 1836, 1839, 1840, and 1860D–1 to 1860D–15 of the Act (42 U.S.C. 402–405, 423, 426, 428, 1382, 1383, 1395i–2, 1395o, 1395r, 1395s, and 1395w–101 to 1395w–115).

Purpose(s): This matching program establishes the conditions under which OCSE will provide SSA with quarterly wage and unemployment insurance information located in the NDNH to allow SSA to determine eligibility of applicants for Extra Help (low-income subsidy assistance) under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173) (Extra Help). This agreement also governs the use, treatment, and safeguarding of the information exchanged. OCSE is the ''source agency'' and SSA is the ''recipient agency,'' as defined by the Privacy Act. 5 U.S.C. 552a(a)(9) and (11).

This agreement assists SSA in (1) determining eligibility of applicants for Extra Help; (2) redetermining eligibility of existing Extra Help beneficiaries during periodic screening, and (3) administering the Extra Help program.

The Privacy Act provides that no record contained in a system of record may be disclosed for use in a computer matching program, except pursuant to a written agreement containing specified provisions. 5 U.S.C. 552a(o). SSA and OCSE are executing this agreement to comply with the Privacy Act and the regulations and guidance promulgated thereunder.

Categories of Individuals: The individuals whose information is involved in this matching program are applicants for Extra Help (low-income subsidy assistance) under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173) (Extra Help).

Categories of Records: SSA's Title XVIII Eligible (T18ELG) table within the Medicare Database File (MDB) contains approximately 90 million records.

The SSA finder file will contain approximately 10,000 records from the MDB each day. Once a month, SSA has an increased volume of approximately 200,000 in one of the daily exchanges. Once a year, the volume will increase by approximately 1.9 million records in the finder file to support the Extra Help process.

The NDNH contains approximately 1.5 billion new hire, quarterly wage, and unemployment insurance records, which represents the most recent 24 months of information. In accordance with section 453(j)(4) of the Act, NDNH information provided to SSA by OCSE will contain all the available data elements from the quarterly wage and unemployment insurance files, if any, pertaining to the individuals whose records are contained in the SSA finder file. 42 U.S.C. 653(j)(4).

Specified Data Elements Used in the Match:

1. SSA will provide OCSE the following data elements electronically in the Finder File:

- COSSN (SSN)
- Name

2. OCSE will provide electronically to SSA the following data elements from the NDNH quarterly wage file:

- Quarterly wage record identifier
- For employees:
  (1) Name (first, middle, last)
  (2) SSN
  (3) Verification request code
  (4) Processed date
  (5) Non-verifiable indicator
  (6) Wage amount
  (7) Reporting period
- For employers of individuals in the quarterly wage file of the NDNH:
  (1) Name
  (2) Employer identification number
  (3) Address(es)
- Transmitter Agency Code
- Transmitter State Code
- State or Agency Name

3. OCSE will provide electronically to SSA the following data elements from the NDNH unemployment insurance file:

- Unemployment insurance record identifier
- Processed date
- SSN
- Verification request code
- Name (first, middle, last)
- Address
- Unemployment insurance benefit amount
- Reporting period
- Transmitter Agency Code
- Transmitter State Code
- State or Agency Name

4. Data Elements SSA updates in the OCSEFITM table, if there is a match:

- Quarterly Wage record identifier
- For employees:
  (1) Employee's SSN
  (2) Employee's wage amount
  (3) Reporting period
- For employers of individuals:
  (1) Employer identification number
  (2) Employer's name
- Unemployment Insurance identifier:
  (1) Claimant SSN
  (2) Unemployment insurance benefit amount
  (3) Reporting period
  (4) Transmitter State Name

System(s) of Records: SSA collects and maintains this information in the Medicare Database (MDB) File system of records, No. 60–0321, published at 69 FR 77816 (December 28, 2004), amended at 71 FR 42159–42164 (July 25, 2006), at 72 FR 69723 (December 10, 2007), and at 83 FR 54969 (November 1, 2018). The MDB contains information related to Medicare Part A, Part B, Medicare Advantage Part C, and Medicare Part D.

OCSE will match SSA information in the MDB against the quarterly wage and unemployment insurance information furnished by state and federal agencies maintained in its system of records ''OCSE National Directory of New Hires'' (NDNH), No. 09–80–0381 was published in the **Federal Register** on April 2, 2015 at 80 FR 17906 and amended at 83 FR 6591 (February 14, 2018). The disclosure of NDNH information by OCSE to SSA constitutes a ''routine use,'' as defined by the Privacy Act. 5 U.S.C. 552a(b)(3). Routine use (9) of the SOR authorizes disclosure of NDNH information to SSA, 80 FR 17906, 17907 (April 2, 2015).

[FR Doc. 2020–07347 Filed 4–7–20; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 874 (Sub-No. 1X)]

Sierra Northern Railway—Abandonment Exemption—in Yolo County, Cal.

On March 19, 2020, Sierra Northern Railway (Sierra) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 for Sierra to abandon approximately 0.70 miles of railroad line extending between approximately milepost 3.10 and approximately milepost 3.80, in Yolo County, Cal. (the Line). The Line traverses U.S. Postal Service Zip Code 95691.

The Line was acquired by Sierra (which was previously known as Yolo Shortline Railroad Company) from Union Pacific Railroad Company in 1992. (Pet., Ex. 8 at 19.) *See Yolo Shortline R.R.—Purchase & Trackage Rights Exemption—Union Pac. R.R.,* FD 32107 (ICC served Aug. 11, 1992). According to Sierra, part of the Line sits atop the Sacramento Weir, which is an essential element in the City of Sacramento's flood control system. (Pet. 1.) [1] Sierra proposes to abandon the Line because the U.S. Army Corps of Engineers and the Sacramento Area Flood Control Agency (SAFCA) are in the process of implementing a flood control improvement project that will require, among other things, removal of the Line so that the current Sacramento Weir can be widened. (Pet. 2–3.) Sierra states that it will convey its property interest in the Line to SAFCA soon after consummating the abandonment, and SAFCA will use that property to implement the flood control project. (*Id.* at 11.) Sierra states that there are currently seven customers that it serves via the Line, three of which receive rail service directly at their facilities in Woodland, Cal., and four of which use Sierra's facilities for car storage or car repair operations. Sierra states that the three customers that receive direct rail service have indicated that they plan to use trucks as an alternative to rail service, while the other customers will carry out their storage and repair operations elsewhere. (*Id.* at 6.)

In addition to an exemption from the provisions of 49 U.S.C. 10903, Sierra also seeks an exemption from the offer of financial assistance (OFA) procedures of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905, and waivers of corresponding regulations, as well as waiver of the interim trail use regulations at 49 CFR 1152.29. In support, Sierra states that the right-of-way for the Line is needed for a valid public purpose, *i.e.,* the flood control project, and there is no overriding need for continued rail service, as all customers have transportation

[1] According to Sierra, the Sacramento Weir is a structure that acts as a flood safety valve, allowing excess flood waters to spill out of the adjacent river system and away from the populated areas of Sacramento and West Sacramento. The Weir also reduces the pressure on the levee system below the Weir. (Pet. 4.)

alternatives. (Pet. 11–12.) According to Sierra, subjecting this abandonment transaction to conditions for offers of financial assistance, public use, or interim trail use would defeat the purpose of this petition. This request will be addressed in the final decision.

According to Sierra, the Line does not contain any federally granted rights-of-way. Any documentation in Sierra's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 7, 2020.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner. Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by April 20, 2020, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(1)(i).

Following authorization for abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for interim trail use/rail banking under 49 CFR 1152.29 will be due no later than April 28, 2020.[2]

All pleadings, referring to Docket No. AB 874 (Sub-No. 1X), must be filed with the Surface Transportation Board either 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 Sierra's representative, Anthony J. LaRocca, Steptoe & Johnson LLP, 1330 Connecticut Ave. NW, Washington, DC 20036. Replies to this petition are due on or before April 28, 2020.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available at *www.stb.gov.*

Decided: April 2, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2020–07330 Filed 4–7–20; 8:45 am]

BILLING CODE 4915–01–P

[2] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–202–0264]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Experimental Permits for Reusable Suborbital Rockets

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The FAA collects information from applicants for experimental permits in order to determine whether they satisfy the requirements for obtaining an experimental permit.

DATES: Written comments should be submitted by June 8, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Charles Huet, 800 Independence Avenue SW, Room 331, Washington, DC 20591.

By fax: 202–267–5463.

FOR FURTHER INFORMATION CONTACT: Charles Huet by email at: *charles.huet@faa.gov* or; phone: (202) 267–7427.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0722.

Title: Experimental Permits for Reusable Suborbital Rockets.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 19, 2017 (82 FR 27949). There were no comments. 14 CFR part 437 established requirements for the FAA's authority to issue experimental permits for reusable suborbital rockets to authorize launches for the purpose of research and development, crew training and showing compliance with the regulations. The information collected includes data required for performing a safety review, which includes a technical assessment to determine if the applicant can launch a reusable suborbital rocket without jeopardizing public health and safety and the safety of property. This information collection requirement is intended for incorporating acquired data into the experimental permit, which then becomes binding on the launch or reentry operator. The applicant is required to submit information that enables FAA to determine, before issuing a permit, if issuance of the experimental permit would jeopardize the foreign policy or national security interests of the U.S.

Respondents: Approximately 10 applicants for experimental permits.

Frequency: On occasion.

Estimated Average Burden per Response: 18.6 Hours.

Estimated Total Annual Burden: 2,567 Hours.

Issued in Washington, DC, on April 3, 2020.

Kelvin B. Coleman,

Deputy Associate Administrator, Office of Commercial Space Transportation.

[FR Doc. 2020–07346 Filed 4–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement

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

ACTION: Notice to Rescind a Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: A Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register** Vol. 78, No. 248, Thursday, December 26, 2013, to advise the public that the FAA would prepare an EIS analyzing the potential environmental impacts of the proposed Shiloh Launch Complex. Space Florida had indicated an intent to submit an application to the FAA to request approval to operate a commercial space launch site, called the ''Shiloh Launch Complex'' in Brevard and Volusia Counties, Florida, triggering the requirement to comply with the National Environmental Policy Act. The FAA is issuing this notice to advise the public that Space Florida is conducting further analysis of the proposed site and the FAA will no longer prepare an EIS for this proposed project, at this time. If Space Florida decides to reinitiate the project, the FAA will release a new Notice of Intent for this project.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey M. Zee, Environmental Protection Specialist, Federal Aviation Administration, 800 Independence Avenue SW, Suite 325, Washington, DC 20591; email *Stacey.Zee@faa.gov,* 202–267–9305.

SUPPLEMENTARY INFORMATION: The FAA in conjunction with the cooperating agencies, U.S. Army Corps of Engineers, National Aeronautics and Space Administration, U.S. Fish and Wildlife Service, and National Park Service will no longer be preparing an EIS for the issuance of a launch site operator license to Space Florida for the operation of the Shiloh Launch Site at this time.

Issued in Washington, DC.

Daniel Murray,

Manager, Space Transportation Development Division.

[FR Doc. 2020–07338 Filed 4–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0181]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 13, 2020, the Durbin & Greenbrier Valley Railroad Inc. (DGVR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 215, Railroad Freight Car Safety Standards. FRA assigned the petition Docket Number FRA–2010–0181.

DGVR is operator of the West Virginia Central Railroad via contractual agreement with the West Virginia State Rail Authority (WVSRA), which includes the operations of the Cass Scenic Railroad (CSR), in Cass, West Virginia. The passenger cars for which DGVR is seeking relief are the fleet of historic freight cars converted for passenger tourist service on the CSR.

Specifically, DGVR seeks FRA approval per 49 CFR 215.203(a) to allow 15 passenger cars—formerly freight cars, including four flat cars (Nos. 1, 2, 3, and 4), nine 40-foot steel frame cars (Nos. 5, 6, 7, 8, 10, 11, 12, 13, and 15), and two cabooses (Nos. 9 and 14)—that are over 50 years old to operate on track owned by the WVSRA. Because the cars would be used for historic tourist operations, DGVR also requests to waive the stenciling requirements outlined in 49 CFR 215.303. DGVR explains the cars will be limited to 10 miles per hour and will not be used in interchange.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Website: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 26, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–07387 Filed 4–7–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0024]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 9, 2020, the City of Fort Collins (the City) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 222, Use of Locomotive Horns at Public Highway-Rail Crossings. FRA assigned the petition Docket Number FRA–2020–0024.

Specifically, the City requests relief from 49 CFR 222.35(b), *Active grade crossing warning devices,* which requires each public highway-rail grade crossing in a new quiet zone to be equipped with active grade crossing warning devices with both flashing lights and gates. The City states that due to the unique nature of the railroad tracks in this area, it is not possible to meet the gate requirement for seven of the twelve total grade crossings. Instead, three crossings are proposed to be closed and a barrier or fence is to be constructed to address pedestrian trespassing. The City recognizes that this waiver would only be the first step in the implementation of a quiet zone, which will require further coordination between the City, the Burlington Northern Santa Fe railroad, the Colorado Public Utilities Commission, and FRA.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 26, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2020–07386 Filed 4–7–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0029]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this provides the public notice that by a document dated March 20, 2020, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2020–0029.

Applicant: Norfolk Southern Corporation, T.A. Phillips, Senior Director—C&S Operations, 1200 Peachtree Street NE, Atlanta, GA 30309.

Specifically, NS requests permission to remove double track main line operations and convert into single signaled bi-directional track, NS Rule 261, for approximately 32.6 miles on the Fort Wayne Line of the Pittsburgh Division.

NS will retire one main track at milepost (MP) PC 84.8 to 96.7, MP PC 157.3 to 160.1, MP PC 161.9 to 169.4, and MP PC 178.0 to 188.3. It will also change the method of operation at MP limits of PC 160.1 to 161.9 and MP PC 175.1 to 178.0 to non-controlled track.

The reason for the proposed changes is a line rationalization and system improvement.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 26, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–07384 Filed 4–7–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before May 8, 2020.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 2, 2020.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA—GRANTED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
7607–M	Thermo Fisher Scientific Inc.	172.101(j), 173.306	To modify the special permit to clarify the manufacturing markings.
16518–M	Midwest Helicopter Airways.	172.200, 172.301(c), 175.33	To modify the special permit to authorize additional hazmat.
20396–M	Hexagon Digital Wave LLC.	180.205(g)	To modify the special permit to authorize MA testing of certain DOT–CFFC cylinders.
20932–N	Jingjiang Asian-pacific Logistics Equipment Co., Ltd.	178.274(b)	To authorize the manufacture, mark, sale, and use of portable tanks constructed to Section VIII, Division 2 of the ASME code.
20951–N	Kalitta Air, LLC	172.101(j), 172.203(a), 172.301(c), 173.27(b)(2), 175.30(a)(1).	To authorize the transportation in commerce of explosives forbidden for air transportation by cargo-only aircraft.
20960–N	Johnson Outdoors Gear Llc.	173.304(a), 173.304a(d)(3)(ii)	To authorize the use of non-DOT specification receptacles similar to the 2P specification, except as specified herein, for the transportation in commerce of Division 2.1 materials.
20963–N	Lg Chem Wroclaw Energy Sp Z O O.	172.101(j)	To authorization in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft.
20973–N	Olin Winchester LLC	172.203(a), 173.63(b)(2)(v)	To authorize the transportation in commerce of 22 caliber (or less) rim-fire cartridges packaged loose in strong outer packagings.
20989–N	Dgm Italia Srl	173.185(e)(5)	To authorize the transportation in commerce of lithium ion batteries which have not been tested.
20993–N	United States Dept. of Energy.	173.467	To authorize the transportation in commerce of class 7 material in alternative packaging.
21003–N	Airgas USA, LLC	173.301(a)(2)	To authorize the transportation in commerce of ethylene in DOT 3T 2400 tubes that are not visually inspected before filling.
21004–N	Actia Corporation	173.185(e)	To authorize the transportation in commerce of low production lithium ion batteries.
21008–N	Atieva USA, Inc	173.185(e), 173.220(d)	To authorize the transportation in commerce of prototype lithium battery packs by themselves and installed in equipment that exceed 35 kg. (modes 1, 2, 3, 4).
21009–N	Atlas Air, Inc	172.101(j), 172.204(c)(3), 173.27(b)(2), 173.27(b)(3).	To authorize the transportation in commerce of explosives by cargo only aircraft which is forbidden in the regulations. (mode 4).

SPECIAL PERMITS DATA—GRANTED—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21021–N	Federal Express Corporation.	175.10(a)(1)(ii)	To authorize the transportation in commerce of certain Division 2.2 aerosols in crewmember carry-on baggage for the purpose of preventing the potential spread and contraction of COVID–19.

SPECIAL PERMITS DATA—DENIED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20957–N	Versum Materials, Inc	173.338(a)	To authorize the transportation in commerce of tungsten hexafluoride in tubes that are dual marked to a DOT and UN specification.
20972–N	Distributor Operations, Inc	173.159(e)(1)	To authorize the transportation in commerce of electric storage batteries under the exception in 173.159(e) when other hazardous materials are present on the vehicle.

SPECIAL PERMITS DATA—WITHDRAWN

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
14951–M	Hexagon Lincoln, LLC	173.301(f), 173.302(a)	To modify the special permit to authorize permitted cylinders to have an ''in-service date'' on their labels. This date would be the date in which the cylinder was released from the Hexagon inventory and placed in the possession of the end user.
20924–N	Candesant Biomedical, Inc	172.402(c), 173.4b(a)	To authorize the transportation in commerce of Division 4.3 materials as de minimis quantities by passenger-carrying aircraft.
21010–N	Jem Technical Marketing Co., Inc.		To authorize the transportation in commerce of hydraulic accumulators designed and fabricated in accordance with Section VIII, Division I of the ASME Code.
21011–N	Spectro Analytical Instruments Gmbh.	173.185(a)	To authorize the transportation in commerce of lithium ion batteries that are not of a type proven to meet the criteria in section 38.3 of the UN Manual of Tests and Criteria.

[FR Doc. 2020–07370 Filed 4–7–20; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 8, 2020.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 2, 2020.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21012–N	Praxair Distribution, Inc	172.203(a), 180.209	To authorize the transportation in commerce DOT 3AA cylinders that have been re-qualified using 100% UE examination in lieu of internal visual inspection and hydrostatic pressure testing as prescribed at paragraph § 180.209(a). Each cylinder successfully passing requalification using 100% UE examination will have its retest interval extended to at least once every 15 years. (modes 1, 2, 3, 4).
21014–N	Volvo Cars Of North America, LLC.		To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg net weight by cargo-only aircraft. (mode 4).
21015–N	Amazon.com, Inc	172.203(a), 172.315(a)(2), 177.834(b).	To authorize the transportation in commerce of materials shipped under limited quantity exceptions with a reduced size limited quantity marking. (modes 1, 2, 3).
21018–N	Packaging And Crating Technologies, LLC.	172.200, 172.300, 172.400, 172.600, 172.700(a), 173.185(b), 173.185(c).	To authorize the manufacture, mark, sale, and use of specially designed packagings for the transportation in commerce of damaged, defective, or recalled lithium ion cells, batteries and these cells and batteries contained in or packed with equipment. (modes 1, 2).
21019–N	Halpern Import Company	173.308(c)(2)	To authorize the transportation in commerce of lighters in non-DOT specification packaging by private or contract motor carrier, or by common carrier in a motor vehicle under exclusive use, between manufacturing sites, distribution centers and retail outlets. (mode 1).
21022–N	Webasto Roof & Components Se.	172.101(j), 173.185(a)	To authorize the transportation in commerce of untested lithium ion batteries that exceed 35 kg by cargo-only aircraft. (mode 4).
21023–N	Tire Seal, Inc	173.306(a)(3)(v)	To authorize the transportation in commerce of receptacles, containing refrigerant gases that have not been subjected to the hot water bath test. (modes 1, 2, 3, 4, 5).
21024–N	Spaceflight, Inc	172.101(j), 173.185(a)	To authorize the transportation in commerce of low production lithium batteries contained in equipment that exceed 35 kg by cargo-only aircraft. (mode 4).
21027–N	Fiba Technologies, Inc	180.207(d)(1)	To authorize the transportation in commerce of seamless steel UN pressure receptacles that have been requalified in accordance with ISO 18119:2018. (modes 1, 2, 3, 4).

[FR Doc. 2020–07368 Filed 4–7–20; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modifications to Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 23, 2020.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 02, 2020.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
10704–M	Airgas USA, LLC	172.200, 172.400, 172.500, 173.302(a), 174.1, 177.800.	To modify the special permit to authorize additional 2.2 hazmat. (modes 1, 2, 3, 4).
11180–M	Affival Inc	172.300, 172.500, 172.400, 173.24(c)	To modify the special permit to authorize a new optional method to close the longitudinal seam of the metal tube by welding. (modes 1, 2, 3).
11215–M	Orbital Sciences Corporation.	172.300, 172.600, 172.400, 172.500, 173.62, 175.75.	To modify the special permit to authorize additional hazmat contained in a new launch vehicle. (mode 4).
11380–M	Baker Hughes Oilfield Operations LLC.	173.302a(a)	To modify the special permit to authorize design changes/improvements in the authorized cylinders. (modes 1, 2, 3, 4).
12479–M	Luxfer Inc	173.302a(a)(1)	To modify the special permit to authorize passenger carrying vessel as a mode of transport.
14453–M	FIBA Technologies, Inc	180.209(a), 180.209(b), 180.209(b)(1)(iv).	To modify the special permit to authorize an additional 2.1 hazmat. (modes 1, 2, 3).
14584–M	Techknowserv Corp	173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i), 180.209(a), 180.209(a).	To modify the special permit to authorize additional cylinders to be requalified by these methods. (modes 1, 2, 3).
14601–M	Gulbrandsen Chemicals, Inc.	173.302a(a)(1)	To modify the special permit to authorize the option of removing the safety relief system from non-DOT specification spherical pressure vessels manufactured in accordance with the special permit. (modes 1, 2, 3).
15536–M	Techknowserv Corp	180.507, 180.509, 180.519(a)	To modify the special permit to authorize additional tank cars. (modes 1, 2, 3).
15610–M	Techknowserv Corp	173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i), 180.209(a), 180.213.	To modify the special permit to authorize additional cylinders. (modes 1, 2, 3).
20391–M	Hexagon Purus LLC	173.301(f), 173.302(a)	To modify the special permit to authorize additional cylinders with a volume up to 3000 liters. (modes 1, 2, 3).
20949–M	Sigma-Aldrich, Inc	178.601(k)	To modify the special permit to remove the requirement to carry a copy of the SP aboard each vehicle, vessel or aircraft and to remove the requirement to maintain a copy of the SP at each facility offering or reoffering packages covered by the SP. (modes 1, 2, 3, 4, 5).

[FR Doc. 2020–07369 Filed 4–7–20; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF THE TREASURY

Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning April 1, 2020, and ending on June 30, 2020, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 1.11 per centum per annum.

DATES: Rates are applicable April 1, 2020 to June 30, 2020.

ADDRESSES: Comments or inquiries may be mailed to Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328.

You can download this notice at the following internet addresses: *http://www.treasury.gov* or *http://www.federalregister.gov*.

FOR FURTHER INFORMATION CONTACT: Ryan Hanna, Manager, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 261006–1328 (304) 480–5120; Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be ''at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.'' 8 U.S.C. 1363(a). Related Federal regulations state that ''Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.'' 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545] In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the TreasuryDirect website.

The Deputy Assistant Secretary for Public Finance, Gary Grippo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Heidi Cohen, Federal Register Liaison for the Department, for purposes of publication in the **Federal Register**.

Heidi Cohen,

Federal Register Liaison, Department of the Treasury.

[FR Doc. 2020–07350 Filed 4–7–20; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

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Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 301

Rules Regarding Certain Hybrid Arrangements; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9896]

RIN 1545–BO53

Rules Regarding Certain Hybrid Arrangements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance regarding hybrid dividends and certain amounts paid or accrued pursuant to hybrid arrangements, which generally involve arrangements whereby U.S. and foreign tax law classify a transaction or entity differently for tax purposes. This document also contains final regulations relating to dual consolidated losses and entity classifications to prevent the same deduction from being claimed under the tax laws of both the United States and a foreign jurisdiction. Finally, this document contains final regulations regarding information reporting to facilitate the administration of certain rules in the final regulations. The final regulations affect taxpayers that would otherwise claim a deduction related to such amounts and certain shareholders of foreign corporations that pay or receive hybrid dividends.

DATES:

Effective date: These regulations are effective on April 8, 2020.

Applicability dates: For dates of applicability, see §§ 1.245A(e)–1(h), 1.267A–7, 1.1503(d)–8(b), 1.6038–2(m), 1.6038–3(l), 1.6038A–2(g), and 301.7701–3(c).

FOR FURTHER INFORMATION CONTACT: Tracy Villecco at (202) 317–6933 or Tianlin (Laura) Shi at (202) 317–6936 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Sections 245A(e) and 267A were added to the Internal Revenue Code (''Code'') by the Tax Cuts and Jobs Act, Public Law 115–97 (2017) (the ''Act''), which was enacted on December 22, 2017. On December 28, 2018, the Department of the Treasury (''Treasury Department'') and the IRS published proposed regulations (REG–104352–18) under sections 245A(e), 267A, 1503(d), 6038, 6038A, 6038C, and 7701 in the **Federal Register** (83 FR 67612) (the ''proposed regulations''). Terms used but not defined in this preamble have the meaning provided in the final regulations.

A public hearing on the proposed regulations was scheduled for March 20, 2019, but it was not held because no speaker outlines were submitted to the IRS by the due date for submission, March 15, 2019. The Treasury Department and the IRS received written comments with respect to the proposed regulations. Comments received outside the scope of this rulemaking are generally not addressed but may be considered in connection with future regulations. All written comments received in response to the proposed regulations are available at *www.regulations.gov* or upon request.

Summary of Comments and Explanation of Revisions

I. Overview

The final regulations retain the basic approach and structure of the proposed regulations, with certain revisions. This Summary of Comments and Explanation of Revisions section discusses the revisions as well as comments received in response to the solicitation of comments in the proposed regulations.

II. Comments and Revisions to Proposed § 1.245A(e)–1—Special Rules for Hybrid Dividends

A. Background

Section 245A(e) and the proposed regulations neutralize the double non-taxation effects of a hybrid dividend or tiered hybrid dividend through either denying the section 245A(a) dividends received deduction with respect to the dividend or requiring an inclusion under section 951(a)(1)(A) (''subpart F inclusion'') with respect to the dividend, depending on whether the shareholder receiving the dividend is a domestic corporation or a controlled foreign corporation (''CFC''). The proposed regulations require that certain shareholders of a CFC maintain a hybrid deduction account with respect to each share of stock of the CFC that the shareholder owns, and provide that a dividend received by the shareholder from the CFC is a hybrid dividend or tiered hybrid dividend to the extent of the sum of those accounts.

A hybrid deduction account with respect to a share of stock of a CFC reflects the amount of hybrid deductions of the CFC that have been allocated to the share. In general, a hybrid deduction is a deduction or other tax benefit allowed to a CFC (or a related person) under a relevant foreign tax law for an amount paid, accrued, or distributed with respect to an instrument of the CFC that is stock for U.S. tax purposes.

B. Hybrid Deductions

1. Current Use of Deduction or Other Tax Benefit

One comment requested that for a deduction or other tax benefit allowed under a relevant foreign tax law to be a hybrid deduction, it must be used currently under the relevant foreign tax law and, thus, currently reduce foreign tax liability. The comment noted that a current use might not occur if, for example, the CFC has other deductions or losses under the relevant foreign tax law, or all of a CFC's income is exempt income (for example, if the CFC is a holding company and all of its income benefits from a 100 percent participation exemption). The comment asserted that absent a current use of a deduction, double non-taxation does not occur.

The Treasury Department and the IRS have determined that it would not be appropriate for a deduction or other tax benefit to be a hybrid deduction only to the extent it is used currently. Even though a deduction or other tax benefit may not be used currently, it could be used in another taxable period—for example, as a result of a net operating loss carrying over to a subsequent taxable year—and thus could produce double non-taxation. In addition, it could be complex or burdensome to determine whether a deduction or other tax benefit is used currently (because it could, for example, require a factual analysis of how particular deductions offset items of gross income under the relevant foreign tax law) and then, to the extent not used currently, track the deduction or other tax benefit so that it is added to a hybrid deduction account only once it is in fact used. Accordingly, the final regulations do not adopt the comment, and the regulations clarify that a deduction or other tax benefit may be a hybrid deduction regardless of whether it is used currently under the relevant foreign tax law. *See* § 1.245A(e)–1(d)(2).

2. Coordination With Foreign Disallowance Rules

i. Thin Capitalization and Other Rules

A comment requested that a deduction or other tax benefit not be a hybrid deduction if under the relevant foreign tax law the deduction or other tax benefit is disallowed under a thin capitalization rule or a rule similar to section 163(j). Similar to the comment discussed in part II.B.1 of this Summary of Comments and Explanation of Revisions section, the comment asserted that such a disallowed deduction or other tax benefit does not produce double non-taxation.

The final regulations do not adopt the comment for reasons similar to those discussed in part II.B.1 of this Summary of Comments and Explanation of Revisions section. For example, a thin capitalization rule or a rule similar to section 163(j) may suspend rather than disallow a deduction, and thus may not prevent eventual double non-taxation. Moreover, because a thin capitalization rule or a rule similar to section 163(j) generally applies to all otherwise allowable deductions, it would be unduly complex and burdensome to determine the extent to which an amount disallowed under such a rule relates to a particular otherwise allowable deduction. Accordingly, the final regulations do not adopt the comment, and the regulations clarify that the determination of whether a deduction or other tax benefit is allowed is made without regard to a rule that disallows or suspends deductions if a certain ratio or percentage is exceeded. *See* § 1.245A(e)–1(d)(2)(ii)(A).

ii. Foreign Hybrid Mismatch Rules

The proposed regulations do not provide rules to take into account the application of foreign hybrid mismatch rules—that is, hybrid mismatch rules under the relevant foreign tax law. Accordingly, if such hybrid mismatch rules deny a deduction to neutralize a deduction/no-inclusion (''D/NI'') outcome, then, because the deduction is not allowed under the relevant foreign tax law, the deduction cannot be a hybrid deduction under the proposed regulations.

The Treasury Department and the IRS have concluded that, in certain cases, whether a deduction or other tax benefit is a hybrid deduction should be determined without regard to foreign hybrid mismatch rules (and thus without regard to whether such rules disallow the deduction). The determination should be made in this manner in cases in which there is a close temporal connection between the amount giving rise to the deduction or other tax benefit and the payment of the amount as a dividend for U.S. tax purposes. In these cases, in order to prevent a D/NI outcome, the participation exemption under section 245A(a) should not apply to the dividend, as opposed to the participation exemption applying to the dividend to the extent that the foreign hybrid mismatch rules disallow a deduction for the amount in order to neutralize a D/NI outcome.

This approach more closely aligns the rules of section 245A(e) with the approach set forth in the OECD/G20 report, *Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2: 2015 Final Report* (the ''Hybrid Mismatch Report''). Such an approach avoids potential circularity or other issues in cases in which the application of foreign hybrid mismatch rules depends on whether an amount will be included in income under U.S. tax law. *See* Hybrid Mismatch Report, para. 35 and Ex. 2.3. In addition, this approach is consistent with an approach suggested in a comment (which was received before the proposed regulations were issued but after the proposed regulations had been substantially developed) with respect to section 245A generally.

Accordingly, the final regulations provide that the determination of whether a relevant foreign tax law allows a deduction or other tax benefit for an amount is made without regard to the application of foreign hybrid mismatch rules, provided that the amount gives rise to a dividend for U.S. tax purposes or is reasonably expected for U.S. tax purposes to give rise to a dividend that will be paid within 12 months after the taxable period in which the deduction or other tax benefit would otherwise be allowed. *See* § 1.245A(e)–1(d)(2)(ii)(B).

As an example, assume that but for foreign hybrid mismatch rules, a CFC would be allowed a deduction under the relevant foreign tax law for an amount paid or accrued pursuant to an instrument issued by the CFC and treated as stock for U.S. tax purposes. If the amount is an actual payment that gives rise to a dividend for U.S. tax purposes (or the amount is an accrual but is reasonably expected to give rise to a dividend for U.S. tax purposes that will be paid within 12 months after the taxable period for which the deduction would otherwise be allowed), then the amount generally gives rise to a hybrid deduction regardless of whether the foreign hybrid mismatch rules may disallow a deduction for the amount. If, on the other hand, the amount would give rise to a dividend in a later period, then the amount would not give rise to a hybrid deduction to the extent that the foreign hybrid mismatch rules disallow a deduction for the amount.

3. Effect of Withholding Taxes

Under the proposed regulations, the determination of whether a deduction or other tax benefit is a hybrid deduction is generally made without regard to whether the amount is subject to withholding tax under the relevant foreign tax law. *But see* proposed § 1.245A(e)–1(g)(2), *Example 2* (illustrating that withholding taxes imposed pursuant to an integration or imputation system may prevent a deduction or other tax benefit from being a hybrid deduction). A comment asserted that, to prevent double-taxation, a deduction or other tax benefit under a relevant foreign tax law should not be a hybrid deduction to the extent the amount giving rise to the deduction or other tax benefit is subject to withholding tax under such tax law.

The purpose of withholding taxes generally is not to address mismatches in tax outcomes, but rather to allow the source jurisdiction to retain its right to tax the payment. For example, in many cases withholding taxes are imposed on payments not giving rise to D/NI concerns, such as nondeductible dividends. In addition, had Congress generally intended for withholding taxes to be taken into account for purposes of section 245A(e), it could have included in section 245A(e) a rule similar to the one in section 59A(c)(2)(B), which was enacted at the same time as section 245A(e). Thus, the Treasury Department and the IRS have concluded that withholding taxes generally should not be viewed as neutralizing a D/NI outcome. In addition, generally taking withholding taxes into account for purposes of determining whether a deductible amount gives rise to a hybrid deduction could raise administrability issues if the amount is subject to withholding taxes at the time of payment (with the result that the amount is not added to a hybrid deduction account at that time) but the taxes are refunded in a later period; in these cases it could be difficult or burdensome to retroactively add the amount to the hybrid deduction account and make corresponding adjustments. Accordingly, the final regulations do not adopt this comment. *See also* part II.B.5 of this Summary of Comments and Explanation of Revisions section (deductions or other tax benefits pursuant to imputation systems or other regimes intended to relieve double-taxation).

4. Deductions With Respect to Equity

The proposed regulations provide that a hybrid deduction includes a deduction with respect to equity, such as a notional interest deduction (''NID''). *See* proposed § 1.245A(e)–1(d)(2)(i)(B). The preamble to the proposed regulations explains that NIDs are hybrid deductions because they raise concerns similar to those raised by traditional hybrid instruments.

Several comments asserted that NIDs should not be hybrid deductions because NIDs do not involve sufficient hybridity so as to be within the intended scope of section 245A(e). These comments noted that NIDs are generally available tax concessions that reflect tax policy decisions, and that NIDs are typically allowed without regard to dividend distributions, if any. Another comment asserted that because NIDs are the equivalent of a lower tax rate on profits, any policy concerns with NIDs are appropriately addressed by the global intangible low-taxed income regime (''GILTI'') under section 951A. Other comments raised concerns that treating NIDs as hybrid deductions departs from the Hybrid Mismatch Report (and thus the approaches taken by other countries to implement the Report) and, as a result, could impair the competiveness of U.S. multinational groups.

As an alternative to not treating NIDs as hybrid deductions, some comments suggested other approaches. For example, a comment suggested that the final regulations reserve on whether NIDs are hybrid deductions so that, to the extent NIDs are viewed as providing inappropriate results, NIDs can be addressed on a multilateral basis. Other comments suggested that only NIDs resulting from an actual payment, accrual, or distribution should constitute hybrid deductions. Lastly, comments suggested that the final regulations treat NIDs as hybrid deductions on a delayed basis, or only if the NIDs are allowed with respect to an instrument issued after a certain date, to allow taxpayers to restructure certain instruments or undertake other restructurings.

The Treasury Department and the IRS have concluded that NIDs should be hybrid deductions, without regard to whether NIDs result from an actual payment, accrual, or distribution. First, because NIDs offset income but generally do not give rise to a corresponding income inclusion, NIDs produce double non-taxation, and such double non-taxation can occur regardless of whether NIDs result from an actual payment, accrual, or distribution. Second, the double non-taxation resulting from NIDs is in general a result of a mismatch in how different tax laws view an instrument of a CFC; that is, the relevant foreign tax law views the instrument as generating amounts similar to interest—to minimize the disparate treatment of debt and equity—and, were the tax law of the United States (the investor jurisdiction of the CFC) to similarly view the instrument as generating amounts treated as interest, there would generally be a corresponding income inclusion in the United States. Such double non-taxation resulting from the mismatch in the treatment of an instrument is the fundamental policy concern underlying section 245A(e). Moreover, including NIDs in the definition of a hybrid deduction is consistent with the broad language of section 245A(e)(4)(B), which refers to any ''deduction (or other tax benefit).''

Thus, the final regulations generally retain the approach of the proposed regulations and treat NIDs as hybrid deductions. However, in response to comments, the final regulations provide that only NIDs allowed to a CFC for taxable years beginning on or after December 20, 2018, are hybrid deductions. *See* § 1.245A(e)–1(d)(2)(iv). The Treasury Department and the IRS have determined that this delay (relative to the proposed regulations) is appropriate in order to account for restructurings intended to eliminate or minimize hybridity.

5. Deductions Pursuant to Imputation Systems or Other Regimes Intended To Relieve Double-Taxation

In the case of a deduction or other tax benefit relating to or resulting from a distribution by a CFC with respect to an instrument treated as stock for purposes of a relevant foreign tax law, a special rule under the proposed regulations provides that the deduction or other tax benefit is a hybrid deduction only to the extent that it has the effect of causing the earnings that funded the distribution to not be included in income or otherwise subject to tax under such tax law. *See* proposed § 1.245A(e)–1(d)(2)(i)(B). As noted in the preamble to the proposed regulations, this special rule ensures that deductions or other tax benefits allowed pursuant to certain integration or imputation systems, including through systems implemented in part through the imposition of withholding taxes, do not constitute hybrid deductions.

The final regulations clarify the operation of this special rule. First, the final regulations clarify that the special rule only applies to deductions or other tax benefits relating to or resulting from a distribution by the CFC that is a dividend for purposes of the relevant foreign tax law. *See* § 1.245A(e)–1(d)(2)(i)(B). Thus, for example, the special rule does not apply to NIDs as to which withholding tax is imposed under the relevant foreign tax law, because the imposition of withholding tax in these cases is not pursuant to an integration or imputation system (as such systems generally only apply to dividends) and, instead, may be imposed to provide parity between NIDs and an actual interest payment. Second, the final regulations clarify that the imposition of withholding tax pursuant to an integration or imputation system can reduce or eliminate the extent to which dividends paid deductions (as well as other similar tax benefits) give rise to a hybrid deduction. *See id.*; *see also* § 1.245A(e)–1(g)(2), *Example 2, alt. facts* (imposition of withholding tax at a rate less than the tax rate at the which dividends paid deduction is allowed only prevents a portion of the deduction from being a hybrid deduction). Lastly, the final regulations clarify that, as a result of the special rule, dividends received deductions allowed pursuant to regimes intended to relieve double-taxation within a group do not constitute hybrid deductions. *See* § 1.245A(e)–1(d)(2)(i)(B).

6. Deductions or Other Tax Benefits Allowed to a Person Related to the CFC

Under the proposed regulations, a hybrid deduction of a CFC includes certain deductions or other tax benefits allowed under a relevant foreign tax law to a person related to the CFC (such as a shareholder of the CFC). *See* proposed § 1.245A(e)–1(d)(2). The proposed regulations provide that relatedness is determined by reference to the rules of section 954(d)(3) (defining a related person based on ownership of more than 50 percent of interests in entities). *See* proposed § 1.245A(e)–1(f)(4).

A comment asserted that, although in certain cases it may be appropriate to treat a deduction or other tax benefit allowed to a related person as a hybrid deduction, the related person rule raises issues, including compliance issues, because it could be burdensome to determine whether any person related to a CFC receives certain deductions or other tax benefits. Accordingly, the comment recommended that the rule be narrowed in certain respects. For example, the comment suggested increasing the threshold for relatedness to 80 percent, including because such a threshold would be consistent with certain other areas of the Code such as the provisions involving consolidated groups. In addition, the comment suggested that a deduction or other tax benefit allowed to a related person be a hybrid deduction only if criteria in addition to those in the proposed regulations are satisfied, such as if (i) treating the deduction or other tax benefit as a hybrid deduction does not result in double-counting, and (ii) the IRS affirmatively demonstrates that, absent treating the deduction or other tax benefit as a hybrid deduction, double non-taxation would occur. Lastly, the comment asserted that the related person rule could inappropriately treat as a hybrid deduction a dividends received deduction, an impairment loss deduction, or a market-to-market deduction allowed to a shareholder.

The Treasury Department and the IRS have determined that, because a deduction or other tax benefit allowed to a person related to a CFC may be economically equivalent to the CFC having been allowed a deduction or other tax benefit, or may otherwise produce a D/NI outcome, the related person rule is necessary to carry out the purpose of section 245A(e). The final regulations therefore retain this rule, including defining relatedness by reference to section 954(d)(3), a well-established standard applicable to controlled foreign corporations and consistent with section 267A, which similarly addresses hybrid mismatches. *See* section 267A(b)(2) (defining related person by reference to section 954(d)(3)). However, recently-issued final regulations under section 954(d)(3) narrow the definition of relatedness for section 954(d)(3) purposes by providing that relatedness is determined without regard to ''downward'' attribution. *See* TD 9883, 84 FR 63802. The Treasury Department and the IRS have determined that narrowing the definition of relatedness in this manner addresses the comment's concerns about potential burdens.

In addition, the final regulations clarify that only deductions allowed under a relevant foreign tax law to a person related to a CFC may be hybrid deductions of the CFC; in general, a relevant foreign tax law is a foreign tax law under which the CFC is subject to tax. *See* § 1.245A(e)–1(d)(2)(i) and (f)(5). Thus, for example, in the case of a CFC and a corporate shareholder of the CFC that are tax residents of different foreign countries, a dividends received deduction allowed to the corporate shareholder under its tax law for a dividend received from the CFC is not a hybrid deduction of the CFC.[1]

The final regulations do not adopt the comment's suggestion to include additional criteria to the related person rule. The Treasury Department and the IRS have concluded that other aspects of the final regulations generally address the comment's double-counting concerns. *See* part II.B.5 (deductions or other tax benefits pursuant to imputation systems or other regimes intended to relieve double-taxation) and part II.C.3 (discussing an anti-duplication rule) of this Summary of Comments and Explanation of Revisions section. In addition, the Treasury Department and the IRS have concluded that requiring the IRS to affirmatively demonstrate double non-taxation would impose an excessive burden on the IRS and raise significant administrability concerns, particularly because the taxpayer may have better access to information (including information regarding the application of foreign tax law) than the IRS.

Lastly, the final regulations clarify that a hybrid deduction of a CFC does not include an impairment loss deduction or a mark-to-market deduction allowed to a shareholder of the CFC with respect to its stock of the CFC. This is because such deductions do not relate to or result from an amount paid, accrued, or distributed with respect to an instrument issued by the CFC, and are not deductions allowed to the CFC with respect to equity. *See* § 1.245A(e)–1(d)(2)(i)(B).

7. Relevant Foreign Tax Law

The proposed regulations define a relevant foreign tax law as, with respect to a CFC, any regime of any foreign country or possession of the United States that imposes an income, war profits, or excess profits tax with respect to income of the CFC, other than a foreign anti-deferral regime under which an owner of the CFC is liable to tax. *See* proposed § 1.245A(e)–1(f). In some countries, however, income taxes imposed by a subnational authority of the country (for example, a state, province, or canton of the country) may constitute a significant portion of a tax resident's overall income tax burden in the country. Accordingly, the Treasury Department and the IRS have determined that, in cases in which subnational income taxes of a country are covered taxes under an income tax treaty between the country and the United States (and therefore are likely to represent a significant portion of the overall income tax paid in the country), the tax law of the subnational authority should be treated as a tax law of a foreign country for purposes of section 245A(e). Thus, under the final regulations, a relevant foreign tax law may include a tax law of a political subdivision or other local authority of a foreign country. *See* § 1.245A(e)–1(f)(5).

C. Hybrid Deduction Accounts

1. Nexus Between Hybrid Dividends and Hybrid Deductions

Under the proposed regulations, a dividend received by a United States shareholder (''U.S. shareholder'') from a CFC is generally a hybrid dividend to the extent of the sum of the U.S. shareholder's hybrid deduction accounts with respect to each share of stock of the CFC, even if the dividend is paid on a share that has not had any hybrid deductions allocated to it. *See* proposed § 1.245A(e)–1(b)(2). As explained in the preamble to the proposed regulations, this approach is intended to prevent the avoidance of the purposes of section 245A(e).

One comment noted that the hybrid deduction account approach in the proposed regulations appropriately safeguards against certain abuse. However, the comment and others asserted that, at least in certain cases, the approach is overbroad and could lead to inappropriate results, including causing a dividend to be a hybrid dividend even though a hybrid deduction was not allowed for the amount to which the dividend is attributable but instead was allowed for another amount. The comments recommended alternative approaches.

Under some alternatives, an exception or similar rule would provide that a dividend is not a hybrid dividend to the extent that the distributed earnings and profits are attributable to earnings and profits that did not benefit from a hybrid deduction, or to the extent that the transactions giving rise to the dividend did not give rise to a hybrid deduction. For example, in the case of a dividend paid by a lower-tier CFC to an upper-tier CFC pursuant to a non-hybrid instrument, followed by a dividend paid by the upper-tier CFC to a domestic corporation pursuant to a hybrid instrument, the dividend paid by the upper-tier CFC would not be a hybrid dividend to the extent it is composed of earnings and profits (i) attributable to earnings and profits of the lower-tier CFC, and (ii) not offset under the upper-tier CFC's tax law by the upper-tier CFC's hybrid deductions (which might occur, for example, if, by reason of a participation exemption, the upper-tier CFC excludes from income the dividend paid by the lower-tier CFC). Or, deemed dividends such as a dividend under section 1248(a), or a dividend arising as a result of a compensatory payment for the surrender of a loss pursuant to a foreign group relief or similar regime, generally would not be a hybrid dividend, as the transactions giving rise to such deemed dividends typically do

[1] As an additional example, in the case of a CFC and a corporate shareholder of the CFC that are tax residents of different foreign countries, an exclusion (similar to the exclusion for previously taxed earnings and profits under section 959) allowed to the corporate shareholder under its tax law upon a distribution by the CFC of earnings and profits previously taxed under such tax law by reason of an anti-deferral regime is not a hybrid deduction of the CFC.

not give rise to a deduction or other tax benefit under a relevant foreign tax law.

Under another alternative, the hybrid deduction account approach in the proposed regulations would not apply to an amount if there is a legal obligation to pay it within 36 months (and the parties reasonably expect it to be so paid). In these cases, the comment recommended that the amount simply be subject to section 245A(e) once paid, such that it would not affect a hybrid deduction account—that is, the account would neither be increased at the time a deduction for the amount is allowed, nor decreased at the time of payment.

The Treasury Department and the IRS have concluded that the hybrid deduction account approach under the proposed regulations appropriately carries out the purposes of section 245A(e), and prevents the avoidance of section 245A(e), in an administrable manner. Alternative approaches, such as those suggested by the comments, could be difficult to administer or could lead to inappropriate results. For example, the approach under the proposed regulations obviates the need (as would be the case under some of the alternatives) for complex analyses or rules tracking which particular earnings and profits benefited from a hybrid deduction, and how those earnings and profits are distributed to particular shareholders. In addition, excepting certain types of dividends from section 245A(e) could defer, potentially long-term, the application of section 245A(e), as those dividends would reduce (or in some cases eliminate) the CFC's earnings and profits and thereby might cause a subsequent distribution pursuant to a hybrid instrument to be described in section 301(c)(2) or (3) (rather than giving rise to a dividend subject to section 245A(e)). Further, if a 36-month approach like the one suggested in the comment were to apply, then additional rules would be necessary to ensure that, upon certain subsequent transfers of stock of the CFC, the transferee appropriately applies section 245A(e) when an amount to which the hybrid deduction account approach did not apply is paid. Accordingly, the final regulations do not adopt these comments.

2. Reduction for Certain Amounts Included in Income by U.S. Shareholders

Under the proposed regulations, a hybrid deduction account is reduced only to the extent that an amount in the account gives rise to a hybrid dividend or a tiered hybrid dividend. *See* proposed § 1.245A(e)–1(d). The preamble to the proposed regulations requests comments on whether hybrid deductions attributable to a subpart F inclusion or an amount included in income under section 951A (''GILTI inclusion amount'') should not increase a hybrid deduction account, or, alternatively, on whether a hybrid deduction account should be reduced by distributions of previously taxed earnings and profits, and the effect of any deemed paid foreign tax credits associated with such inclusions.

In response to the comment request, some comments suggested that subpart F inclusions or GILTI inclusion amounts (or a distribution of previously taxed earnings and profits) provide a dollar-for-dollar reduction of a hybrid deduction account. However, another comment noted that a dollar-for-dollar reduction could give rise to inappropriate results because the inclusions may not be fully taxed in the United States, given foreign tax credits associated with the amounts or, in the case of a GILTI inclusion amount, the deduction under section 250. The comment thus suggested that, as part of the end-of-year adjustments to a hybrid deduction account, the account be reduced by certain subpart F inclusions or GILTI inclusion amounts with respect to that year, but only to the extent that such amounts are fully taxed in the United States (determined by accounting for foreign tax credits and the section 250 deduction). Another comment suggested that a hybrid deduction not be added to the hybrid deduction account to the extent that the deduction relates to an amount directly included in U.S. income (for example, under section 882). Finally, comments suggested that, to avoid double-taxation, a hybrid deduction account should also be reduced when an amount is included in a U.S. shareholder's gross income under sections 951(a)(1)(B) and 956 by reason of the application of section 245A(e) to the hypothetical distribution described in § 1.956–1(a)(2).

Section 245A(e) is generally intended to ensure that to the extent earnings and profits of a CFC have not been subject to foreign tax as a result of certain hybrid arrangements, earnings and profits of the CFC of an equal amount will, once distributed as a dividend, be ''included in income'' in the United States (that is, taken into account in income and not offset by, for example, a deduction or credit particular to the inclusion). To the extent the earnings and profits are so included by other means (for example, as a subpart F inclusion or GILTI inclusion amount), with the result that the double non-taxation effects of the hybrid arrangement are neutralized, section 245A(e) need not apply to a corresponding amount of earnings and profits. Accordingly, in these cases, the Treasury Department and the IRS have determined that hybrid deduction accounts with respect to stock of the CFC—which are generally intended to represent earnings and profits of the CFC that have neither been subject to foreign tax nor yet included in income in the United States—should be reduced. A separate notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register** (REG–106013–19) provides rules to this effect, which taxpayers may rely on before the regulations described therein are effective. These rules are consistent with the comment recommending that a hybrid deduction account be reduced by amounts included in gross income under sections 951(a)(1)(B) and 956, as well as the comment recommending an account be reduced by certain subpart F inclusions or GILTI inclusion amounts, to the extent fully taxed in the United States. The Treasury Department and the IRS have determined that it would be too complex to adjust hybrid deduction accounts based on the extent to which under a relevant foreign tax law a hybrid deduction offsets certain types of income (such as effectively connected income subject to tax under section 882), and thus the final regulations do not adopt the comment suggesting such an approach.

3. Rules Regarding Transfers of Stock

Because hybrid deduction accounts are maintained with respect to stock of a CFC, the proposed regulations provide rules that take into account transfers of stock of a CFC, including transfers pursuant to certain nonrecognition exchanges and liquidations. *See* proposed § 1.245A(e)–1(d)(4). In general, and depending on the type of transaction pursuant to which the transfer occurs, the transferee succeeds to the transferor's hybrid deduction accounts with respect to the transferred stock, or hybrid deduction accounts with respect to the transferred stock are tacked onto successor or similar interests. However, if the stock is transferred to a person that is not required to maintain a hybrid deduction account, such as an individual or a foreign corporation that is not a CFC, the hybrid deduction account generally terminates.

Although a comment noted that these rules generally provide for appropriate results, the comment (and others) recommended that the rules be modified to address certain issues involving transfers of stock. First, a comment recommended that the rules address certain distributions of stock under section 355. The comment suggested that the balance of a hybrid deduction account with respect to stock of the distributing CFC be allocated to a hybrid deduction account with respect to stock of the controlled CFC in a manner similar to how basis in stock of the distributing CFC is allocated to stock of the controlled CFC under section 358. The Treasury Department and the IRS agree that allocation rules should apply with respect to certain section 355 distributions, but have concluded that the allocation should be consistent with how earnings and profits of the distributing CFC are allocated between the distributing CFC and the controlled CFC. The final regulations thus provide a rule to this effect. *See* § 1.245A(e)–1(d)(4)(iii)(B)(*4*). This rule, like the other rules in § 1.245A(e)–1(d)(4)(iii)(B) that adjust hybrid deduction accounts upon certain nonrecognition transactions, is in addition to the general rule of § 1.245A(e)–1(d)(4)(iii)(A), pursuant to which an acquirer of stock of a CFC generally succeeds to the transferor's hybrid deduction accounts with respect to the stock. Accordingly, if the section 355 distribution involves a pre-existing controlled CFC, the shareholder's hybrid deductions accounts with respect to the controlled CFC immediately after the distribution are generally equal to the sum of (i) the hybrid deduction accounts with respect to the controlled CFC to which the shareholder succeeds under the rules of § 1.245A(e)–1(d)(4)(iii)(A), and (ii) the portions of the hybrid deduction accounts with respect to the distributing CFC that are allocated to hybrid deduction accounts with respect to stock of the controlled CFC under § 1.245A(e)–1(d)(4)(iii)(B)(*4*).

Second, a comment suggested that the final regulations adopt an anti-duplication rule to address cases in which a liquidation of a lower-tier CFC into an upper-tier CFC would in effect result in a duplication of hybrid deductions. For example, the comment noted that if the upper-tier CFC and lower-tier CFC have issued ''mirror'' hybrid instruments, then hybrid deduction accounts with respect to shares of stock of the upper-tier CFC would already reflect amounts attributable to hybrid deductions of the lower-tier CFC, with the result that, upon the liquidation of the lower-tier CFC, it would not be appropriate to increase hybrid deduction accounts with respect to shares of stock of the upper-tier CFC by the hybrid deductions of the lower-tier CFC. The Treasury Department and the IRS agree with this comment. However, rather than addressing this duplication issue only in the context of transfers of stock of a CFC, the final regulations provide a general anti-duplication rule. *See* § 1.245A(e)–1(d)(2)(iii). This rule generally ensures that when deductions or other tax benefits under a relevant foreign tax law are in effect duplicated at different tiers, the deductions or other tax benefits only give rise to a hybrid deduction of the higher-tier CFC. Thus, in the mirror hybrid instrument example, the deduction allowed to the upper-tier CFC, but not the deduction allowed to the lower-tier CFC, would be a hybrid deduction, provided that the deductions arise under the same relevant foreign tax law.

Lastly, a comment requested clarification that, when a section 338(g) election is made with respect to a CFC target, the shareholder of the new target does not succeed to a hybrid deduction account with respect to a share of stock of the old target. The comment asserted that such a result is appropriate because the old target is generally treated as transferring all of its assets to an unrelated person, and the new target is generally treated as acquiring all of its assets from an unrelated person. The Treasury Department and the IRS agree with this comment because, in general, the new target does not inherit any of the earnings and profits of the old target and, as a result, no distributions by the new target could represent a distribution of earnings and profits of the old target sheltered from foreign tax by reason of hybrid deductions incurred by the old target. Accordingly, the final regulations clarify that, in connection with an election under section 338(g), a hybrid deduction account with respect to stock of the old target generally does not carry over to stock of the new target. *See* § 1.245A(e)–1(d)(4)(iii)(B)(*5*).

4. Mid-Year Transfers of Stock

Under the proposed regulations, if there is a transfer of stock of a CFC during the CFC's taxable year, then the determinations and adjustments that would otherwise be made at the close of the CFC's taxable year are generally made at the close of the date of the transfer. *See* proposed § 1.245A(e)–1(d)(5). A comment requested clarification regarding how, in such cases, a hybrid deduction account with respect to a share of stock of the CFC is adjusted on the date of transfer, and whether hybrid dividends and tiered hybrid dividends that arise during the post-transfer period affect such adjustments.

In response to this comment, the final regulations provide additional rules that, in general, adjust the hybrid deduction account based on the number of days in the taxable year within the pre-transfer period to the total number of days in the taxable year. *See* § 1.245A(e)–1(d)(5). The rules also coordinate the end-of-the year adjustments and the adjustments that must be made on the transfer date. *See Id.*

5. Applicability Date

The proposed regulations provide that proposed § 1.245A(e)–1, including the hybrid deduction account rules, applies to distributions made after December 31, 2017. However, the preamble to the proposed regulations explains that if proposed § 1.245A(e)–1 is finalized after June 22, 2019, then § 1.245A(e)–1 will apply only to distributions made during taxable years ending on or after the date the proposed regulations were issued (December 20, 2018).

Some comments requested that, given that the statutory language of section 245A(e) does not include the concept of an account, the hybrid deduction account rules apply on a prospective basis to provide taxpayers time to comply with the rules and to prevent harsh results. One comment suggested that the rules apply only to distributions made after the proposed regulations were issued, and another suggested that the rules apply only to distributions made after December 31, 2018.

The final regulations provide that the hybrid deduction account rules apply to distributions made after December 31, 2017, provided that such distributions occur during taxable years ending on or after the date the proposed regulations were issued. *See* § 1.245A(e)–1(h)(1). The Treasury Department and the IRS have determined that it would not be appropriate to delay the applicability date of the hybrid deduction account rules because the enactment of section 245A(e) provided notice that D/NI outcomes involving instruments that are stock for U.S. tax purposes—including D/NI outcomes involving a deduction or other tax benefit allowed for an amount on a particular date and a payment of a corresponding amount of earnings and profits as a dividend for U.S. tax purposes on a later date—would be neutralized under section 245A(e) (including in conjunction with the regulatory authority under section 245A(g)), and the hybrid deduction account rules are necessary to ensuring such D/NI outcomes are so neutralized.

D. Miscellaneous Issues

1. Treatment of Amounts Under Tax Law of Another Foreign Country

Under the proposed regulations, a tiered hybrid dividend means an amount received by a CFC (''receiving CFC'') from another CFC to the extent that the amount would be a hybrid dividend under the proposed regulations if the receiving CFC were a domestic corporation. *See* proposed § 1.245A(e)–1(c)(2). As noted in the preamble to the proposed regulations, whether a dividend is a tiered hybrid dividend is determined without regard to how the amount is treated under the tax law of which the receiving CFC is a tax resident (or under any other foreign tax law). Similarly, whether a deduction or other tax benefit allowed to a CFC (or a related person) under a relevant foreign tax law is a hybrid deduction is determined without regard to how the amount is treated under another foreign tax law.

Comments suggested that the treatment of an amount under another foreign tax law be taken into account in two cases. First, a comment recommended an exception pursuant to which a dividend is not a tiered hybrid dividend to the extent that the receiving CFC includes the dividend in income under its tax law (or is subject to withholding tax under the payer CFC's tax law). The comment suggested that this approach only apply, however, to the extent that the inclusion (or withholding tax) is at a tax rate at least equal to the rate at which the hybrid deduction was allowed. The comment noted that such an approach could prevent double-taxation, though it might also result in additional complexity.

The Treasury Department and the IRS have determined that not taking into account the treatment of an amount under the receiving CFC's tax law (or other foreign tax law), as provided in the proposed regulations, is consistent with the plain language of section 245A(e)(2). In addition, the Treasury Department and the IRS have concluded that such an exception could give rise to inappropriate results in certain cases. For example, if the exception applied without regard to tax rates, then an inclusion by the receiving CFC at a low tax rate applicable to all income would discharge the application of section 245A(e) to a dividend even though the payer CFC deducted the amount at a high tax rate. *See also* part III.C.1 of this Summary of Comments and Explanation of Revisions section (discussing the effect of inclusions in another foreign country). Moreover, and as noted by the comment, a comparative tax rate test would create complexity and administrability issues—for example, it would require that hybrid deduction accounts track the tax rate at which the CFC (or a related person) was allowed a hybrid deduction. Accordingly, the final regulations do not adopt this comment.

Second, a comment suggested that, in cases involving tiers of CFCs that are tax residents of different foreign countries, a deduction or other tax benefit allowed to the upper-tier CFC under a relevant foreign tax law not be a hybrid deduction to the extent that the deduction or other tax benefit offsets an amount that the upper-tier CFC includes in its income and that is attributable to a hybrid deduction of a lower-tier CFC.[2] For example, the comment noted that, in the case of back-to-back hybrid instruments involving CFCs that are tax residents of different foreign countries (pursuant to which, for U.S. tax purposes, the lower-tier CFC pays a dividend to the upper-tier CFC and the upper-tier CFC pays a dividend to a domestic corporation), in effect only a single D/NI outcome occurs if under its tax law the upper-tier CFC includes in income the amount paid by the lower-tier CFC. The comment asserted that, in such a case, the deduction allowed to the upper-tier CFC should not be treated as a hybrid deduction because, by reason of treating the amount paid by the lower-tier CFC as a tiered hybrid dividend, the D/NI outcome associated with the arrangement is neutralized. The final regulations do not adopt this comment because it would be inconsistent with the statute, which does not take into account the overall effect of a deduction or other tax benefit under the relevant foreign tax law. In addition, the Treasury Department and the IRS have determined that such an exception would be complex and would give rise to administrability issues because it could require, for example, a factual analysis of how particular deductions offset items of gross income under a relevant foreign tax law. Moreover, pursuant to rules described in a separate notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register** (REG–106013–19), the subpart F inclusion arising by reason of the upper-tier CFC receiving the tiered hybrid dividend will, to an extent, generally reduce the hybrid deduction accounts with respect to stock of the upper-tier CFC.

[2] In these cases, the anti-duplication rule described in part II.C.3 of this Summary of Comments and Explanation of Revisions section, which applies only to certain deductions or tax benefits under the same relevant foreign tax law, would not apply.

2. Application of Tiered Hybrid Dividend Rule to Non-Corporate U.S. Shareholders

If an upper-tier CFC receives a tiered hybrid dividend from a lower-tier CFC, and a domestic corporation is a U.S. shareholder of both CFCs, then, notwithstanding any other provision of the Code (i) the tiered hybrid dividend is treated for purposes of section 951(a)(1)(A) as subpart F income of the upper-tier CFC, (ii) the U.S. shareholder must include in gross income its pro rata share of the subpart F income, and (iii) the rules of section 245A(d) apply to the amount included in the U.S. shareholder's gross income. *See* proposed § 1.245A(e)–1(c)(1). A comment requested that the final regulations address how the tiered hybrid dividend rule applies with respect to a non-corporate U.S. shareholder of the upper-tier CFC.

The final regulations provide that the tiered hybrid dividend rule applies only as to a domestic corporation that is a U.S. shareholder of both the upper-tier CFC and the lower-tier CFC. *See* § 1.245A(e)–1(c)(1). Thus, for example, if a domestic corporation and a U.S. individual equally own all of the stock of an upper-tier CFC, and the upper-tier CFC receives a tiered hybrid dividend from a wholly-owned lower-tier CFC, the tiered hybrid dividend rule does not apply to cause a subpart F inclusion to the individual U.S. shareholder (though the dividend may otherwise result in a subpart F inclusion to the individual U.S. shareholder). If the dividend does not give rise to a subpart F inclusion to the individual U.S. shareholder, the earnings associated with the dividend would generally be subject to full U.S. tax when distributed to the individual as a dividend because individuals are not allowed a deduction under section 245A(a) and, as a result, it would be inappropriate for the tiered hybrid dividend rule to have applied to the individual.

3. Upper-Tier CFCs Required To Maintain Hybrid Deduction Accounts

Under the proposed regulations, an upper-tier CFC is generally a specified owner of shares of stock of a lower-tier CFC, and thus the upper-tier CFC must maintain hybrid deduction accounts with respect to those shares. *See* proposed § 1.245A(e)–1(d)(1) and (f)(5). However, in certain cases there may not be a domestic corporation that is a U.S. shareholder of the upper-tier CFC. For example, the only U.S. shareholders of the upper-tier CFC may be individuals, with the result that section 245A(e)(2) would not apply to a dividend received by the upper-tier CFC from the lower-tier CFC. Or, the upper-tier CFC may be a CFC solely by reason of the repeal of the limitation on the ''downward'' attribution rule under section 958(b)(4), with the result that even if a dividend received by the upper-tier CFC from the lower-tier CFC were a tiered hybrid dividend, there would be no meaningful U.S. tax consequence because no U.S. shareholder would have a subpart F inclusion with respect to the upper-tier CFC.

To obviate the need for hybrid deduction accounts to be maintained in these cases, the final regulations provide that an upper-tier CFC is a specified owner of shares of stock of a lower-tier CFC only if, for purposes of sections 951 and 951A, a domestic corporation that is a U.S. shareholder of the upper-tier CFC owns (within the meaning of section 958(a), but for this purpose treating a domestic partnership as foreign) one or more shares of stock of the upper-tier CFC. *See* § 1.245A(e)–1(f)(6). The Treasury Department and the IRS expect that when proposed regulations under section 958 (REG–101828–19, 84 FR 29114) are finalized, the rule described in the preceding sentence treating a domestic partnership as foreign will be removed, as it will no longer be necessary. *See* proposed § 1.958–1(d)(1).

4. Anti-Avoidance Rule

The proposed regulations include an anti-avoidance rule that requires appropriate adjustments to be made, including adjustments that would disregard a transaction or arrangement, if a transaction or arrangement is engaged in with a principal purpose of avoiding the purposes of the proposed regulations. As an example, the anti-avoidance rule disregards a transaction or arrangement that is undertaken to affirmatively fail to satisfy the holding period requirement under section 246, such as the sale of lower-tier CFC stock before satisfying the holding period, if a principal purpose of the transaction or arrangement is to avoid the tiered hybrid dividend rules. A comment suggested that the anti-avoidance rule should not apply to a sale of lower-tier CFC stock before satisfying the holding period if the sale is to an unrelated party, even though the timing of the sale may be driven by tax considerations. Another comment requested clarification that the anti-avoidance rule does not apply to disregard a transaction pursuant to which the hybrid nature of an arrangement is eliminated (for example, a restructuring of a hybrid instrument into a non-hybrid instrument, so as to eliminate the accrual of a hybrid deduction under a relevant foreign tax law).

The Treasury Department and the IRS have determined that the anti-avoidance rule should not be limited to transactions or arrangements with related parties, as otherwise transactions or arrangements with unrelated parties could lead to the avoidance of section 245A(e) and the regulations thereunder. Accordingly, the final regulations retain the anti-avoidance rule in the proposed regulations, and thus whether the anti-avoidance rule applies to a transaction or arrangement depends solely on a principal purpose of the transaction or arrangement for the avoidance of section 245A(e) and the regulations thereunder and does not take into account the status of a counter party. *See* § 1.245A(e)–1(e). The Treasury Department and the IRS agree, however, with the comment asserting that the anti-avoidance rule should not apply to disregard a restructuring of a hybrid arrangement into a non-hybrid arrangement and, accordingly, the rule is modified to this effect. *See id.*

III. Comments and Revisions to Proposed §§ 1.267A–1 Through 1.267A–7—Certain Payments Involving Hybrid and Branch Mismatches

A. Background

The proposed regulations disallow a deduction for any interest or royalty paid or accrued (''specified payment'') to the extent the specified payment produces a D/NI outcome as a result of a hybrid or branch arrangement. The proposed regulations also disallow a deduction for a specified payment to the extent the specified payment produces an indirect D/NI outcome as a result of the effects of an offshore hybrid or branch arrangement being imported into the U.S. tax system. Finally, the proposed regulations disallow a deduction for a specified payment to the extent the specified payment produces a D/NI outcome and is made pursuant to a transaction a principal purpose of which is to avoid the purposes of the regulations under section 267A.

B. Hybrid and Branch Arrangements

1. Arrangements Giving Rise to Long-Term Deferral

i. In General

Several provisions of the proposed regulations address long-term deferral, which results when there is deferral beyond a taxable period ending more than 36 months after the end of the specified party's taxable year. For example, to address long-term deferral arising as a result of different ordering or other rules under U.S. and foreign tax law, a hybrid transaction includes an instrument a payment with respect to which is interest for U.S. tax purposes but a return of principal for purposes of the tax law of a specified recipient of a payment. *See* proposed § 1.267A–2(a)(2). In addition, the proposed regulations deem a specified payment as made pursuant to a hybrid transaction if differences between U.S. tax law and the taw law of a specified recipient of the payment (such as differences in tax accounting treatment) result in more than a 36-month deferral between the time the deduction would be allowed under U.S. tax law and the time the payment is taken into account in income under the specified recipient's tax law. *See id.* Further, a D/NI outcome is considered to occur with respect to a specified payment if under a relevant foreign tax law the payment is not included in income within the 36-month period. *See* proposed § 1.267A–3(a)(1).

One comment supported these provisions, on balance, noting that long-term deferral can create D/NI outcomes that should be neutralized by section 267A, but recommending certain of the modifications discussed in this part III.B.1 of the Summary of Comments and Explanation of Revisions section. Other comments suggested that the provisions be eliminated, because according to such comments they are potentially burdensome or are not appropriate since a D/NI outcome should not be viewed as occurring if the amount will eventually be included in income; in addition, one comment asserted that the provision dealing with mismatches in tax accounting treatment is neither supported by section 267A nor within the regulatory authority granted under section 267A(e). However, some comments also noted that the burden concerns could be addressed by adopting certain of the comments discussed in this part III.B.1 of the Summary of Comments and Explanation of Revisions section.

The Treasury Department and the IRS have determined that the final regulations should retain the long-term deferral provisions because long-term deferral can in effect create D/NI outcomes and, absent such provisions, hybrid arrangements could be used to achieve results inconsistent with the purposes of section 267A. *See* S. Comm. on the Budget, Reconciliation Recommendations Pursuant to H. Con. Res. 71, S. Print No. 115–20, at 389 (2017) (expressing concern with hybrid arrangements that ''achieve double non-taxation, including long-term deferral.''). In addition, the Treasury Department and the IRS have concluded that the provisions are consistent with section 267A and the broad regulatory authority thereunder. In particular, the Treasury Department and the IRS have concluded that deeming mismatches in tax accounting treatment to be hybrid transactions is consistent with section 267A(c) (defining a hybrid transaction), because in these cases a specified payment is deductible interest under U.S. tax law on a particular date whereas it is not includible interest under the foreign tax law until a later date.

Therefore, the final regulations retain the long-term deferral provisions but, in response to comments, modify the provisions as discussed in this part III.B.1 of the Summary of Comments and Explanation of Revisions section.

ii. Recovery of Basis or Principal

One comment requested that, in the case of a specified payment that is treated as a recovery of basis or principal under the tax law of a specified recipient, the final regulations clarify whether the specified recipient is considered to include the payment in income. The comment asserted that basis or principal should be viewed as a ''generally applicable'' tax attribute such that recovery of basis or principal should not create a D/NI outcome and, therefore, the specified recipient should be considered to include the payment in income.

The Treasury Department and the IRS have determined that basis or principal recovery can give rise to long-term deferral and thus can create a D/NI outcome. For example, consider a specified payment that is made pursuant to an instrument treated as indebtedness for U.S. tax purposes and equity for purposes of the tax law of a specified recipient, and that is treated as interest for U.S. tax purposes and a recovery of basis (under a rule similar to section 301(c)(2)) for purposes of the specified recipient's tax law. If section 267A were to not apply in such a case, then the specified party would generally be allowed a deduction at the time of the specified payment but the specified recipient would not have a taxable inclusion at that time and, indeed, might not have a taxable inclusion, if any, for an extended period.

Accordingly, the final regulations clarify that a recovery of basis or principal can create a D/NI outcome. *See* § 1.267A–3(a)(1)(ii). However, as discussed in parts III.B.1.iii (discussing a rule reducing a no-inclusion by certain amounts that are repayments of principal for U.S. tax purposes but included in income for foreign tax purposes) and III.B.1.iv (discussing hybrid sale/license transactions) of this Summary of Comments and Explanation of Revisions section, the final regulations modify the long-term deferral provisions. The Treasury Department and the IRS expect that these modifications will in many cases prevent a specified payment from being a disqualified hybrid amount when the payment is treated as a recovery of basis or principal under the tax law of a specified recipient.

iii. Defining Long-Term Deferral; Reduction of No-Inclusion by Certain Amounts

Some comments noted that under the proposed regulations, to determine whether long-term deferral occurs with respect to a specified payment, the specified party must know at the time of the payment if, under the tax law of a specified recipient, the payment will be taken into account and included in income within the 36-month period. The comments stated that in certain cases this could be difficult or burdensome, including because, after the payment is made, the specified party might need to monitor the payment during the 36-month period to ensure that it is in fact taken into account and included in income (and, if it is not so taken into account and included, the specified party might need to amend its tax return to reflect a disallowance of the deduction). The comments suggested addressing these concerns by providing for a reasonable expectation standard, based on whether, at the time of the specified payment, it is reasonable to expect that the payment will be taken into account and included in income within the 36-month period. The Treasury Department and the IRS agree with these comments and, thus, the final regulations provide rules to such effect. *See* §§ 1.267A–2(a)(2)(ii)(A) and 1.267A–3(a)(1)(i).

Comments also suggested that, to address certain cases in which there are different ordering or other rules under U.S. tax law and the tax law of a specified recipient, certain amounts related to a specified payment be aggregated for purposes of determining whether long-term deferral occurs. For example, under such an approach, if a year 1 $100x specified payment is interest for U.S. tax purposes and a return of principal for purposes of a specified recipient's tax law, but a year 2 $100x payment is a repayment of principal for U.S. tax purposes and interest for purposes of the specified recipient's tax law (and is included in income by the specified recipient), then there is no long-term deferral with respect to the year 1 payment and, as a result, the payment is not a disqualified hybrid amount. The Treasury Department and the IRS generally agree that the year 1 $100x specified payment should not be a disqualified hybrid amount. However, rather than addressing through an aggregation rule, which could give rise to uncertainty in certain cases, the final regulations provide a special rule pursuant to which a specified recipient's no-inclusion with respect to a specified payment is reduced by certain amounts that are repayments of principal for U.S. tax purposes but included in income by the specified recipient. *See* § 1.267A–3(a)(4); *see also* § 1.267A–6(c)(1)(vi).

iv. Hybrid Sale/License Transactions

Some comments suggested that hybrid sale/license transactions not be subject to the hybrid transaction rule. A hybrid sale/license transaction can occur, for example, when a specified payment is treated as a royalty for U.S. tax purposes, and a contingent payment of consideration for the purchase of intangible property under the tax law of a specified recipient. In such a case, if under the specified recipient's tax law the payment is treated as a recovery of basis, then a D/NI outcome would occur. Accordingly, if the specified payment is considered made pursuant to a hybrid transaction, then the payment would generally be a disqualified hybrid amount. Comments asserted that these transactions should be excluded because they are common, may be unavoidable, and are not abusive.

The Treasury Department and the IRS have determined that in many cases there might not be a significant difference between the results occurring under a hybrid sale/license transaction and the results that would occur were the specified recipient's tax law to (like U.S. tax law) also view the transaction as a license and the specified payment as a royalty. For example, if the specified recipient's tax law were to view the transaction as a license and the specified payment as a royalty, then the payment could be offset by an amortization deduction attributable to the basis of the intangible property. In such a case, the amortization deduction—a generally available deduction or other tax attribute—would not prevent the specified recipient from being considered to include the payment in income. *See* § 1.267A–3(a)(1). Thus, regardless of whether the transaction is a hybrid sale/license or an actual license, the specified payment could under the specified recipient's tax law be offset by basis or a deduction that is a function of basis. These cases are generally distinguishable from ones in which a transaction is a hybrid debt instrument, because tax laws typically do not provide amortization or similar deductions with respect to indebtedness.

Accordingly, the Treasury Department and the IRS have concluded that it is appropriate to exempt hybrid sale/license transactions from the hybrid transaction rule. The final regulations thus provide a rule to this effect. *See* § 1.267A–2(a)(2)(ii)(B).

v. Other Modifications or Clarifications

Comments suggested several other modifications to the long-term deferral provisions. First, although one comment generally supported a bright-line standard for measuring long-term deferral because it provides certainty, other comments suggested modifying the standard for measuring long-term deferral, either by lengthening the period to, for example, 120 months, or defining long-term deferral as an unreasonable period of time based on all the facts and circumstances. The final regulations do not adopt these comments because the Treasury Department and the IRS have concluded that, in general, a bright-line 36-month standard appropriately distinguishes between short-term and long-term deferral and avoids administrability issues that would likely arise if long-term deferral were based on a subjective standard (such as an ''unreasonable'' period of time). *See also* Hybrid Mismatch Report para. 56 (bright-line safe harbor pursuant to which inclusions within a 12-month period are not considered to give rise to long-term deferral).

Second, a comment suggested that, to balance the benefits of the bright-line standard with the resulting cliff effects, the final regulations provide a rule, similar to section 267(a)(3), that defers a deduction for a specified payment until taken into account under the foreign tax law. The final regulations do not adopt this approach because it would be inconsistent with the plain language of section 267A, which provides for the disallowance of a deduction at the time of the payment, and not a deferral of a deduction. In addition, the Treasury Department and the IRS have determined that, if such an approach were adopted, tracking rules would be necessary and such rules would create additional complexity and administrative burden.

Third, a comment requested that the final regulations clarify that if a specified payment will never be recognized under the tax law of a specified recipient (because, for example, such tax law does not impose an income tax), then the long-term deferral provision does not apply so as to deem the payment as made pursuant to a hybrid transaction. Finally, a comment requested clarification that a specified payment is treated as included in income if the payment is included in income in a prior taxable period. The Treasury Department and the IRS agree with these comments, and the final regulations thus include these clarifications. *See* § 1.267A–2(a)(2)(ii)(A); § 1.267A–3(a)(1)(i).

2. Interest-Free Loans

An interest-free loan includes, for example, an instrument that is treated as indebtedness under both U.S. tax law and the tax law of the holder of the instrument but provides no stated interest. If the issuer is allowed an imputed interest deduction, but the holder is not required to impute interest income, the instrument would give rise to a D/NI outcome. Because the imputed interest deduction is not regarded under the tax law of the holder of the instrument, the disregarded payment rule of the proposed regulations treats the imputed interest as a disregarded payment and, accordingly, a disqualified hybrid amount to the extent it exceeds dual inclusion income.

A comment noted that the Hybrid Mismatch Report generally does not disallow deductions for imputed interest payments, such as interest imputed with respect to interest-free loans, and that imputed interest raises issues that should be further considered on a multilateral basis. The comment thus suggested that the final regulations generally reserve on whether imputed interest is subject to section 267A. The final regulations do not adopt this comment because imputed interest can give rise to D/NI outcomes that are no different than D/NI outcomes produced by other hybrid and branch arrangements. However, to more clearly address these transactions, and because interest-free loans are similar to hybrid transactions and are unlikely to involve dual inclusion income, the final regulations address imputed interest under the hybrid transaction rule, rather than the disregarded payment rule. *See* § 1.267A–2(a)(4). The rules in the final regulations addressing interest-free loans and similar arrangements apply for taxable years beginning on or after December 20, 2018. *See* § 1.267A–7(b)(1).

3. Disregarded Payments

i. Dual Inclusion Income

In general, the proposed regulations provide that a disregarded payment is a disqualified hybrid amount to the extent it exceeds the specified party's dual inclusion income. For this purpose, an item of income of a specified party is dual inclusion income only if it is included in the income of both the specified party and the tax resident or taxable branch to which the disregarded payment is made (as determined under the rules of § 1.267A–3(a)). *See* proposed § 1.267A–2(b)(3). A comment suggested that the final regulations address whether an item of income is dual inclusion income even though, as a result of a participation exemption, patent box, or other exemption regime, it is not included in the income of the tax resident or taxable branch to which the disregarded payment is made.

The Treasury Department and the IRS have concluded that an item of income of a specified party should be dual inclusion income even though, by reason of a participation exemption or other relief particular to a dividend, it is not included in the income of the tax resident or taxable branch to which the disregarded payment is made, provided that the application of the participation exemption or other relief relieves double-taxation (rather than results in double non-taxation). The final regulations are thus modified to this effect. *See* § 1.267A–2(b)(3)(ii); *see also* § 1.267A–6(c)(3)(iv). The final regulations provide a similar rule in cases in which an item of income of a specified party is included in the income of the tax resident or taxable branch to which the disregarded payment is made but not included in the income of the specified party by reason of a dividends received deduction (such as the section 245A(a) deduction). These rules do not apply to items that are excluded from income under a patent box or similar regime because, to the extent the payer of the item is allowed a deduction for the item under its tax law, the deduction and the exclusion, together, result in double non-taxation. *See also* Hybrid Mismatch Report para. 126.

ii. Exception for Payments Otherwise Taken Into Account Under Foreign Law

Under the proposed regulations, a special rule ensures that a specified payment is not a deemed branch payment to the extent the payment is otherwise taken into account under the home office's tax law in such a manner that there is no mismatch. *See* proposed § 1.267A–2(c)(2). Absent such a rule, a deduction for a deemed branch payment could be disallowed even though it does not give rise to a D/NI outcome. Thus, for example, if under an applicable treaty a U.S. taxable branch is deemed to pay an amount of interest or royalty to the home office that is not regarded under the home office's tax law, the payment is nevertheless not a deemed branch payment to the extent that under the home office's tax law a corresponding amount of interest or royalties is allocated and attributable to the U.S. taxable branch and therefore is not deductible. *See id.*

However, the proposed regulations do not provide a similar special rule in analogous cases involving disregarded payments. For example, assume FX1, a tax resident of Country X, owns FX2, also a tax resident of Country X, and FX2 has a U.S. taxable branch (''USB''). Further, assume that FX1 borrows from a bank and on-lends the proceeds to FX2, and that pursuant to such transactions FX1 pays $100x of interest to the bank and FX2 pays $100x of interest to FX1 but, as a consequence of the Country X consolidation regime, FX2's payment to FX1 is treated as a disregarded transaction between group members. Lastly, assume that the entire $100x of FX2's payment of interest to FX1 is allocable to USB's effectively connected income under section 882 and thus is a specified payment under proposed § 1.267A–5(b)(3). Under the proposed regulations, USB's specified payment of interest would be a disregarded payment, regardless of whether the payment is otherwise taken into account under Country X tax law. The specified payment would otherwise be taken into account under Country X tax law if, for example, FX1's payment of interest to the bank were allocated and attributed to USB and were therefore not deductible. *Cf.* § 1.267A–2(c)(2). To provide symmetry between the disregarded payment rule and the deemed branch payment rule, the final regulations add to the disregarded payment rule a special rule similar to the special rule in the deemed branch payment context. *See* § 1.267A–2(b)(2)(ii)(B).

4. Payments by U.S. Taxable Branches

i. Allocation of Interest Expense to U.S. Taxable Branches

The proposed regulations provide that a U.S. taxable branch of a foreign corporation is considered to pay or accrue interest allocable under section 882(c)(1) to effectively connected income of the U.S. taxable branch. *See* proposed § 1.267A–5(b)(3). The proposed regulations include rules to identify the manner in which a specified payment of a U.S. taxable branch is considered made. *See id.* For directly allocable interest described in § 1.882–5(a)(1)(ii)(A), or a U.S. booked liability described in § 1.882–5(d)(2), a direct tracing approach applies; for any excess interest, the U.S. taxable branch is treated as paying or accruing interest to the same persons and pursuant to the same terms that the home office paid or accrued such interest on a pro-rata basis. *See id.* As explained in the preamble to the proposed regulations, these rules are necessary to determine whether a U.S. taxable branch's specified payment is made pursuant to a hybrid or branch arrangement (for example, made pursuant to a hybrid transaction or to a reverse hybrid).

The proposed regulations do not, however, contain rules for tracing a foreign corporation's distributive share of interest expense when the foreign corporation is a partner in a partnership that has a U.S. asset, as described in § 1.882–5(a)(1)(ii)(B), or rules for tracing interest that is determined under the separate currency pools method, as described in § 1.882–5(e). The final regulations therefore provide that, like directly allocable interest and U.S. booked liabilities, a U.S. taxable branch must use a direct tracing approach to identify the person to whom interest described in § 1.882–5(a)(1)(ii)(B) or § 1.882–5(e) is payable. *See* § 1.267A–5(b)(3)(ii)(A). In addition, the Treasury Department and the IRS have determined that a consistent approach should apply for purposes of identifying a U.S. branch interest payment in order to avoid treating similarly situated taxpayers differently under section 267A. Accordingly, similar to the tracing rules provided in the final regulations under section 59A, the final regulations provide that foreign corporations should use U.S. booked liabilities to identify the person to whom an interest expense is payable, without regard to which method the foreign corporation uses to determine its interest expense under section 882(c)(1). *See id.*; *see also* § 1.59A–3(b)(4)(i)(B).

ii. Interaction With Income Tax Treaties

Under the proposed regulations, the deemed branch payment rule addresses a D/NI outcome when, under an income tax treaty, a deductible payment is deemed to be made by a permanent establishment to its home office (or another branch of the home office) and offsets income not taxable to the home office, but the payment is not taken into account under the tax law of the home office or other branch. *See* proposed § 1.267A–2(c)(2). A deemed branch payment is a notional payment that arises from applying Article 7 (Business Profits) of certain U.S. income tax treaties, which takes into account only the profits derived from the assets used, risks assumed and activities performed by the permanent establishment to determine the business profits that may be taxed where the permanent establishment is situated. *See, for example,* the U.S. Treasury Department Technical Explanation to the income tax convention between the United States and Belgium, signed November 27, 2006 (''[T]he OECD Transfer Pricing Guidelines apply, by analogy, in determining the profits attributable to a permanent establishment.'').

A comment questioned whether the deemed branch payment rule is a treaty override because it creates a new condition on the allowance of a deduction for purposes of computing the business profits of a U.S. permanent establishment based upon an intervening change in U.S. law. The comment noted that the deemed branch payment rule affects the allocation of taxing rights of business profits under the treaty. Another comment raised a similar concern and requested that the deemed branch payment rule be withdrawn because it is inconsistent with U.S. income tax treaty obligations.

The Treasury Department and the IRS have determined that the deemed branch payment rule is not a treaty override and is consistent with U.S. income tax treaty obligations. The treaties that allow notional payments under Article 7 take into account interbranch transactions and value such interbranch transactions using the most appropriate arm's length methodology. Once expenses are either allocated or determined under arm's length principles to be taken into account in determining the business profits of the permanent establishment under Article 7, domestic limitations on deductibility of such expenses may apply in the same manner as they would if the amounts were paid by a domestic corporation. In other words, sections 163(j), 267(a)(3), and 267A generally apply to the same extent to the notional payments as they would to actual interest payments by a domestic subsidiary to a foreign parent. The commentary to paragraph 2 of Article 7 of the OECD Model Tax Convention adopts a comparable interpretation. *See* Para. 30 and 31 of the commentary to para. 2 of Article 7 of the OECD Model Tax Convention. Accordingly, the final regulations retain the deemed branch payment rule.

5. Reverse Hybrids

i. Fiscally Transparent

A reverse hybrid is an entity that is fiscally transparent for purposes of the tax law of the country in which it is established but not for purposes of the tax law of an investor of the entity. *See* § 1.267A–2(d)(2). Under the proposed regulations, whether an entity is fiscally transparent with respect to an item of income is determined under the principles of § 1.894–1(d)(3)(ii) and (iii). *See* proposed § 1.267A–5(a)(8).

The final regulations provide special rules to address certain cases in which, given § 1.894–1(d)(3)'s definition of fiscally transparent, an entity might not be considered a reverse hybrid under the proposed regulations with respect to a payment received by the entity, even though neither the entity nor an investor of the entity take the payment into account in income, with the result that the payment gives rise to a D/NI outcome. Pursuant to the special rules, an entity is considered fiscally transparent with respect to the payment under the tax law of the country where it is established if, under such tax law, the entity allocates the payment to an investor, with the result that under such tax law the investor is viewed as deriving the payment through the entity. *See* § 1.267A–5(a)(8)(i); *see also* § 1.267A–6(c)(5)(vi). A similar rule applies for purposes of determining whether the entity is fiscally transparent with respect to the payment under an investor's tax law. *See* § 1.267A–5(a)(8)(ii). Lastly, to address the fact that under § 1.894–1(d)(3)(ii), certain collective investment vehicles and similar arrangements may not be considered fiscally transparent under the tax law of the country where established, a special rule provides that such arrangements are considered fiscally transparent under the tax law of the establishment country if neither the arrangement nor an investor is required to take the payment into account in income. *See* § 1.267A–5(a)(8)(iii); *see also* § 1.894–1(d)(5), *Example 7.*

ii. Current-Year Distributions From Reverse Hybrid

Under the proposed regulations, when a specified payment is made to a reverse hybrid, it is generally a disqualified hybrid amount to the extent that an investor does not include the payment in income. *See* proposed § 1.267A–2(d)(1). For this purpose, whether an investor includes the specified payment in income is determined without regard to a subsequent distribution by the reverse hybrid. *See* proposed § 1.267A–3(a)(3). As explained in the preamble to the proposed regulations, although a subsequent distribution may be included in the investor's income, the distribution may not occur for an extended period and, when it does occur, it may be difficult to determine whether the distribution is funded from an amount comprising the specified payment.

A comment noted that if a reverse hybrid distributes all of its income during a taxable year, then current year distributions should be taken into account for purposes of determining whether an investor of the reverse hybrid includes in income a specified payment made to the reverse hybrid. The comment asserted that not doing so would be unduly harsh and could create unwarranted disparities between cases involving current year distributions and anti-deferral inclusions (which are taken into account for purposes of determining whether an investor includes in income a specified payment). The comment also suggested that the final regulations reserve on whether subsequent year distributions are taken into account.

The Treasury Department and the IRS agree with the comment that current year distributions should be taken into account in cases in which the reverse hybrid distributes all of its income during the taxable year. The final regulations thus provide that in these cases a portion of a specified payment made to the reverse hybrid during the taxable year is considered to relate to each of the current year distributions from the reverse hybrid. As a result, to the extent that an investor includes in income a current year distribution, the investor is treated as including in income a corresponding portion of a specified payment made to the reverse hybrid during the year. *See* § 1.267A–3(a)(3). The Treasury Department and the IRS have determined that it would be too complex to take into account current year distributions in cases in which the reverse hybrid does not distribute all of its income during the taxable year, as in these cases stacking or similar rules would likely be needed to determine the extent that a specified payment is considered to relate to a distribution. For similar reasons, the Treasury Department and the IRS have determined that it would be too complex to take into account subsequent year distributions.

iii. Multiple Investors

The final regulations clarify the application of the reverse hybrid rule in cases in which an investor of the reverse hybrid owns only a portion of the interests of the reverse hybrid and does not include in income a specified payment made to the reverse hybrid. In these cases, given the ''as a result of'' test, only the no-inclusion of the investor that occurs for its portion of the payment may give rise to a disqualified hybrid amount.

For example, consider a case in which a $100x specified payment is made to a reverse hybrid 60% of the interests of which are owned by a Country X investor (the tax law of which treats the reverse hybrid as not fiscally transparent) and 40% of the interests of which are owned by a Country Y investor (the tax law of which treats the reverse hybrid as fiscally transparent). If the Country X investor does not include any portion of the payment in income, then $60x of the payment would generally be a disqualified hybrid amount under the reverse hybrid rule, calculated as $100x (the no-inclusion that actually occurs with respect to the Country X investor) less $40x (the no-inclusion that would occur with respect to the Country X investor absent hybridity). *See* §§ 1.267A–2(d) and 1.267A–6(c)(5)(iv).

iv. Inclusion by Taxable Branch in Country in Which Reverse Hybrid is Established

The final regulations provide an exception pursuant to which the reverse hybrid rule does not apply to a specified payment made to a reverse hybrid to the extent that, under the tax law of the country in which the reverse hybrid is established, a taxable branch the activities of which are carried on by an investor of the reverse hybrid includes the payment in income. *See* § 1.267A–2(d)(4). The Treasury Department and the IRS have determined that, in these cases, the inclusion in the establishment country generally prevents a D/NI outcome and thus it is appropriate for an exception to apply.

C. Exceptions Relating to Disqualified Hybrid Amounts

1. Effect of Inclusion in Another Foreign Country

Under the proposed regulations, a specified payment generally is a disqualified hybrid amount to the extent that a D/NI outcome occurs with respect to any foreign country as a result of a hybrid or branch arrangement, even if the payment is included in income in another foreign country (a ''third country''). *See also* part III.C.2 of this Summary of Comments and Explanation of Revisions section (exceptions for amounts included or includible in income in the United States). Absent such a rule, an inclusion of a specified payment in income in a third country would discharge the application of section 267A even though a D/NI outcome occurs in a foreign country as a result of a hybrid or branch arrangement. The preamble to the proposed regulations expresses particular concern with cases in which the third country imposes a low tax rate.

Comments requested that this rule be eliminated because requiring an income inclusion in multiple jurisdictions is not necessary or appropriate to prevent a D/NI outcome. One of these comments asserted that the rule is unfair and does not effectively prevent rate arbitrage. The comments further asserted that the rule is inconsistent with the policies of section 267A, other provisions of the Code (such as section 894(c) and § 1.894–1(d)), and the Hybrid Mismatch Report. One comment stated that the rule is neither included in section 267A nor permissible under the regulatory authority under section 267A(e). Although the comments noted potential concerns associated with an income inclusion in a low-tax third country discharging the application of section 267A, the comments suggested addressing the concerns through the anti-avoidance rule included in the proposed regulations. Alternatively, a comment suggested retaining the general approach of the proposed regulations but permitting an inclusion in a third country to discharge the application of section 267A if the inclusion satisfies a rate test (for example, to the extent the inclusion is at a tax rate at least equal to the U.S. tax rate or the tax rate of the foreign country in which the no-inclusion occurs).

The Treasury Department and the IRS have determined that the approach of the proposed regulations should be retained to prevent the avoidance of section 267A by routing a specified payment through a low-tax third country, and to prevent the use of a hybrid or branch arrangement from placing a taxpayer in a better position than it would have been in absent the arrangement. In addition, the Treasury Department and the IRS have concluded that the rule is consistent with section 267A and the broad regulatory authority thereunder. Finally, the Treasury Department and the IRS have concluded that relying on the anti-avoidance rule would give rise to uncertainty and be an insufficient remedy, and that a rate test would also be an insufficient remedy because it would give rise to additional complexity and would require taking into account tax rates, which is beyond the scope of hybrid mismatch rules.

2. Amounts Included or Includible in Income in the United States

The proposed regulations provide rules that, in general, ensure that a specified payment is not a disqualified hybrid amount to the extent it is included in the income of a tax resident of the United States or a U.S. taxable branch, or is taken into account by a U.S. shareholder under the subpart F or GILTI rules. *See* proposed § 1.267A–3(b). Several comments suggested retaining these rules, but revising them in certain respects.

One comment suggested revising the rules relating to amounts taken into account under subpart F so that the determination is made without regard to the earnings and profits limitation under section 952. Another comment noted that the rules relating to amounts taken into account under GILTI could potentially give rise to rate arbitrage (for example, if the rate on the GILTI inclusion amount is in effect reduced by reason of the deduction under section 250(a)(1)(B), and the deduction for the specified payment offsets income that is not eligible for a reduced rate).[3] Finally, a comment suggested an exception for specified payments received by a qualified electing fund (as described in section 1295) and taken into account by a tax resident of the United States under section 1293.

The Treasury Department and the IRS agree with these recommendations, and thus the final regulations provide rules to such effect. *See* § 1.267A–3(b)(3) through (5).

3. Effect of Withholding Taxes on a Specified Payment

Under the proposed regulations, the determination of whether a deduction for a specified payment is disallowed under section 267A is made without regard to whether the payment is subject to U.S. source-based tax under section 871 or 881 and such tax has been deducted and withheld under section 1441 or 1442. The preamble to the proposed regulations explains that withholding tax policies are unrelated to the policies underlying hybrid arrangements and, because the approach of the proposed regulations is consistent with the Hybrid Mismatch Report, it may improve the coordination of section 267A with hybrid mismatch rules of other countries.

In response to a request for comments in the proposed regulations, several comments recommended that withholding taxes be taken into account for purposes of section 267A. For example, comments suggested that to the extent the United States imposes withholding tax on a specified payment, section 267A generally should not apply to the payment because, otherwise, the payment may be effectively taxed twice by the United States (once as a result of the withholding tax, and second as a result of the denial of a deduction for the payment). The comments also asserted that such an approach would generally be consistent with the policies underlying the exceptions in § 1.267A–3(b) (certain amounts not treated as disqualified hybrid amounts to extent included or includible in income). Although one comment acknowledged that adopting an approach to withholding taxes that is inconsistent from the Hybrid Mismatch Report could raise potential coordination concerns, it recommended further work be undertaken on a multilateral level to avoid such issues and to ensure that economic double taxation does not occur.

The Treasury Department and the IRS have determined that it would not be appropriate for withholding taxes to be taken into account for purposes of section 267A. The purpose of withholding taxes is generally not to address mismatches in tax outcomes but, rather, to allow the source jurisdiction to retain its right to tax a payment. In addition, and as explained in the preamble to the proposed regulations, taking withholding taxes into account could create issues regarding how section 267A interacts with foreign hybrid mismatch rules—for example, a foreign country with hybrid mismatch rules may not treat the imposition of U.S. withholding taxes on a specified payment as neutralizing a D/NI outcome and may therefore apply a secondary or defensive rule requiring the payee to include the payment in income. Moreover, had Congress intended for withholding taxes to be taken into account for purposes of section 267A, it could have added a rule similar to the one in section 59A(c)(2)(B), which was enacted at the same time as section 267A. Finally, providing an exception for withholding taxes could raise administrability issues in cases in which a specified payment is subject to U.S. withholding taxes at the time of payment (with the result that a deduction for the payment is not disallowed under section 267A at that

[3] For instance, in the case of a structured arrangement pursuant to which a domestic corporation (US1) makes a specified payment to a CFC of an unrelated domestic corporation (US2), a deduction allowed to US1 for the specified payment would offset income subject to tax at the full U.S. corporate tax rate, whereas US2's GILTI inclusion attributable to the payment would generally be subject to tax at a reduced rate by reason of the deduction under section 250(a)(1)(B).

time) but the taxes are refunded in a later period; in these cases, it could be difficult or burdensome to retroactively deny the deduction and make corresponding adjustments. Thus, the Treasury Department and the IRS have determined that the exceptions in § 1.267A–3(b) should generally be limited to inclusions similar to those described in the flush language of section 267A(b)(1) (inclusions under section 951(a)), which, unlike U.S. source income that is subject to withholding taxes, are included in the U.S. tax base on a net basis. Accordingly, the final regulations do not adopt the comment.

D. Disqualified Imported Mismatch Amounts

1. In General

Under the proposed regulations, an ''imported mismatch rule'' prevents the effects of an offshore hybrid arrangement from being imported into the U.S. taxing jurisdiction through the use of a non-hybrid arrangement. Pursuant to this rule, a specified payment is generally a disqualified imported mismatch amount, and therefore a deduction for the payment is disallowed, to the extent that the payment is (i) an imported mismatch payment, and (ii) income attributable to the payment is directly or indirectly offset by a hybrid deduction of a tax resident or taxable branch. *See* proposed § 1.267A–4(a). The extent that a hybrid deduction directly or indirectly offsets income attributable to an imported mismatch payment is determined pursuant to a series of operating rules, including ordering rules, funding rules, and a pro rata allocation rule. *See* proposed § 1.267A–4(c) and (e). Under these rules, a hybrid deduction is considered to offset income attributable to an imported mismatch payment only if the imported mismatch payment directly or indirectly funds the hybrid deduction. *See* proposed § 1.267A–4(c).

Some comments asserted that the imported mismatch rule is complex and could be difficult to administer. These comments suggested various ways to address these concerns. One comment suggested removing the imported mismatch rule because of the complexity and administrability concerns and also because, according to the comment, the rule exceeds the authority granted under section 267A. Another comment suggested modifying the rule such that an imported mismatch payment is a disqualified imported mismatch amount only if the income attributable to the payment is offset by a hybrid deduction that as a factual matter is connected to the payment; thus, under this approach, the operating rules under the proposed regulations would generally be replaced with a broader facts and circumstances inquiry, possibly supplemented by rebuttable presumptions. Other comments suggested modifications to specific aspects of the imported mismatch rule, such as the operating rules.

The Treasury Department and the IRS have concluded that the general approach of the imported mismatch rule under the proposed regulations should be retained, and that the rule is consistent with the grant of regulatory authority under section 267A(e)(1) (regarding regulations to address conduit arrangements involving hybrid transactions or hybrid entities). The Treasury Department and the IRS have determined that the operating rules under the proposed regulations provide more certainty than under alternative approaches, such as determining disqualified imported mismatch amounts based on a factual tracing of hybrid deductions to imported mismatch payments. In addition, the Treasury Department and the IRS have determined that the general approach under the proposed regulations promotes parity between similarly situated taxpayers. For example, in the case of one taxpayer with an imported mismatch payment factually linked to a hybrid deduction and another taxpayer with an imported mismatch payment not factually linked to a hybrid deduction, only the first taxpayer's payment would be a disqualified imported mismatch amount under a factual tracing approach, even though as an economic matter (and taking into account the fungibility of money) the income attributable to each taxpayer's payment may be offset by a hybrid deduction. Further, the general approach under the proposed regulations is consistent with the approach recommended under the Hybrid Mismatch and Branch Mismatch reports, which would better align these rules with hybrids mismatch rules of other jurisdictions to ensure that imported mismatches are adequately addressed and do not result in a single hybrid deduction giving rise to a disallowance in more than one jurisdiction. *See* Hybrid Mismatch Report Recommendation 8; *see also* OECD/G20, *Neutralising the Effects of Branch Mismatch Arrangements, Action 2: Inclusive Framework on BEPS* (July 2017) Recommendation 5.

However, in response to comments, the final regulations modify certain aspects of the imported mismatch rule in order to reduce complexity and facilitate compliance and administration of the rule. These modifications and others are discussed in parts III.D.2 through 5 of this Summary of Comments and Explanation of Revisions section.

2. Imported Mismatch Payments

Several comments suggested that the imported mismatch rule could result in double U.S. taxation in certain cases. For example, assume US1, a domestic corporation, owns all the interests of each of US2, a domestic corporation, and FX, a tax resident of Country X that is a CFC for U.S. tax purposes. Also assume that FX owns all the interests of FY, a tax resident of Country Y that is a disregarded entity for U.S. tax purposes. Lastly, assume that US2 makes a $100x non-hybrid specified payment to FY, and that FY incurs a $100x hybrid deduction. In such a case, according to the comments, treating US2's payment as a disqualified imported mismatch amount could result in double U.S. taxation, as the United States would be disallowing US2 a deduction for the payment even though the entire amount is indirectly included in US1's income as a subpart F inclusion. The comments thus requested modifying the imported mismatch rule such that it does not apply in cases like these.

The Treasury Department and the IRS agree with these comments. As a result, the final regulations revise the definition of an imported mismatch payment, which under the proposed regulations is defined as any specified payment to the extent not a disqualified hybrid amount. Under the final regulations, a specified payment is an imported mismatch payment only to the extent that it is neither a disqualified hybrid amount nor included or includible in income in the United States (as determined under the rules of § 1.267A–3(b)). *See* § 1.267A–4(a)(2)(v). Thus, in the example in the previous paragraph, none of US2's payment would be an imported mismatch payment, calculated as $100x (the amount of the payment) less $0 (the disqualified hybrid amount with respect to the payment), less $100x (the amount of the payment that is included or includible in income in the United States). Accordingly, none of the payment would be subject to disallowance under the imported mismatch rule.

3. Hybrid Deductions

i. Deductions Constituting Hybrid Deductions

Under the proposed regulations, for a deduction allowed to a tax resident or taxable branch under its tax law to be a hybrid deduction, it generally must be one that would be disallowed if such tax law contained rules substantially similar to the rules under §§ 1.267A–1 through 1.267A–3 and 1.267A–5. *See* proposed § 1.267A–4(b). A comment requested guidance on how this standard applies when the tax law of a tax resident or taxable branch contains hybrid mismatch rules. The comment posited several approaches, including (i) not treating deductions allowed to such a tax resident or taxable branch under its tax law as a hybrid deduction, or (ii) treating deductions allowed to a such a tax resident or taxable branch under its tax law as a hybrid deduction if the deduction would be disallowed if such tax law contained rules nearly identical to those under section 267A. The comment recommended the first approach.

The Treasury Department and the IRS have determined that the first approach could give rise to inappropriate results. For example, in the case of a deduction allowed to a foreign tax resident under its tax law with respect to an interest-free loan, the deduction would not be a hybrid deduction under the first approach if the tax resident's tax law contains hybrid mismatch rules, even though the deduction would be disallowed under section 267A were section 267A to apply to the deduction. The Treasury Department and the IRS believe that these results could lead to avoidance of the purposes of section 267A. That is, the first approach could incentivize taxpayers to implement certain offshore hybrid arrangements and import the effects of the arrangement into the U.S. taxing jurisdiction, even though a deduction would be disallowed under section 267A were the arrangement to involve the U.S. taxing jurisdiction directly. Accordingly, the final regulations do not adopt this approach.

However, in response to the comment, the final regulations provide an exclusive list of deductions that constitute hybrid deductions with respect to a tax resident or taxable branch the tax law of which contains hybrid mismatch rules. *See* § 1.267A–4(b)(2)(i). This list, which represents deductions that would be disallowed under section 267A but may be allowed under the hybrid mismatch rules of the foreign country, includes deductions with respect to (i) equity, (ii) interest-free loans (and similar arrangements), and (iii) amounts that are not included in income in a third foreign country. Thus, in the case of a tax resident or taxable branch the tax law of which contains hybrid mismatch rules, a taxpayer need only consider these three types of arrangements when determining whether the tax resident or taxable branch has hybrid deductions for purposes of the imported mismatch rule. The Treasury Department and the IRS have concluded that this approach increases certainty and improves the administration of the imported mismatch rule.

ii. NIDs

Under the proposed regulations, a hybrid deduction includes NIDs allowed to a tax resident under its tax law. *See* proposed § 1.267A–4(b). The comments regarding NIDs in the context of section 267A were substantially similar to the comments regarding NIDs in the context of section 245A(e). *See* part II.B.4 of this Summary of Comments and Explanation of Revisions section. Thus, for reasons similar to the reasons discussed in that section, the final regulations generally retain the approach of the proposed regulations regarding NIDs, but provide that only NIDs allowed to a tax resident under its tax law for accounting periods beginning on or after December 20, 2018, are hybrid deductions. *See* § 1.267A–4(b)(2)(iii).

In addition, a comment suggested that including NIDs as a hybrid deduction conflicts with nondiscrimination provisions of income tax treaties that require interest and royalties paid by U.S. residents to residents of the other treaty country be deductible under the same conditions as if they had been paid to a resident of the United States. *See, for example,* paragraph (4) of Article 23 (Nondiscrimination) of the income tax convention between the United States and Belgium, signed November 27, 2006. However, the U.S. Treasury Department Technical Explanation of Article 23 of the U.S.-Belgium income tax treaty provides that ''. . . the common underlying premise [in each paragraph of the Article] is that if the difference in treatment is directly related to a tax-relevant difference in the situations of the domestic and foreign persons being compared, that difference is not to be treated as discriminatory. . . .'' In this case, the disallowance of a deduction is dependent solely on differences in U.S. tax law and the tax law of an imported mismatch payee (or certain other foreign parties), and the tax benefits allowed to the imported mismatch payee (or certain other foreign parties) under foreign tax law. Payments to related domestic persons would always be governed by the same Federal tax laws, and domestic law does not provide hybrid deductions, including NIDs, to domestic persons. Accordingly, the Treasury Department and the IRS have concluded that including NIDs as a hybrid deduction does not conflict with the nondiscrimination provision of applicable U.S. income tax treaties.

The proposed regulations do not provide a rule pursuant to which NIDs are hybrid deductions only to the extent that the double non-taxation produced by the NIDs is a result of hybridity. However, consistent with other aspects of the section 267A regulations, the Treasury Department and the IRS have concluded that such a rule is appropriate and the final regulations therefore provide a rule to this effect. *See* § 1.267A–4(b)(1)(ii). Thus, for example, in the case of a tax resident all the interests of which are owned by an investor that is a tax resident of another country, NIDs allowed to the tax resident are not hybrid deductions if the tax law of the investor has a pure territorial regime (that is, only taxes income from domestic sources) or if such tax law does not impose an income tax.

iii. Deemed Branch Payments

Under the proposed regulations, a hybrid deduction of a taxable branch includes a deduction that would be disallowed if the tax law of the taxable branch contained a provision substantially similar to proposed § 1.267A–2(c) (regarding deemed branch payments). *See* proposed § 1.267A–4(b). Proposed § 1.267A–2(c) generally disallows a deduction for a deemed branch payment of a U.S. taxable branch only if the tax law of the home office provides an exclusion or exemption for income attributable to the branch. Proposed § 1.267A–2(c) thus provides a simpler standard than the dual inclusion income standard of proposed § 1.267A–2(b) (regarding disregarded payments). The simpler standard applies for deemed branch payments because these payments may arise due to simply operating a U.S. trade or business (as opposed to disregarded payments that typically result from structured tax planning), as well as because, given that U.S. permanent establishments cannot consolidate or otherwise share losses with U.S. taxpayers, there is a more limited opportunity for a deduction for such payments to offset non-dual inclusion income.

A comment noted that under a tax law of a foreign country a taxable branch could be permitted to consolidate or otherwise share losses with a tax resident of that country. The comment thus questioned whether, in the imported mismatch context, it is appropriate for the deemed branch payment rule to apply the branch exemption standard, rather than the dual inclusion income standard.

The Treasury Department and the IRS have concluded that, in the imported mismatch context, the dual inclusion income standard should apply in cases in which the tax law of the taxable branch permits a loss of the taxable branch to be shared with a tax resident or another taxable branch, because in these cases the excess of the taxable branch's deemed branch payments over its dual inclusion income could offset non-dual inclusion income. The final regulations therefore provide a rule to this effect. *See* § 1.267A–4(b)(2)(ii).

iv. Hybrid Deductions of CFCs

Under the proposed regulations, only a tax resident or taxable branch that is not a specified party can incur a hybrid deduction. *See* proposed § 1.267A–4(b). Similarly, under the proposed regulations, only a tax resident or a taxable branch that is not a specified party can make a funded taxable payment. *See* proposed § 1.267A–4(c)(3). This approach was generally intended to ensure that section 267A does not result in double U.S. taxation in cases of specified payments involving CFCs, because payments to CFCs are generally includible in income in the United States and payments by CFCs are generally subject to disallowance as disqualified hybrid amounts.

A comment noted that this approach could lead to inappropriate results in certain cases. For example, it could lead to the avoidance of the imported mismatch rule through the use CFCs that are not wholly-owned by tax residents of the United States. The comment therefore recommended that the final regulations provide that CFCs can incur hybrid deductions and make funded taxable payments. However, to prevent double U.S. taxation, the comment suggested that a payment by a CFC not give rise to a hybrid deduction or a funded taxable payment to the extent that the payment gives rise to an increase in the U.S. tax base.

The Treasury Department and the IRS agree with the comment and the final regulations therefore provide that CFCs can incur hybrid deductions and make funded taxable payments. *See* § 1.267A–4(b)(1) and (c)(3)(v). The final regulations also provide rules to ensure that a hybrid deduction or funded taxable payment of a CFC does not include an amount that is a disqualified hybrid amount or included or includible in income in the United States (as determined under the rules of § 1.267A–3(b)). *See* § 1.267A–4(b)(2)(iv) and (c)(3)(v)(C). However, in the case of a disqualified hybrid amount of a CFC that is only partially owned by tax residents of the United States (or a disqualified hybrid amount a deduction for which would be allocated and apportioned to income not subject to U.S. tax), only a portion of the disqualified hybrid amount prevents a payment of the CFC from giving rise to a hybrid deduction or a funded taxable payment, as disallowing the CFC a deduction for the disqualified hybrid amount will only partially increase the U.S. tax base (or will not increase the U.S. tax base at all). *See* § 1.267A–4(g). A new example illustrates these rules. *See* § 1.267A–6(c)(11).

4. Setoff Rules

i. Funded Taxable Payments

Under the proposed regulations, for an imported mismatch payment to indirectly fund a hybrid deduction, the imported mismatch payee must directly or indirectly make a funded taxable payment to the tax resident or taxable branch that incurs the hybrid deduction. *See* proposed § 1.267A–4(c)(3). A comment requested that the final regulations clarify that, for a payment to be a funded taxable payment, it must be included in income of a tax resident or taxable branch. The Treasury Department and the IRS agree with the comment and the final regulations thus provide a clarification to this effect. *See* § 1.267A–4(c)(3)(v)(B).

ii. Hybrid Deduction First Offsets Imported Mismatch Payment With Closest Nexus to Deduction

Under the proposed regulations, when there are multiple imported mismatch payments, a hybrid deduction is first considered to offset income attributable to the imported mismatch payment that has the closest nexus to the hybrid deduction. *See* proposed §§ 1.267A–4(c)(2) and 1.267A–6(c)(10). For example, in the case of two imported mismatch payments, one of which is made pursuant to a transaction entered into pursuant to the same plan pursuant to which the hybrid deduction is incurred (a ''factually-related imported mismatch payment'') and the other of which is not a factually-related imported mismatch payment, the hybrid deduction is first considered to offset income attributable to the factually-related imported mismatch payment. As an additional example, in the case of two imported mismatch payments, one of which is directly connected to a hybrid deduction (because the imported mismatch payee with respect to the payment is the tax resident or taxable branch that incurs the hybrid deduction) and the other of which is indirectly connected to the hybrid deduction (because the imported mismatch payee with respect to the payment makes a funded taxable payment to the tax resident or taxable branch that incurs the hybrid deduction), the hybrid deduction is first considered to offset income attributable to the imported mismatch payment that is directly connected to the hybrid deduction.

The final regulations retain this approach and provide two clarifications. First, the final regulations clarify that an imported mismatch payment is a factually-related imported mismatch payment—and therefore is given priority in terms of funding the hybrid deduction over other imported mismatch payments—only if a design of the plan or series of related transactions pursuant to which the hybrid deduction is incurred was for the hybrid deduction to offset income attributable to the payment. *See* § 1.267A–4(c)(2)(i).

Second, the final regulations clarify that when there are multiple imported mismatch payments that are indirectly connected to the tax resident or taxable branch that incurs the hybrid deduction, the hybrid deduction is first considered to offset income attributable to an imported mismatch payment that is connected, through the fewest number of funded taxable payments, to the tax resident or taxable branch that incurs the hybrid deduction. *See* § 1.267A–4(c)(3)(vii) and (viii). For example, in the case of back-to-back imported mismatch payments, the first such payment is given priority over more removed imported mismatch payments.

iii. Relatedness Requirement

Under the proposed regulations, a hybrid deduction offsets income attributable to an imported mismatch payment only if the tax resident or taxable branch that incurs the hybrid deduction is related to the imported mismatch payer (or is a party to a structured arrangement pursuant to which the payment is made). *See* proposed § 1.267A–4(a). A comment requested that, for an imported mismatch payment to indirectly fund a hybrid deduction and thus be offset by the deduction, the imported mismatch payee (and, if applicable, each intermediary tax resident or taxable branch in the chain of funded taxable payments) must be related to the imported mismatch payer (or a party to a structured arrangement pursuant to which the payment is made). The Treasury Department and the IRS agree with the comment and the final regulations therefore provide rules to this effect. *See* § 1.267A–4(c)(3)(ii) and (iv).

5. Coordination With Foreign Imported Mismatch Rules

i. Certain Payments Deemed To Be Imported Mismatch Payments

The proposed regulations coordinate the U.S. imported mismatch rule with foreign imported mismatch rules, in order to prevent the same hybrid deduction from resulting in deductions for non-hybrid payments being disallowed under imported mismatch rules in more than one jurisdiction. In general, the proposed regulations do so through a special rule pursuant to which certain payments by non-specified parties are deemed to be imported mismatch payments (the ''Deemed IMP Rule''). *See* proposed § 1.267A–4(f). In certain cases, the effect of the Deemed IMP Rule is that the rule reduces the extent to which a payment of a specified party is considered to fund a hybrid deduction (and therefore reduces the extent to which the hybrid deduction is considered to offset the income attributable to the imported mismatch payment). For example, a hybrid deduction may be considered directly funded by a payment of a non-specified party, rather than indirectly funded by a payment of a specified party; or, a hybrid deduction may be considered pro rata funded by a payment of a specified party and a payment of a non-specified party, rather than solely funded by the payment of the specified party. Under the proposed regulations, the Deemed IMP Rule applies only to payments by a tax resident or taxable branch the tax law of which contains hybrid mismatch rules, and only to the extent that pursuant to an imported mismatch rule under such tax law, the tax resident or taxable branch is denied a deduction for all or a portion of the payment.

Comments recommended modifying the Deemed IMP Rule so that it takes into account payments subject to disallowance under a foreign imported mismatch rule, rather than payments a deduction for which is actually denied under the foreign imported mismatch rule. According to a comment, this would obviate the need for taxpayers to apply all foreign imported mismatch rules before the U.S. imported mismatch rule, determine which payments are ones for which a deduction is disallowed under the foreign rules, and then treat those payments as imported mismatch payments for purposes of the U.S. imported mismatch rule.

The Treasury Department and the IRS generally agree with these comments and the final regulations therefore modify the Deemed IMP Rule to this effect. *See* § 1.267A–4(f)(2). However, as discussed in part III.D.5.ii of this Summary of Comments and Explanation of Revisions section, the final regulations adjust the application of the imported mismatch rule in certain cases, in order to prevent the Deemed IMP Rule from giving rise to inappropriate results.

ii. Special Rules for Applying Imported Mismatch Rule

In cases in which the U.S. imported mismatch rule treats a deduction as a hybrid deduction but a foreign imported mismatch rule does not, the Deemed IMP Rule could give rise to inappropriate results. For example, consider a case in which FW, a tax resident of Country W, owns all the interests of FX, a tax resident of Country X, which owns all the interests of FZ, a tax resident of Country Z (the tax law of which contains hybrid mismatch rules), and FZ owns all the interests of US1, a domestic corporation. Assume that US1 makes a non-hybrid interest payment to FZ (which FZ includes in income), FZ makes a non-hybrid interest payment to FX (which FX includes in income), FX makes a payment to FW that is considered a hybrid deduction for purposes of the U.S. imported mismatch rule, and no other payments are made during the accounting period. Further, assume that FZ's payment is subject to disallowance under the Country Z imported mismatch rule, but that the Country Z imported mismatch rule does not treat FX's deduction as a hybrid deduction (for example, because it is with respect to an interest-free loan). If pursuant to the Deemed IMP Rule FZ's payment were deemed to be an imported mismatch payment, then, given that FZ's payment has a closer nexus to FX's hybrid deduction than US1's payment, the hybrid deduction would, for purposes of the U.S. imported mismatch rule, offset only the income attributable to FZ's payment. The Deemed IMP Rule would thus lead to neither the United States nor Country Z neutralizing the D/NI outcome produced by the hybrid arrangement, thereby creating a result contrary to the purpose of the rule.

To address this concern, the final regulations provide that the U.S. imported mismatch rule is first applied by taking into account only certain hybrid deductions—that is, deductions that are unlikely to be treated as hybrid deductions for purposes of a foreign hybrid mismatch rule. *See* § 1.267A–4(f)(1). The final regulations provide an exclusive list of such hybrid deductions, which covers the hybrid deductions similar to those on the list discussed in part III.D.3.i of this Summary of Comments and Explanation of Revisions section. *See id.* In addition, for purposes of applying the imported mismatch rule in this manner, the Deemed IMP Rule does not apply. Consequently, such hybrid deductions are considered to offset only income attributable to imported mismatch payments of specified parties. This approach generally ensures that a foreign imported mismatch rule does not turn off the U.S. imported mismatch rule in cases in which the foreign imported mismatch rule is unlikely to neutralize the D/NI outcome produced by the hybrid arrangement.

For all other hybrid deductions, the imported mismatch rule is applied by taking into account the Deemed IMP Rule. *See* § 1.267A–4(f)(2). This generally ensures that, for deductions that are likely to be treated as hybrid deductions for both the U.S. and a foreign imported mismatch rule, there is a coordination mechanism to mitigate the likelihood of double-tax.

iii. Payments to a Country the Tax Law of Which Contains Hybrid Mismatch Rules

Several comments suggested a special rule pursuant to which an imported mismatch payment is exempt from the U.S. imported mismatch rule if the tax law of the imported mismatch payee contains hybrid mismatch rules. According to the comments, such an approach would generally rely on an imported mismatch rule of the imported mismatch payee to neutralize the effects of offshore hybrid arrangements that have a closer nexus to the country of the imported mismatch payee than the United States.

The final regulations do not incorporate a special rule to this effect because the Treasury Department and the IRS have determined that such a rule could give rise to inappropriate results similar to those discussed in part III.D.5.ii of this Summary of Comments and Explanation of Revisions section. In addition, the Treasury Department and the IRS have concluded that when the U.S. imported mismatch rule is applied by taking into account the Deemed IMP Rule, the Deemed IMP Rule—in conjunction with other portions of the imported mismatch rule, such as the ordering and funding rules (including the waterfall approach)—generally obviates the need for the special rule. That is, when a hybrid deduction has a closer nexus to the country of the imported mismatch payee than the United States, the hybrid deduction is generally considered to offset income attributable to the imported mismatch payee's payment, rather than income attributable to the specified party's payment. As a result, the U.S. imported mismatch rule in effect relies on an imported mismatch rule of the imported mismatch payee to neutralize the effect of the offshore hybrid arrangement. *See* § 1.267A–6(c)(10)(iv) and (c)(12).

iv. Priority for Certain Amounts Disallowed Under Foreign Imported Mismatch Rule

One comment suggested a new coordination rule pursuant to which, to the extent that a foreign tax resident or taxable branch is disallowed a deduction for a payment under a foreign imported mismatch rule, the U.S. imported mismatch rule generally considers a hybrid deduction to offset income attributable to that payment before offsetting income attributable to other payments. Such an approach would in effect provide as a credit against the U.S. imported mismatch rule amounts disallowed under a foreign imported mismatch rule. According to the comment, such an approach would mitigate the chance of double tax and would be appropriate if the main purpose of the U.S. imported mismatch rule is to participate with the international community in neutralizing the effects of hybrid arrangements (as opposed to protecting the integrity of the U.S. tax base).

The final regulations do not adopt this comment. The Treasury Department and the IRS have concluded that when a hybrid deduction has a closer nexus to the United States than a foreign country, the U.S. imported mismatch rule—rather than the foreign imported mismatch rule—should apply to neutralize the effects of the offshore hybrid arrangement. In addition, the Treasury Department and the IRS have determined that, for purposes of administrability, the U.S. imported mismatch rule should not require an analysis of amounts actually disallowed under a foreign imported mismatch rule. *See also* part III.D.5.i of this Summary of Comments and Explanation of Revisions section.

E. Other Issues

1. Definition of Interest

As explained in the preamble to the proposed regulations, the definition of interest in proposed § 1.267A–5(a)(12) is based on, and is similar in scope as, the definition of interest contained in the proposed regulations under section 163(j); no comments were received on this definition. However, the Treasury Department and IRS received numerous comments on the definition of interest in the proposed regulations under section 163(j). Taking into account those comments, the final regulations modify the definition of interest for section 267A purposes in certain respects. For example, in view of comments recommending modification of the hedging rules, the final regulations under section 267A do not include rules requiring adjustments to the amount of interest expense to reflect the impact of derivatives that alter a taxpayer's effective cost of borrowing. *See* § 1.267A–5(a)(12). As another example, in view of comments regarding the treatment of swaps with nonperiodic payments, the final regulations provide exceptions for cleared swaps and for non-cleared swaps subject to margin or collateral requirements. *See* § 1.267A–5(a)(12)(ii).

2. Structured Payments Treated as Interest

In order to address certain structured transactions, the proposed regulations provide that structured payments are treated as specified payments and therefore are subject to section 267A. *See* proposed § 1.267A–5(b)(5)(i). Under the proposed regulations, structured payments include certain payments related to, or predominantly associated with, the time value of money, and adjustments for amounts affecting the effective cost of funds. *See* proposed § 1.267A–5(b)(5)(ii). A comment noted that under the proposed regulations it is unclear in certain cases whether structured payments are treated as identical to interest for purposes of section 267A. The comment suggested that the final regulations address this ambiguity, including by providing that structured payments are treated as identical to interest or including structured payments within the definition of interest. The Treasury Department and the IRS agree with the comment, and thus the final regulations clarify that structured payments are treated as identical to interest for purposes of section 267A. *See* § 1.267A–5(b)(5)(i).

In addition, the final regulations modify the definition of a structured payment in light of comments that the Treasury Department and the IRS received regarding the definition of interest in the proposed regulations under section 163(j). Under proposed § 1.267A–5(b)(5)(ii), certain amounts that are closely related to interest and that affect the economic cost of funds, such as commitment fees, debt issuance costs, and guaranteed payments, are treated as structured payments. The final regulations do not specifically include these items as part of the definition of structured payments; instead, the final regulations provide an anti-avoidance rule under which any expense or loss that is economically equivalent to interest is treated as a structured payment for purposes of section 267A if a principal purpose of structuring the transaction is to reduce an amount incurred by the taxpayer that otherwise would have been treated as interest or as a structured payment under § 1.267A–5(a)(12) or (b)(5)(ii). *See* § 1.267A–5(b)(5)(ii)(B).

3. Coordination With Capitalization and Recovery Provisions

A comment noted that in certain cases a structured payment may not be deductible under the Code and, instead, the payment may be capitalized and give rise to amortization or depreciation deductions. The comment suggested that the final regulations clarify how section 267A applies to such payments, including whether the payments are treated as ''paid or accrued'' for purposes of the regulations and whether amortization or depreciation deductions for the payments are subject to disallowance under section 267A. The comment asserted that the disallowance of deductions relating to capitalized costs should be limited to structured payments.

The final regulations provide that section 267A applies to a structured payment, including a capitalized cost, in the same manner as if it were an amount of interest paid or accrued. *See* § 1.267A–5(b)(5)(i). In addition, the final regulations coordinate section 267A with the capitalization and recovery provisions of the Code. *See* § 1.267A–5(b)(1)(iii). Pursuant to this rule, to the extent a specified payment is described in § 1.267A–1(b) (that is, a disqualified hybrid amount, a disqualified imported mismatch amount, or one to which the section 267A anti-avoidance rule applies), a deduction for the payment is considered permanently disallowed for all purposes of the Code and, therefore, the payment is not taken into account for purposes of any capitalization and recovery provision. *See id. But see* § 1.267A–5(b)(4) (a payment for which a deduction is disallowed may still reduce the corporation's earnings and profits). This rule is not limited to structured payments because the Treasury Department and the IRS have determined that, if the rule were so limited, deductions for other specified payments could inappropriately give rise to D/NI outcomes through, for example, depreciation or amortization deductions.

4. Structured Arrangements

i. Definition

Under the proposed regulations, an arrangement is a structured arrangement if either (i) a pricing test is satisfied, meaning that a hybrid mismatch is priced into the terms of the arrangement, or (ii) a principal purpose test is satisfied, meaning that, based on all the facts and circumstances, a hybrid mismatch is a principal purpose of the arrangement. *See* proposed § 1.267A–5(a)(20).

A comment suggested that the principal purpose test could be difficult to apply, as it requires a subjective analysis of actual motivation or intent. In addition, the comment noted that in certain cases it might not be clear whose actual motivation or intent controls for purposes of the test. Thus, the comment suggested replacing the principal purpose test with an objective test, such as a test that analyzes whether the arrangement was designed to produce the hybrid mismatch. Further, the comment suggested incorporating a ''reason to know'' standard into the structured arrangement rules, such that a tax resident or taxable branch would not be considered a party to a structured arrangement if the tax resident or taxable branch (or a related party) could not reasonably have been expected to be aware of the hybrid mismatch. Lastly, the comment noted that having a pricing test as an independent test could potentially lead to confusion if the other test (that is, the principal purpose test or the design test) also takes into account pricing considerations.

The Treasury Department and the IRS agree with this comment. Thus, the final regulations provide for an objective design test, incorporate a reason to know standard, and incorporate the pricing test into the design test. *See* § 1.267A–5(a)(20).

ii. Applicability Date

A comment asserted that it may be difficult or costly to unwind a structured arrangement between unrelated parties. In order to facilitate restructuring of these arrangements, the comment suggested transitional relief for specified payments made pursuant to structured arrangements entered into on or before December 20, 2018 (or, alternatively, before December 22, 2017, the date of the Act). For example, the comment suggested that specified payments made pursuant to such arrangements be subject to section 267A beginning January 1, 2021.

The Treasury Department and the IRS have determined that, to facilitate restructurings intended to eliminate or minimize hybridity for structured arrangements entered into before December 22, 2017, the final regulations should apply to specified payments made pursuant to such an arrangement only for taxable years beginning after December 31, 2020. The final regulations therefore provide a rule to this effect. *See* § 1.267A–7(b)(2).

5. De Minimis Exception

The proposed regulations include a de minimis exception that exempts a specified party from the application of section 267A for any taxable year for which the sum of the specified party's interest and royalty deductions (plus interest and royalty deductions of any related specified parties) is below $50,000. *See* proposed § 1.267A–1(c). This $50,000 threshold takes into account a specified party's interest or royalty deductions without regard to whether the deductions involve hybrid arrangements and therefore, absent the de minimis exception, would be disallowed under section 267A. *See id.*

A comment suggested that the $50,000 threshold instead should apply to the total amount of interest or royalty deductions involving hybrid or branch arrangements. The comment suggested that such an approach would produce more equitable results between similarly situated taxpayers. The Treasury Department and the IRS agree with the comment, and the final regulations thus modify the de minimis exception to this effect. *See* § 1.267A–1(c). In addition, for purposes of clarity, and because certain specified payments may not be deductible under the Code (but, instead, may be capitalized and give rise to other deductions, such as amortization or depreciation, or loss), the final regulations replace the reference in the de minimis exception to interest or royalty deductions with a reference to specified payments.

6. Tax Law of a Country

The proposed regulations define a tax law of a country to include statutes, regulations, administrative or judicial rulings, and treaties of the country. *See* proposed § 1.267A–5(a)(21). However, as discussed in part II.B.7 of this Summary of Comments and Explanation of Revisions section, the Treasury Department and the IRS have determined that it is appropriate to take into account a country's subnational tax laws when such laws impose income taxes that are covered taxes under an income tax treaty with the United States (and therefore are likely to comprise a significant amount of a taxpayer's overall tax burden in that country). The final regulations therefore provide that the tax law of a country includes the tax law of a political subdivision or other local authority of a country, provided that income taxes imposed under such a subnational tax law are covered by an income tax treaty between that country and the United States. *See* § 1.267A–5(a)(21).

7. Specified Parties

Under the proposed regulations, a specified party includes a CFC for which there are one or more U.S. shareholders that own (within the meaning of section 958(a)) at least ten percent of the stock of the CFC. *See* proposed § 1.267A–5(a)(17). However, the Treasury Department and the IRS have determined that in certain cases involving CFCs the definition of specified party could be overbroad. For example, under the proposed regulations, a CFC wholly owned by a domestic partnership is a specified party, even if all the partners of the partnership are foreign persons.

The final regulations thus provide that a CFC is a specified party only if there is a tax resident of the United States that, for purposes of sections 951 and 951A, owns (within the meaning of section 958(a), but for this purpose treating a domestic partnership as foreign) at least ten percent of the stock of the CFC. The Treasury Department and the IRS expect that when proposed regulations under section 958 (REG–101828–19, 84 FR 29114) are finalized, the rule described in the preceding sentence treating a domestic partnership as foreign will be removed, as it will no longer be necessary. *See* proposed § 1.958–1(d)(1).

8. Coordination With Section 163(j)

The proposed regulations provide a rule to coordinate section 267A with other provisions of the Code. *See* proposed § 1.267A–5(b)(1). A comment requested that the final regulations clarify that section 267A applies to a specified payment before section 163(j) applies to the payment.

The final regulations provide a clarification to this effect. *See* § 1.267A–5(b)(1)(ii). In addition, the final regulations clarify that to the extent a specified payment is not described in § 1.267A–1(b) at the time it is subject to section 267A, the payment is not again subject to section 267A at a subsequent time. *See* § 1.267A–5(b)(1)(i). For example, if for the taxable year in which a specified payment is paid the payment is not described in § 1.267A–1(b) but under section 163(j) a deduction for the payment is deferred, the payment is not again subject to section 267A in the taxable year for which section 163(j) no longer defers the deduction.

9. Anti-Avoidance Rule

The proposed regulations include an anti-avoidance rule, which provides that a specified party's deduction for a specified payment is disallowed to the extent it gives rise to a D/NI outcome, and a principal purpose of the plan or arrangement is to avoid the purposes of the regulations under section 267A. *See* proposed § 1.267A–5(b)(6).

One comment supported a purpose-based anti-avoidance rule, in general, but questioned whether the rule was appropriate in the context of the section 267A regulations—which sets forth detailed rules regarding the hybrid or branch arrangements addressed by section 267A—and whether the rule appropriately balances fairness and administrability. The comment also raised concerns that the anti-avoidance rule may be overly broad because it neither requires hybridity nor that the D/NI outcome be the cause of hybridity. Finally, the comment requested a clearer distinction between the structured arrangement rule and the anti-avoidance rule, and recommended that the anti-avoidance rule focus on the use of a specific structure or terms in order to accomplish a D/NI outcome while avoiding the application of the regulations.

The Treasury Department and the IRS have determined that it is appropriate for the final regulations to retain a general anti-avoidance rule because, even in the context of specific rules that target hybrid and branch arrangements, such rules might be circumvented in a manner that is contrary to the purposes of the section 267A regulations. However, the Treasury Department and the IRS agree with the comment that the anti-avoidance rule should focus on the terms or structure of an arrangement and require that the D/NI outcome produced is a result of a hybrid or branch arrangement. The final regulations thus provide rules to this effect. *See* § 1.267A–5(b)(6).

10. Effect of Disallowance on Earnings and Profits

The proposed regulations provide that the disallowance of a deduction under section 267A does not affect a corporation's earnings and profits. *See* proposed § 1.267A–5(b)(4). Thus, a corporation's earnings and profits may be reduced as a result of a specified payment for which a deduction is disallowed under section 267A. One comment stated that this rule is generally appropriate. However, the comment questioned whether the rule is appropriate in the context of a CFC, as the reduction of the CFC's earnings and profits may, because of the limit in section 952(c)(1), limit or prevent a subpart F inclusion with respect to the CFC, thereby negating the effect of disallowing the CFC's deduction.

The Treasury Department and the IRS agree with the comment and, accordingly, the final regulations adopt an anti-avoidance rule. *See* § 1.267A–5(b)(4). Pursuant to this rule, for purposes of section 952(c)(1) or § 1.952–1(c), a CFC's earnings and profits are not reduced by a specified payment for which a deduction is disallowed if a principal purpose of the transaction giving rise to the specified payment is to reduce or limit the CFC's subpart F income. *See id.*

IV. Comments and Revisions to Dual Consolidated Loss Rules and Entity Classification Rules

A. Domestic Reverse Hybrids

To address double-deduction outcomes that result from domestic reverse hybrid structures, the proposed regulations require, as a condition to a domestic entity electing to be treated as a corporation under § 301.7701–3(c), that the domestic entity agree to be treated as a dual resident corporation for purposes of section 1503(d) for taxable years in which certain requirements are satisfied. *See* proposed § 301.7701–3(c)(3).

A comment agreed with the policy rationale for subjecting domestic reverse hybrids to the section 1503(d) regulations, and recommended that losses of domestic reverse hybrids be treated as dual consolidated losses. However, the comment expressed concern that the approach of the proposed regulations might establish a precedent allowing for a check-the-box election to be conditioned on consenting to any rule, which the comment asserted would be contrary to sound tax policy. Nonetheless, the comment stated that the section 1503(d) regulations are closely connected to the check-the-box regime, and acknowledged that a consent approach had been noted in a comment on regulations under section 1503(d) that were proposed in 2005. *See* TD 9315, 74 FR 12902. The comment recommended that, rather than the approach of the proposed regulations, the Treasury Department and the IRS directly subject domestic reverse hybrids to section 1503(d) or, if the Treasury Department and the IRS were to determine that there is not sufficient authority to do so, seek a legislative amendment.

The Treasury Department and the IRS have determined that it is appropriate to condition a check-the-box election on consenting to be subject to the section 1503(d) regulations because the double-deduction concerns that result from domestic reverse hybrid structures are closely connected to the check-the-box regime. Moreover, as explained in the preamble to the proposed regulations, the approach of the proposed regulations is narrowly tailored such that the consent applies only for taxable years in which it is likely that losses of the domestic consenting corporation could result in a double-deduction outcome. The Treasury Department and the IRS have therefore determined that the approach of the proposed regulations is appropriate and consistent with ensuring that the check-the-box regime does not result in double-deduction outcomes. Accordingly, the final regulations retain the approach of the proposed regulations regarding domestic reverse hybrids.

B. Disregarded Payments Made to Domestic Corporations

The preamble to the proposed regulations describes certain structures involving payments from foreign disregarded entities to their domestic corporate owners that are regarded for foreign tax purposes but disregarded for U.S. tax purposes. The preamble notes that these disregarded payment structures are not addressed under the current section 1503(d) regulations but give rise to significant policy concerns that are similar to those arising under sections 245A(e), 267A, and 1503(d). In addition, the preamble states that the Treasury Department and the IRS are studying these structures and request comments. In response to this request, one comment was received.

The Treasury Department and the IRS continue to study disregarded payment structures and the comment, and may in the future issue guidance addressing these structures. In addition, the Treasury Department and the IRS are studying other issues and comments received regarding the section 1503(d) regulations, such as an issue involving the interaction of the section 1503(d) regulations and the matching rule under § 1.1502–13(c).

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, of reducing costs, of harmonizing rules, and of promoting flexibility. For purposes of Executive Order 13771, this rule is regulatory.

The Office of Information and Regulatory Affairs has designated the proposed regulations as significant under section 1(b) of the Memorandum of Agreement. between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations (April 11, 2018). Accordingly, the OMB has reviewed the final regulations.

A. Background

Multinational corporations (MNCs) that have operations in both the U.S. and foreign countries can engage in so-called ''hybrid arrangements.'' In some instances, the MNC structures its U.S. and foreign operations in a way that exploits differences between foreign tax rules and U.S. tax rules. By using particular organizational structures or financial instruments, the MNC can avoid paying taxes in one or both jurisdictions. Hybrid arrangements refer to particular strategies for achieving this type of tax outcome.

Hybrid arrangements may be ''hybrid entities'' or ''hybrid instruments.'' A hybrid entity is a business that is treated as a flow-through or so-called disregarded entity for U.S. tax purposes and as a corporation for foreign tax purposes. A ''reverse hybrid entity'' is a business that is treated as a corporation for U.S. tax purposes, but as a flow-through entity for foreign tax purposes. For example, a foreign parent could own a domestic limited liability partnership that elects to be treated as a corporation under U.S. tax law [4] but is viewed as a partnership under foreign tax law. In this situation, the domestic subsidiary could be entitled to a deduction for U.S. tax purposes for interest payments it makes to the foreign parent, but the foreign country would not tax the interest income of the foreign parent because it treats it as payment between a partnership and a partner. In plain language, the result is that this portion of income would not be taxed in either country. This outcome is possible because of both the difference in the recognized business structure across countries (for the same business) and differences in the tax treatment applied to different business structures.

A similar result is possible under a hybrid instrument. A hybrid instrument is a financial instrument with characteristics of both debt and equity. Because the instrument has a mix of characteristics, one country may treat the instrument as debt while another country may treat it as equity. An example is ''perpetual debt,'' which the United States generally treats as equity and which many other countries treat as debt. If a foreign affiliate of a U.S.-based MNC issues perpetual debt to a U.S. holder, the interest payments made to the U.S. holder would be tax deductible in the foreign jurisdiction (if the foreign country treats perpetual debt as debt) and could potentially be eligible for a dividends received deduction (DRD) in the United States, which treats perpetual debt as equity. Again, the result is that this portion of income would not be taxed in either country. The double non-taxation produced by hybrid instruments or deductible payments made by or to a hybrid entity is often referred to as a ''deduction/no-inclusion outcome'' (D/NI outcome).

The Act introduced two new provisions that affect the treatment of these hybrid arrangements. New section 245A(e) disallows the DRD for any dividend received by a U.S. shareholder from a controlled foreign corporation if the dividend is a hybrid dividend. In addition, section 245A(e) treats hybrid dividends between controlled foreign corporations with a common U.S. shareholder as subpart F income. The statute defines a hybrid dividend as an amount received from a controlled foreign corporation for which a deduction would be allowed under section 245A(a) and for which the controlled foreign corporation received a deduction or other tax benefit in a foreign country. The disallowance of the DRD for hybrid dividends and the treatment of hybrid dividends as subpart F income neutralize the D/NI outcome produced by hybrid dividends.

The Act also added section 267A of the Code, which denies a deduction for any disqualified related party amount paid or accrued as a result of a hybrid transaction or by, or to, a hybrid entity. The statute defines a disqualified related party amount as any interest or royalty paid or accrued to a related party where there is no corresponding inclusion to the related party in the foreign tax jurisdiction or where the related party is allowed a deduction with respect to such amount in the foreign tax jurisdiction. The statute's definition of a hybrid transaction is any transaction where there is a mismatch in tax treatment between the U.S. and the other foreign jurisdiction. Similarly, a hybrid entity is any entity which is treated as fiscally transparent (that is, a flow-through or disregarded entity) for U.S. tax purposes but not for purposes of the foreign tax jurisdiction, or vice versa. The statute provides regulatory authority to address overly broad or under-inclusive applications of section 267A.

The Treasury Department and the IRS previously issued proposed regulations under sections 245A(e), 267A, 1503(d), 6038, 6038A, 6038C, and 7701 on December 20, 2018.

B. Overview of the Final Regulations

These final regulations provide clarity to taxpayers regarding the determination and tracking of hybrid dividends. They also provide clarity and guidance on the disallowance of deductions for interest or royalties paid as a result of hybrid or branch arrangements.

1. Section 245A(e)

Section 245A(e) applies in certain cases in which a CFC pays a hybrid dividend, which is a dividend paid by the CFC for which the CFC received a deduction or other tax benefit under foreign tax law (a hybrid deduction). The proposed regulations provide rules for identifying hybrid deductions and hybrid dividends. They further require taxpayers to maintain ''hybrid deduction accounts'' by which taxpayers would track those hybrid deductions. These accounts would allow for CFCs to track the amounts of hybrid deductions across sources and years and properly reduce the amounts when they are considered to give rise to inclusions under U.S. tax law. The final regulations largely retain the decisions made in the proposed regulations and provide additional clarity on what is a hybrid deduction and how the hybrid deduction account rules operate.

[4] Treasury and IRS regulations contain a so-called ''check-the-box'' provision under which certain taxpayers can choose whether they are treated as a corporation or as a partnership or disregarded entity. It is this election that facilitates the creation of hybrid entities.

2. Section 267A

Section 267A disallows a deduction for interest or royalties paid or accrued in certain transactions involving a hybrid arrangement. Congress intended this provision to address cases in which the taxpayer is provided a deduction under U.S. tax law, but the payee does not have a corresponding income inclusion under foreign tax law (the D/NI outcome). *See* S. Comm. on the Budget, Reconciliation Recommendations Pursuant to H. Con. Res. 71, S. Print No. 115–20, at 389 (2017).

The proposed regulations disallow a deduction under section 267A only to the extent that the D/NI outcome is a result of a hybrid arrangement. Consistent with the grant of regulatory authority to address overly broad applications of section 267A, the proposed regulations provide several exceptions to section 267A in order to refine the scope of the provision and minimize burdens on taxpayers, and further provide de minimis rules that except small taxpayers from section 267A. Finally, the proposed regulations address the treatment of a comprehensive set of arrangements that give rise to D/NI outcomes to close off potential avenues for additional tax avoidance by applying the rules of section 267A to branch mismatches, reverse hybrids, certain transactions with unrelated parties that are structured to achieve D/NI outcomes, certain structured transactions involving amounts similar to interest, and imported mismatches. The final regulations largely retain these decisions while providing additional clarity for taxpayers.

C. Need for the Final Regulations

Because the Act introduced new sections to the Code to address hybrid entities and hybrid instruments, a number of the relevant terms and necessary calculations that taxpayers are currently required to apply under the statute can benefit from greater specificity. The final regulations provide taxpayers with interpretive guidance and clarifications on which types of arrangements are subject to the statute and the effect of the application of the statute to such arrangements.

D. Economic Analysis

1. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the final regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

2. Summary of Economic Effects

These final regulations provide certainty and clarity to taxpayers regarding (i) the determination and tracking of hybrid dividends; and (ii) the deductibility of interest or royalties paid as a result of hybrid or branch arrangements. In the absence of this clarity, the likelihood that different taxpayers would interpret the rules regarding hybrid payments differently would be exacerbated. In general, overall economic performance is enhanced when businesses face more uniform signals about tax treatment. Certainty and clarity over tax treatment generally also reduce compliance costs for taxpayers.

For those statutory provisions for which similar taxpayers would generally adopt similar interpretations of the statute even in the absence of guidance, the final regulations provide value by helping to ensure that those interpretations are consistent with the intent and purpose of the statute. For example, the final regulations may specify a tax treatment that few or no taxpayers would adopt in the absence of specific guidance.

The Treasury Department and the IRS projected that the proposed regulations would have annual economic effects of less than $100 million (2018$) if they were to be finalized. The final regulations differ from the proposed regulations primarily by incorporating certain changes that reduce administrative and compliance costs (relative to the proposed regulations) without substantially altering the final regulations' effectiveness (with regard to the intent and purpose of the statute). The assessment that the annual economic effects of the final regulations will be less than $100 million, relative to the no-action baseline, is unchanged.

The Treasury Department and the IRS undertook a rough estimate of the economic effects of the final regulations. As explained later, we estimate that roughly 9,000 unique taxpayers are potentially affected by the regulations. We assumed that the effect of the final regulations would be the denial of between 1 and 4 percent of the interest paid deductions by these potentially affected taxpayers; these are deductions that we assumed would be denied beyond those that would be disallowed under the no-action baseline.[5] The Treasury Department and the IRS note that because the presence of a hybrid arrangement is not reported on a tax return, we do not have any specific data on the percent of interest paid deductions that are not allowed by the statute nor on the incremental portion of deductions that would not be allowed specifically by these final regulations. We further do not have readily available data or results from the academic literature to determine whether the assumed 1 to 4 percent range is accurate. We have selected these percentages to illustrate a plausible calculation of the final regulations' economic effects.[6]

We assume that taxpayers will respond to the disallowance of hybrids by substituting towards other tax-reduction strategies. These strategies must necessarily be less beneficial to the taxpayer than the hybrid arrangements because otherwise the taxpayer would have adopted those strategies under the baseline. The Treasury Department and the IRS do not have readily available data or models to estimate the cost or availability of these tax strategies for particular taxpayers. In this exercise for the final regulations, we assume that taxpayers will effectively continue to be able to claim between 85 to 100 percent of the disallowed interest deductions through alternative tax-reduction strategies. This results in a net disallowance of interest deductions of between 0 and 0.6 percent.

We next applied Treasury Department models to confidential tax data for tax year 2017 to calculate average effective tax rates for these potentially affected taxpayers.[7] Because taxpayers are assumed to be unable to fully offset the disallowed interest deductions under the final regulations, their effective tax rates will rise. We modeled taxpayers' average effective tax rates with and without the assumed range of denied interest paid deductions that would result from the final regulations to estimate the changes in effective tax rates attributable to the final regulations.

As a final step, we applied an estimate of the semi-elasticity of taxable income (0.2) to the range of estimated increases in the effective tax rates.[8] The

[5] While section 267A applies to both interest and royalty deductions, the Treasury Department and IRS do not have readily available data on royalty deductions.

[6] These percentages are comparable to estimates provided in OECD *Measuring and Monitoring BEPS, Action 11—2015 Final Report. https://doi.org/10.1787/9789264241343-en.*

[7] Because the most recently available complete tax data available for this exercise are from 2017, we multiplied average effective tax rates by 21/35 to reflect the 21 percent corporate tax rate that applies to these final regulations relative to the 35 percent rate that applied in 2017. Because effective tax rates are not readily defined for taxpayers with zero or negative taxable income, our model assumes the effective rate to be the statutory rate for those taxpayers.

[8] The semi-elasticity measures the percent change in taxable income that results from a one percentage

Continued

result is an estimate of the reduction in taxable income for these taxpayers that results from their response to higher effective tax rates.

Based on these assumptions and modeling, the Treasury Department and the IRS estimate that the change in economic activity as a result of these final regulations, relative to the no-action baseline, is a decline of between $0 and $83 million (2019$) per year, with this number growing over time at the real rate of growth of taxable income.

This approach does not capture many other important economic effects of the final regulations: (1) Under this approach, there is an increase in Federal tax revenue relative to the no-action baseline but the calculations do not include the effect of this increase on the rest of the United States economy. For example, an increase in Federal tax revenue resulting from these final regulations would either reduce the deficit or allow reductions in other taxes, and these changes would have their own set of economic effects. Incorporating these effects would reduce the net decline in economic activity that we estimate. Indeed, if the elasticity of taxable income were the same across all taxpayers and if Federal tax revenue were held constant, the particular economic effects estimated here would be zero except for any change in compliance costs, relative to the baseline.

(2) This estimate does not account for the improved efficiency in the affected sectors that would result from the certainty and clarity provided by the final regulations, relative to the no-action baseline. Incorporating this factor would reduce the net decline in economic activity that we estimate and could lead the average estimate of economic effects to be positive rather than negative.

(3) Finally, this estimate does not include any reduction in economically wasteful planning and monitoring (by taxpayers) of the amount of foregone hybrid arrangements. To the extent that taxpayers use hybrid arrangements solely for tax shifting and those arrangements are economically unproductive, our assumed range should include a negative end; that is, there may be an increase in real economic activity as a result of the final regulations. Incorporating this effect would reduce the net decline in economic activity that we estimate.

point change in the effective tax rate. The parameter used for this exercise reflects the fact that this income is generally considered to be a supernormal return to investment. Supernormal income is highly inelastic.

The Treasury Department and the IRS have not undertaken more precise quantitative estimates of the economic effects the final regulations because we do not have readily available data or models to estimate with reasonable precision (i) the types or volume of hybrid arrangements that taxpayers would likely use under these regulations, under the no-action baseline, or under alternative regulatory approaches; nor (ii) the effects of those hybrid arrangements on businesses' overall economic performance, including possible differences in compliance costs.

In the absence of such quantitative estimates, the Treasury Department and the IRS have undertaken a qualitative analysis of the economic effects of the final regulations relative to the no-action baseline and relative to alternative regulatory approaches. This analysis is presented in part I.D.4 of this Special Analyses section.

3. Number and Characteristics of Affected Taxpayers

The Treasury Department and the IRS project that the upper bound of taxpayers likely to be affected by section 245A(e) is 2,000 and the upper bound likely to be affected by section 267A is 8,000.[9] These estimates are based on the top 10 percent of taxpayers (by gross receipts) that filed a domestic corporate income tax return with a Form 5471 attached (therefore potentially affected by section 245A(e)), or that filed a domestic corporate income tax return with a Form 5472, ''Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business,'' or Form 8865, ''Return of U.S. Persons With Respect to Certain Foreign Partnerships,'' attached or a foreign corporate income tax return with a Form 5472 attached (therefore potentially affected by section 267A) for tax year 2017.[10] These estimates are upper bounds of the number of large corporations affected because they are based on all transactions, even though only a portion of such transactions involve hybrid arrangements. The tax data do not report whether these reported dividends or deductions were part of a hybrid arrangement because such information was not relevant for calculating tax prior to the Act.

The Treasury Department and the IRS also projected the types of taxpayers affected. We project that the population of taxpayers affected by section 267A and the final regulations under section 267A will seldom include U.S.-based companies as these companies are taxed under the new GILTI regime as well as subpart F. Instead, section 267A and the final regulations apply predominantly to U.S. affiliates of foreign-headquartered companies that employ hybrid arrangements to shift income out of the U.S. The Treasury Department and the IRS project that section 245A(e) applies primarily to U.S.-based companies. The amounts of dividends affected, however, are not likely to be large because a large portion of distributions will be treated as previously taxed earnings and profits due to the operation of both the GILTI regime and the transition tax under section 965, and such distributions are not subject to section 245A(e).

[9] Approximately 1,000 taxpayers are affected by both sections, so the number of taxpayers affected by at least one provision is approximately 9,000.

[10] Because of the complexities involved, primarily only large taxpayers engage in hybrid arrangements. The estimate that the top 10 percent of otherwise-relevant taxpayers (by gross receipts) are likely to engage in hybrid arrangements is based on the judgment of the Treasury Department and IRS.

4. Economic Effects of Specific Provisions

i. Delayed Basis for Hybrid Deduction Characterizations

In the proposed regulations under section 245A(e), taxpayers were instructed that notional interest deductions (NIDs) allowed to a CFC would be considered hybrid deductions. The final regulations retain this characterization, but on a delayed basis (relative to the proposed regulations). Thus, the final regulations provide that only NIDs allowed to a CFC for taxable years beginning on or after December 20, 2018, are hybrid deductions for purposes of section 245A(e). Similarly, the final regulations provide that NIDs give rise to hybrid arrangements for section 267A purposes starting for accounting periods beginning on or after December 20, 2018. In addition, transition relief is provided for structured arrangements (that is, certain arrangements among unrelated parties) entered into before the enactment of the Act, such that section 267A does not apply to payments made pursuant to such arrangements until taxable years beginning after December 31, 2020. These delays provide affected taxpayers more time (relative to the proposed regulations) to restructure instruments, seek alternative investment arrangements, or otherwise take into account the application of the relevant rules to structured arrangements or arrangements involving NIDs. These delays may, in some circumstances, allow taxpayers to unwind current financial arrangements in a less costly way than they would if no such delay were provided.

Allowing a delay in the characterization of certain hybrid deductions will lower the compliance costs (relative to the proposed regulations) for some taxpayers. Taxpayers commented that accounting for those deductions back to the beginning of 2018 would be difficult, and the delay offered by the final regulations obviates the need to account for those deductions back to the beginning of 2018. In addition, the delay provided by the final regulations may facilitate restructurings (for example, the unwinding of certain structured arrangements) such that, following the delay, fewer taxpayers will incur hybrid deductions. However, the reduction in compliance costs (relative to the proposed regulations) as a result of that delay will only be temporary, as the regime for those instruments as specified under the proposed regulations and as retained for the final regulations will take effect after the delay period.

ii. De Minimis Exception

The proposed regulations provided a de minimis rule that exempted a specified party from the application of 267A for any taxable year in the which the sum of the party's interest and royalty deductions (plus interest and royalty deductions of certain related persons) is below $50,000 (regardless of hybridity). The final regulations keep this threshold but specify that the deductible payments only count towards the de minimis threshold if they are from hybrid arrangements.

Without this exception, two taxpayers with the same value of hybrid deductions (under $50,000) might be treated differently simply because one taxpayer operated in an industry with more royalties or interest payments than the other, with these royalties or interest payments arising as a normal course of business in that industry rather than as a tax-avoidance mechanism. Under the final regulations, the de minimis exception focuses only on payments the statute is looking to limit, the hybrid payments themselves, as opposed to all interest and royalties. This enhanced focus will potentially allow small firms to make decisions in their best economic interest as opposed to needing to structure contracts and payments (that did not even involve hybrid arrangements) in a way that would avoid exceeding the de minimis threshold.

This provision expands the pool of taxpayers excepted from the hybrid provisions of the statute, relative to the proposed regulations. The Treasury Department and the IRS do not have readily available data to provide a reasonably precise projection of the number of taxpayers that would be affected by the de minimis provision under the final regulations.

iii. Timing Differences Under Section 245A(e)

For some taxpayers and some transactions, there may be a timing difference between when a CFC pays an amount constituting a dividend for U.S. tax purposes and when the CFC receives a deduction or other tax benefit (a hybrid deduction) for the amount in a foreign jurisdiction. Tax regulations are necessary to make clear whether a deduction is considered a hybrid deduction and thus whether a dividend is considered a hybrid dividend in such situations. In the absence of such guidance, taxpayers could be uncertain about the tax treatment of certain dividends, an uncertainty that may result in an inefficient pattern of financing across taxpayers.

The proposed regulations addressed the timing difference by requiring the establishment of ''hybrid deduction accounts'' and specifying rules to be used for these accounts. These accounts are to be maintained across years so that hybrid deductions that accrue in one year will be matched up with dividends arising in a different year, thus providing clear rules for when a dividend is a hybrid dividend and generally ensuring that income is neither doubly taxed nor doubly non-taxed. The final regulations reaffirm this approach, and add additional guidance and clarifications as necessary, such as guidance regarding mid-year stock transfers and what types of deductions and other tax benefits are hybrid deductions.

The final regulations also respond to a comment that suggested that a deduction could only be a hybrid deduction if it was currently used to reduce foreign tax. The final regulations determined that such an interpretation would not be appropriate, and provide additional clarity that a deduction can be a hybrid deduction regardless of whether it is currently used under relevant foreign tax law. Were the final regulations to adopt the approach of the commenter, taxpayers would be required to undertake potentially burdensome analyses regarding the extent that a deduction is used currently under foreign tax law and, to the extent not used currently, track the deduction across other tax years so as to ensure that, when the deduction is ultimately used, it becomes a hybrid deduction at that point.

iv. Determination of a Hybrid Dividend Under Section 245A(e)

The proposed regulations required taxpayers to maintain hybrid deduction accounts. A hybrid deduction account generally reflects the amount of deductions or other tax benefits allowed to the CFC (or a person related to the CFC) under a foreign tax law with respect to instruments of the CFC that U.S. tax law views as stock, and thus generally reflects an amount of earnings of a CFC sheltered from foreign tax by reason of a hybrid arrangement. The proposed regulations provided that a dividend received by a domestic corporation that is a U.S. shareholder from a CFC is a hybrid dividend to the extent of the balance of the U.S. shareholder's hybrid deduction accounts with respect to its stock of the CFC. Some comments suggested modifications to this approach. The final regulations retain the approach in the proposed regulations, with small revisions made in part to respond to certain comments.

One option for revising the approach in response to comments was to provide exceptions to the definition of a hybrid dividend such that certain dividends cannot be hybrid dividends, such as some dividends arising by reason of a transaction that under the foreign tax law does not give rise to a deduction (for example, a sale of stock that gives rise to a section 1248(a) dividend). However, the Department of Treasury and IRS decided not to adopt this approach because the dividend, to the extent of the balance of the hybrid deduction accounts, is likely composed of earnings that were sheltered from foreign tax by reason of a hybrid arrangement and is therefore one for which Congress did not intend that the section 245A(a) deduction be available.

A second option was to provide an exception to when the hybrid deduction account rules apply, such that certain amounts (such as amounts that will be paid within 36-months from when the deduction is allowed under the foreign tax law) are not taken into account for purposes of determining a hybrid deduction account but instead are treated as hybrid dividends when paid. While such an approach might address D/NI outcomes resulting from hybrid arrangements in a tailored manner, it would also increase complexity and compliance burden, because it would in effect require two regimes under section 245A(e): The hybrid deduction account rules and separate tracking rules for cases in which an amount is excepted from the hybrid deduction account rules.

The third option, and the one adopted by the final regulations was to retain the approach of the proposed regulations, and thus continue to treat a dividend as a hybrid dividend to the extent of the balance of the U.S. shareholder's hybrid deduction accounts with respect to its shares of stock of the CFC. This option both avoids incentivizing double non-taxation and avoids the complexities of needing multiple accounts.

v. No Inclusion in a Third Country Under Section 267A

The proposed regulations generally deny a deduction for an interest or royalty payment if the payment is not included in income in a foreign country by reason of a hybrid arrangement, regardless of whether the payment is included in income in a different foreign country (a ''third country''). Absent such an approach, payments involving hybrid arrangements could be funneled through low-tax countries, with an inclusion in the low-tax country turning off section 267A even though a no-inclusion occurs in a high-tax country by reason of a hybrid arrangement. Some comments suggested modifications to this approach. The final regulations retain the approach of the proposed regulations.

One option for responding to comments was to allow an inclusion in the third country to turn off section 267A. Although this would be a simple approach, it would permit inclusions in a low-taxed country to turn off section 267A even though a no-inclusion occurs in a high-tax country. Such an approach could thus incentivize certain hybrid arrangements, as it could allow parties to achieve a better tax result through a hybrid arrangement than they would have had the arrangement not existed with no corresponding productive economic activity.

A second option was to only allow an inclusion in the third country to turn off section 267A if the third country's tax rate is at least equal to a certain rate (for example, the U.S. tax rate, or the tax rate of the foreign country where the no-inclusion occurs). This approach would result in additional complexity, and would key the application of the hybrid rules on minimum effective rates of tax, which is beyond the scope of anti-hybrid rules.

A third option was to not allow an inclusion in a third country to turn off section 267A. The final regulations adopt this approach, as it prevents inclusions in low-tax countries from turning off section 267A and thus prevents hybrid arrangements from being used to reduce U.S. tax without any accompanying productive economic activity. The Treasury Department and the IRS have determined that the advantages of this approach outweigh the drawbacks, including potential instances of double-taxation, relative to other regulatory approaches. First, absent the approach, payments could be routed through low-tax countries in a manner that would turn off section 267A, thus giving rise to at least partial double non-taxation and tax planning opportunities. Second, the approach is less complex—and easier to administer—than a more precise one which would calibrate the disallowed deduction based on the amount of tax avoided by reason of the hybrid arrangement (which would have to in part take into account relevant tax rates). Third, these types of structures are generally planned in advance and thus the approach would deter behavior. In particular, it would be relatively easy for taxpayers to avoid these structures and it is unlikely that taxpayers would have these structures arise by accident.

vi. Conduit Arrangements/Imported Mismatches

Section 267A(e)(1) provides regulatory authority to apply the rules of section 267A to conduit arrangements and thus to disallow a deduction in cases in which income attributable to a payment is directly or indirectly offset by an offshore hybrid deduction. Under the proposed regulations, the Treasury Department and the IRS implemented rules that applied to so-called imported mismatch payments. These rules are generally similar to the Organization of Economic Cooperation and Development's Base Erosion and Profit Shifting project's (BEPS) imported mismatch rules. *See* Hybrid Mismatch Report Recommendation 8; *see also* Branch Mismatch Report Recommendation 5.

Some commenters suggested that the proposed regulations were too complex and would be difficult to comply with. However, the Treasury Department and IRS decided in the final regulations that the approach taken in the proposed regulations was appropriate. The first advantage of this approach is that it provides certainty to taxpayers over a greater range of arrangements about whether a deduction will or will not be disallowed under the rule relative to other possible regulatory approaches. A second advantage of this approach is that it helps ensure that income is not subject either to double non-taxation or double taxation. This approach minimizes the chances of double taxation because it is modeled off the BEPS approach, which is being implemented by other countries, and it also contains explicit rules to coordinate with foreign tax law. Coordinating with the global tax community reduces opportunities for tax avoidance that is not otherwise economically productive.

As noted in the preamble to the proposed regulations, although such an approach involves greater complexity than alternative regulatory approaches, the Treasury Department and IRS expect the benefits of this approach's comprehensiveness, administrability, and conduciveness to taxpayer certainty, to be substantially greater than the complexity burden in comparison with available alternative approaches.

vii. Deemed Branch Payments and Branch Mismatch Payments

The proposed regulations expand the application of section 267A to certain transactions involving branches. This treatment was necessary to ensure that taxpayers could not avoid section 267A by engaging in transactions that were economically similar to the hybrid arrangements that are covered by the statute. If these types of arrangements were not addressed, some firms would have likely used branch structures to avoid paying U.S. tax. In some cases, these structures would have been created solely to avoid section 267A, resulting in potential efficiency loss. The final regulations maintain the position of the proposed regulations.

viii. Exceptions for Income Included in U.S. Tax and GILTI Inclusions

Section 267A(b)(1) provides that deductions for interest and royalties that are paid to a CFC and included under section 951(a) in income (as subpart F income) by a United States shareholder of such CFC are not subject to disallowance under section 267A. The statute does not state whether section 267A applies to a payment that is included directly in the U.S. tax base (for example, because the payment is made directly to a U.S. taxpayer or a U.S. taxable branch), or a payment made to a CFC that is taken into account under GILTI (as opposed to being included as subpart F income) by such CFC's United States shareholders. However, the grant of regulatory authority in section 267A(e) includes a specific mention of exceptions in ''cases which the Secretary determines do not present a risk of eroding the Federal tax base.'' *See* section 267A(e)(7)(B). Payments that are included directly in the U.S. tax base or that are included in GILTI do not give rise to a D/NI outcome and, therefore, in the proposed regulations, it was deemed consistent with the policy of section 267A and the grant of authority in section 267A(e) to exempt them from disallowance under section 267A.

Several comments suggested small revisions to this provision to avoid potential arbitrage, and such small revisions were made in the final regulations while maintaining the overall approach to income included in U.S. tax and GILTI inclusions.

ix. Link Between Hybridity and D/NI

The proposed regulations limited disallowance to cases in which the no-inclusion portion of the D/NI outcome is a result of hybridity as opposed to a different feature of foreign tax law, such as a general preference for royalty income. Disallowing hybrid arrangements in which the D/NI outcome was not the result of hybridity would have forced taxpayers to undertake potentially costly restructuring of arrangements with no change in outcome, since the hybridity was irrelevant to the D/NI outcome. The final regulations maintain this position.

x. Timing Differences Under Section 267A

A similar timing issue that was addressed for section 245A(e) arises under section 267A. Here, there may be a timing difference between when the deduction is otherwise permitted under U.S. tax law and when the payment is included in the payee's income under foreign tax law. The legislative history to section 267A indicates that in certain cases such timing differences can lead to ''long term deferral'' and that such long-term deferral should be treated as giving rise to a D/NI outcome. Examples of such long-term deferral include cases in which under the foreign tax law the payment is a recovery of principal or basis, or the payment is pursuant to a hybrid sale/license transaction.

The Treasury Department and IRS decided to address only certain timing differences—namely, long-term timing differences, in the proposed regulations. The proposed regulations generally denied a deduction for an interest or royalty payment if, under foreign tax law, the payment is not included in the payee's income within 36-months. Some comments suggested modifications to this approach. The final regulations retain this overall approach but with small revisions, made in part to respond to certain comments.

One option for responding to comments was to not address long-term deferral, because it will eventually reverse over time. Although this would be a simpler approach than the option adopted for the final regulations, the Treasury Department and IRS did not adopt this approach because, as indicated in the legislative history, long-term deferral can be equivalent to a permanent exclusion, and could lead to widespread avoidance.

A second option was to continue to address long-term deferral but to not treat recovery of basis or principal as creating long-term deferral to the extent that the transaction giving rise to the basis, or the transaction pursuant to which the principal funds were generated, did not involve a hybrid arrangement. Although such an approach might be conceptually pure, it would raise significant practical and administrative difficulties. It would also be inconsistent with other areas of the Code, in that basis generally provides a dollar-for-dollar offset against income, as opposed to providing an offset against income only to the extent that the inclusion that generated the basis was at a tax rate at least equal to the tax rate at which the income is taken into account.

The final option was to address long-term deferral but provide targeted modifications to excuse transactions unlikely to give rise to double non-taxation concerns—for example, hybrid sale/license cases, or cases in which different ordering or recovery rules under U.S. and foreign tax law reverse within 36-months.[11] The final regulations adopt this approach, because it strikes an appropriate balance between administrability and ensuring that similar economic activities were taxed similarly.

II. Paperwork Reduction Act

The collections of information in the final regulations with respect to sections 245A(e) and 267A are in §§ 1.6038–2(f)(13) and (14), 1.6038–3(g)(3), and 1.6038A–2(b)(5)(iii). These collections of information retain the collections of information in the proposed regulations, with a minor refinement to § 1.6038–2(f)(14) to ensure that the IRS may require the reporting of certain information that will facilitate compliance with section 245A(e) and § 1.245A(e)–1.

The collection of information in § 1.6038–2(f)(14) requires a U.S. person that controls a foreign corporation that pays or receives a hybrid dividend or tiered hybrid dividend under section 245A(e) during an annual accounting period to provide information about the hybrid dividend or tiered hybrid dividend on Form 5471, ''Information Return of U.S. Persons With Respect to Certain Foreign Corporations,'' (OMB control number 1545–0123), as the form and its instructions may prescribe. Section 1.6038–2(f)(14) was revised to ensure that the IRS may require the reporting of certain information that will facilitate compliance with section 245A(e) and § 1.245A(e)–1 (such as information about hybrid deduction accounts). For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (''PRA''), the reporting burden associated with § 1.6038–2(f)(14) will be reflected in the PRA submission associated with Form 5471 (see chart at the end of this part II of this Special Analyses section for the status of the PRA submission for Form 5471). The estimated number of respondents for the reporting burden associated with § 1.6038–2(f)(14) is based on a percentage of large taxpayers that file income tax returns with a Form 5471 attached and Schedule I, ''Summary of Shareholder's Income From Foreign Corporations,'' completed because only filers that are controlling U.S. shareholders of CFCs that pay or receive a dividend would be subject to the information collection requirements. As provided below, the IRS estimates the number of affected filers to be 2,000.

As explained in the preamble to the proposed regulations, the remaining collections of information in §§ 1.6038–2(f)(13), 1.6038–3(g)(3), and 1.6038A–2(b)(5)(iii) will facilitate compliance with section 267A and the final regulations thereunder. For purposes of the PRA, the reporting burdens associated with §§ 1.6038–2(f)(13), 1.6038–3(g)(3), and 1.6038A–2(b)(5)(iii) will be reflected in the PRA submissions associated with Form 5471, Form 8865, ''Return of U.S. Persons With Respect to Certain Foreign Partnerships,'' (OMB control number 1545–1668), and Form 5472, ''Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business,'' (OMB control number 1545–0123), respectively (see chart at the end of this part II of this Special Analyses section for the status of the PRA submissions for Forms 5471, 8865, and 5472). The estimated number of respondents for the reporting burdens associated with §§ 1.6038–2(f)(13), 1.6038–3(g)(3), and 1.6038A–2(b)(5)(iii) is based on a percentage of large taxpayers that file income tax returns

[11] Other areas of the Code similarly adopt a 36-month period for administrability purposes. *See, for example,* § 1.884–1(g) (36-month period for testing whether a foreign corporation is eligible to claim an exemption from, or a reduced rate of, branch profits tax); § 1.7874–10 (36-month period for measuring whether prior distributions should be taken into account for purposes of the non-ordinary course distribution rule).

with a Form 5471 (Schedule G, Other Information), Form 8865, or Form 5472 attached. The IRS estimates the number of affected filers to be the following.

TAX FORMS IMPACTED

Collection of information	Number of respondents (estimated, rounded to nearest 1,000)	Forms in which information may be collected
§ 1.6038–2(f)(13)	1,000	Form 5471 (Schedule G).
§ 1.6038–2(f)(14)	2,000	Form 5471 (Schedule I).
§ 1.6038A–2(b)(5)(iii)	7,000	Form 5472.
§ 1.6038–3(g)(3)	<1,000	Form 8865.

Source: IRS data (MeF, DCS, and Compliance Data Warehouse).

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 final regulations is provided in the accompanying table. As described above, the reporting burdens associated with the information collections in §§ 1.6038–2(f)(13) and (14) and 1.6038A–2(b)(5)(iii) are included in the aggregated burden estimates for OMB control number 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). The overall burden estimates provided for OMB control number 1545–0123 are aggregate amounts that relate to the entire package of forms associated with the 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 proposed regulations. These burden estimates are therefore not accurate for future calculations needed to assess the burden imposed by the proposed regulations. These burden estimates have been reported for other regulations related to the taxation of cross-border income. The Treasury Department and IRS urge readers to recognize that many of the burden estimates reported for regulations related to taxation of cross-border income are duplicates and to guard against overcounting the burden that international tax provisions impose. No burden estimates specific to the final regulations are currently available. The Treasury Department and IRS have not identified any burden estimates, including those for new information collections, related to the requirements under the final regulations. The Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis. Those estimates 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 Nos.	Status
Form 5471	Business (NEW Model)	1545–0123	Published in the **Federal Register** on 9/30/19 (84 FR 51718). Public Comment period closed on 11/29/19. Approved by OMB through 1/31/2021.
	Link: *https://www.federalregister.gov/documents/2019/09/30/2019-21068/proposed-collection-comment-request-for-forms-1065-1066-1120-1120-c-1120-f-1120-h-1120-nd-1120-s.*		
	Individual (NEW Model)	1545–0074	Published in the **Federal Register** on 9/30/19 (84 FR 51712). Public Comment period closed on 11/29/19. Approved by OMB through 1/31/2021.
	Link: *https://www.federalregister.gov/documents/2019/09/30/2019-21066/proposed-collection-comment-request-for-form-1040-form-1040nr-form-1040nr-ez-form-1040x-1040-sr-and-u.*		
Form 5472	Business (NEW Model)	1545–0123	Published in the **Federal Register** on 9/30/19 (84 FR 51718). Public Comment period closed on 11/29/19. Approved by OMB through 1/31/2021.
	Link: *https://www.federalregister.gov/documents/2019/09/30/2019-21068/proposed-collection-comment-request-for-forms-1065-1066-1120-1120-c-1120-f-1120-h-1120-nd-1120-s.*		
	Individual (NEW Model)	1545–0074	Published in the **Federal Register** on 9/30/19 (84 FR 51712). Public Comment period closed on 11/29/19. Approved by OMB through 1/31/2021.
	Link: *https://www.federalregister.gov/documents/2019/09/30/2019-21066/proposed-collection-comment-request-for-form-1040-form-1040nr-form-1040nr-ez-form-1040x-1040-sr-and-u.*		

Form	Type of filer	OMB Nos.	Status
Form 8865	All other Filers (mainly trusts and estates) (Legacy system).	1545–1668	Published in the **Federal Register** on 10/1/18 (83 FR 49455). Public Comment period closed on 11/30/18. Approved by OMB through 12/31/2021.
	Link: *https://www.federalregister.gov/documents/2018/10/01/2018-21288/proposed-collection-comment-request-for-regulation-project.*		
	Business (NEW Model)	1545–0123	Published in the **Federal Register** on 9/30/19 (84 FR 51718). Public Comment period closed on 11/29/19. Approved by OMB through 1/31/2021.
	Link: *https://www.federalregister.gov/documents/2019/09/30/2019-21068/proposed-collection-comment-request-for-forms-1065-1066-1120-1120-c-1120-f-1120-h-1120-nd-1120-s.*		
	Individual (NEW Model)	1545–0074	Published in the **Federal Register** on 9/30/19 (84 FR 51712). Public Comment period closed on 11/29/19. Approved by OMB through 1/31/2021.
	Link: *https://www.federalregister.gov/documents/2019/09/30/2019-21066/proposed-collection-comment-request-for-form-1040-form-1040nr-form-1040nr-ez-form-1040x-1040-sr-and-u.*		

III. Regulatory Flexibility Act

It is hereby certified that this final rule 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).

The small entities that are subject to §§ 1.6038–2(f)(13), 1.6038–3(g)(3), and 1.6038A–2(b)(5)(iii) are small entities that are controlling U.S. shareholders of a CFC that is disallowed a deduction under section 267A, small entities that are controlling fifty-percent partners of a foreign partnership that makes a payment for which a deduction is disallowed under section 267A, and small entities that are 25 percent foreign-owned domestic corporations and disallowed a deduction under section 267A, respectively. In addition, the small entities that are subject to § 1.6038–2(f)(14) are controlling U.S. shareholders of a CFC that pays or receives a hybrid dividend or a tiered hybrid dividend.

A controlling U.S. shareholder of a CFC is a U.S. person that owns more than 50 percent of the CFC's stock. A controlling fifty-percent partner is a U.S. person that owns more than a fifty-percent interest in the foreign partnership. A 25 percent foreign-owned domestic corporation is a domestic corporation at least 25 percent of the stock of which is owned by a foreign person.

The Treasury Department and the IRS estimate that 15 taxpayers with gross receipts below $25 million (or $41.5 million for financial entities) would potentially be affected by these regulations.[12] These are taxpayers who filed a domestic corporate income tax return in 2016 with gross receipts below $25 million (or $41.5 million for financial entities) and that (i) attached either a Form 5471 (therefore potentially affected by section 245A(e)) or a Form 5472 (therefore potentially affected by section 267A) and (ii) reported on Form 5471 dividends received by the domestic corporation from the foreign corporation, or on Form 5472 interest or royalty payments by the domestic corporation; and (iii) in the case of interest or royalties reported on Form 5472, the interest and royalty payments were above the $50,000 de minimis threshold for section 267A. The de minimis exception under section 267A excepts many small entities from the application of section 267A for any taxable year for which the sum of its interest and royalty deductions (plus interest and royalty deductions of certain related persons) involving hybrid arrangements is below $50,000. This estimate of 15 potentially affected taxpayers with gross receipts below the stated thresholds is less than 2 percent of potentially affected taxpayers of all sizes.

The Treasury Department and the IRS cannot readily identify from these data amounts that are paid pursuant to hybrid arrangements because those amounts are not separately reported on tax forms. Thus, dividends received as reported on Form 5471, and interest and royalty expenses as reported on Form 5472, are an upper bound on the amount of hybrid arrangements by these taxpayers.

[12] This estimate is limited to those taxpayers who report gross receipts above $0.

The Treasury Department and the IRS estimated the upper bound of the relative cost of the statutory and regulatory hybrids provisions, as a percentage of revenue, for these taxpayers as (i) the statutory tax rate of 21 percent multiplied by dividends received as reported on Form 5471 and or interest and royalty payments as reported on Form 5472, divided by (ii) the taxpayer's gross receipts. Based on this calculation, the Treasury Department and the IRS estimate that the upper bound of the relative cost of these statutory and regulatory provisions is above 3 percent for more than half but fewer than all of the 15 entities identified in the preceding paragraph. Because this estimate is an upper bound, a smaller subset of these taxpayers (including potentially zero taxpayers) is likely to have a cost above three percent of gross receipts.

Therefore, the Treasury Department and the IRS project that a substantial number of domestic small business entities will not be subject to § 1.6038–2(f)(13) or (14), § 1.6038–3(g)(3), or § 1.6038A–2(b)(5)(iii). Accordingly, the Treasury Department and the IRS project that § 1.6038–2(f)(13) or (14), § 1.6038–3(g)(3), or § 1.6038A–2(b)(5)(iii) will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal authors of the final regulations are Shane M. McCarrick and Tracy M. Villecco of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in the development of the final regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding sectional authorities for §§ 1.245A(e)–1 and 1.267A–1 through 1.267A–7 in numerical order and revising the entry for § 1.6038A–2 to read in part as follows:

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

Section 1.245A(e)–1 also issued under 26 U.S.C. 245A(g).

* * * * *

Sections 1.267A–1 through 1.267A–7 also issued under 26 U.S.C. 267A(e).

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Section 1.6038A–2 also issued under 26 U.S.C. 6038A and 6038C.

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■ **Par. 2.** Section 1.245A(e)–1 is added to read as follows:

§ 1.245A(e)–1 Special rules for hybrid dividends.

(a) *Overview.* This section provides rules for hybrid dividends. Paragraph (b) of this section disallows the deduction under section 245A(a) for a hybrid dividend received by a United States shareholder from a CFC. Paragraph (c) of this section provides a rule for hybrid dividends of tiered corporations. Paragraph (d) of this section sets forth rules regarding a hybrid deduction account. Paragraph (e) of this section provides an anti-avoidance rule. Paragraph (f) of this section provides definitions. Paragraph (g) of this section illustrates the application of the rules of this section through examples. Paragraph (h) of this section provides the applicability date.

(b) *Hybrid dividends received by United States shareholders*—(1) *In general.* If a United States shareholder receives a hybrid dividend, then—

(i) The United States shareholder is not allowed a deduction under section 245A(a) for the hybrid dividend; and

(ii) The rules of section 245A(d) (disallowance of foreign tax credits and deductions) apply to the hybrid dividend. See paragraph (g)(1) of this section for an example illustrating the application of paragraph (b) of this section.

(2) *Definition of hybrid dividend.* The term *hybrid dividend* means an amount received by a United States shareholder from a CFC for which, without regard to section 245A(e) and this section as well as § 1.245A–5T, the United States shareholder would be allowed a deduction under section 245A(a), to the extent of the sum of the United States shareholder's hybrid deduction accounts (as described in paragraph (d) of this section) with respect to each share of stock of the CFC, determined at the close of the CFC's taxable year (or in accordance with paragraph (d)(5) of this section, as applicable). No other amount received by a United States shareholder from a CFC is a hybrid dividend for purposes of section 245A.

(3) *Special rule for certain dividends attributable to earnings of lower-tier foreign corporations.* This paragraph (b)(3) applies if a domestic corporation directly or indirectly (as determined under the principles of § 1.245A–5T(g)(3)(ii)) sells or exchanges stock of a foreign corporation and, pursuant to section 1248, the gain recognized on the sale or exchange is included in gross income as a dividend. In such a case, for purposes of this section—

(i) To the extent that earnings and profits of a lower-tier CFC gave rise to the dividend under section 1248(c)(2), those earnings and profits are treated as distributed as a dividend by the lower-tier CFC directly to the domestic corporation under the principles of § 1.1248–1(d); and

(ii) To the extent the domestic corporation indirectly owns (within the meaning of section 958(a)(2), and determined by treating a domestic partnership as foreign) shares of stock of the lower-tier CFC, the hybrid deduction accounts with respect to those shares are treated as the domestic corporation's hybrid deduction accounts with respect to stock of the lower-tier CFC. Thus, for example, if a domestic corporation sells or exchanges all the stock of an upper-tier CFC and under this paragraph (b)(3) there is considered to be a dividend paid directly by the lower-tier CFC to the domestic corporation, then the dividend is generally a hybrid dividend to the extent of the sum of the upper-tier CFC's hybrid deduction accounts with respect to stock of the lower-tier CFC.

(4) *Ordering rule.* Amounts received by a United States shareholder from a CFC are subject to the rules of section 245A(e) and this section based on the order in which they are received. Thus, for example, if on different days during a CFC's taxable year a United States shareholder receives dividends from the CFC, then the rules of section 245A(e) and this section apply first to the dividend received on the earliest date (based on the sum of the United States shareholder's hybrid deduction accounts with respect to each share of stock of the CFC), and then to the dividend received on the next earliest date (based on the remaining sum).

(c) *Hybrid dividends of tiered corporations*—(1) *In general.* If a CFC (the *receiving CFC*) receives a tiered hybrid dividend from another CFC, and a domestic corporation is a United States shareholder with respect to both CFCs, then, notwithstanding any other provision of the Code—

(i) For purposes of section 951(a) as to the United States shareholder, the tiered hybrid dividend is treated for purposes of section 951(a)(1)(A) as subpart F income of the receiving CFC for the taxable year of the CFC in which the tiered hybrid dividend is received;

(ii) The United States shareholder includes in gross income an amount equal to its pro rata share (determined in the same manner as under section 951(a)(2)) of the subpart F income described in paragraph (c)(1)(i) of this section; and

(iii) The rules of section 245A(d) (disallowance of foreign tax credit, including for taxes that would have been deemed paid under section 960(a) or (b), and deductions) apply to the amount included under paragraph (c)(1)(ii) of this section in the United States shareholder's gross income. See paragraph (g)(2) of this section for an example illustrating the application of paragraph (c) of this section.

(2) *Definition of tiered hybrid dividend.* The term *tiered hybrid dividend* means an amount received by a receiving CFC from another CFC to the extent that the amount would be a hybrid dividend under paragraph (b)(2) of this section if, for purposes of section 245A and the regulations in this part under section 245A (except for section 245A(e)(2) and this paragraph (c)), the receiving CFC were a domestic corporation. A tiered hybrid dividend does not include an amount described in section 959(b). No other amount received by a receiving CFC from another CFC is a tiered hybrid dividend for purposes of section 245A.

(3) *Special rule for certain dividends attributable to earnings of lower-tier foreign corporations.* This paragraph (c)(3) applies if a CFC directly or indirectly (as determined under the principles of § 1.245A–5T(g)(3)(ii)) sells or exchanges stock of a foreign corporation and pursuant to section

964(e)(1) the gain recognized on the sale or exchange is included in gross income as a dividend. In such a case, the rules of paragraph (b)(3) of this section apply, by treating the CFC as the domestic corporation described in paragraph (b)(3) of this section and substituting the phrase ''sections 964(e)(1) and 1248(c)(2)'' for the phrase ''section 1248(c)(2)'' in paragraph (b)(3)(i) of this section.

(4) *Interaction with rules under section 964(e).* To the extent a dividend described in section 964(e)(1) (gain on certain stock sales by CFCs treated as dividends) is a tiered hybrid dividend, the rules of section 964(e)(4) do not apply as to a domestic corporation that is a United States shareholder of both of the CFCs described in paragraph (c)(1) of this section and, therefore, such United States shareholder is not allowed a deduction under section 245A(a) for the amount included in gross income under paragraph (c)(1)(ii) of this section.

(d) *Hybrid deduction accounts*—(1) *In general.* A specified owner of a share of CFC stock must maintain a hybrid deduction account with respect to the share. The hybrid deduction account with respect to the share must reflect the amount of hybrid deductions of the CFC allocated to the share (as determined under paragraphs (d)(2) and (3) of this section), and must be maintained in accordance with the rules of paragraphs (d)(4) through (6) of this section.

(2) *Hybrid deductions*—(i) *In general.* The term *hybrid deduction* of a CFC means a deduction or other tax benefit (such as an exemption, exclusion, or credit, to the extent equivalent to a deduction) for which the requirements of paragraphs (d)(2)(i)(A) and (B) of this section are both satisfied.

(A) The deduction or other tax benefit is allowed to the CFC (or a person related to the CFC) under a relevant foreign tax law, regardless of whether the deduction or other tax benefit is used, or otherwise reduces tax, currently under the relevant foreign tax law.

(B) The deduction or other tax benefit relates to or results from an amount paid, accrued, or distributed with respect to an instrument issued by the CFC and treated as stock for U.S. tax purposes, or is a deduction allowed to the CFC with respect to equity. Examples of such a deduction or other tax benefit include an interest deduction, a dividends paid deduction, and a notional interest deduction (or similar deduction determined with respect to the CFC's equity). However, a deduction or other tax benefit relating to or resulting from a distribution by the CFC that is a dividend for purposes of the relevant foreign tax law is considered a hybrid deduction only to the extent it has the effect of causing the earnings that funded the distribution to not be included in income (determined under the principles of § 1.267A–3(a)) or otherwise subject to tax under such tax law. Thus, for example, upon a distribution by a CFC that is treated as a dividend for purposes of the CFC's tax law to a shareholder of the CFC, a dividends paid deduction allowed to the CFC under its tax law (or a refund to the shareholder, including through a credit, of tax paid by the CFC on the earnings that funded the distribution) pursuant to an integration or imputation system is not a hybrid deduction of the CFC to the extent that the shareholder, if a tax resident of the CFC's country, includes the distribution in income under the CFC's tax law or, if not a tax resident of the CFC's country, is subject to withholding tax (as defined in section 901(k)(1)(B)) on the distribution under the CFC's tax law. As an additional example, upon a distribution by a CFC to a shareholder of the CFC that is a tax resident of the CFC's country, a dividends received deduction allowed to the shareholder under the tax law of such foreign country pursuant to a regime intended to relieve double-taxation within the group is not a hybrid deduction of the CFC (though if the CFC were also allowed a deduction or other tax benefit for the distribution under such tax, such deduction or other tax benefit would be a hybrid deduction of the CFC). See paragraphs (g)(1) and (2) of this section for examples illustrating the application of paragraph (d) of this section.

(ii) *Coordination with foreign disallowance rules.* The following special rules apply for purposes of determining whether a deduction or other tax benefit is allowed to a CFC (or a person related to the CFC) under a relevant foreign tax law:

(A) Whether the deduction or other tax benefit is allowed is determined without regard to a rule under the relevant foreign tax law that disallows or suspends deductions if a certain ratio or percentage is exceeded (for example, a thin capitalization rule that disallows interest deductions if debt to equity exceeds a certain ratio, or a rule similar to section 163(j) that disallows or suspends interest deductions if interest exceeds a certain percentage of income).

(B) Except as provided in this paragraph (d)(2)(ii)(B), whether the deduction or other tax benefit is allowed is determined without regard to hybrid mismatch rules, if any, under the relevant foreign tax law that may disallow such deduction or other tax benefit. However, whether the deduction or other tax benefit is allowed is determined with regard to hybrid mismatch rules under the relevant foreign tax law if the amount giving rise to the deduction or other tax benefit neither gives rise to a dividend for U.S. tax purposes nor, based on all the facts and circumstances, is reasonably expected to give rise to a dividend for U.S. tax purposes that will be paid within 12 months from the end of the taxable period for which the deduction or other tax benefit would be allowed but for the hybrid mismatch rules. For purposes of this paragraph (d)(2)(ii)(B), the term hybrid mismatch rules has the meaning provided in § 1.267A–5(b)(10).

(iii) *Anti-duplication rule.* A deduction or other tax benefit allowed to a CFC (or a person related to the CFC) under a relevant foreign tax law for an amount paid, accrued, or distributed with respect to an instrument issued by the CFC is not a hybrid deduction to the extent that treating it as a hybrid deduction would have the effect of duplicating a hybrid deduction that is a deduction or other tax benefit allowed under such tax law for an amount paid, accrued, or distributed with respect to an instrument that is issued by a CFC at a higher tier and that has terms substantially similar to the terms of the first instrument. For example, if an upper tier CFC issues to a corporate United States shareholder a hybrid instrument (the ''upper tier instrument''), a lower tier CFC issues to the upper tier CFC a hybrid instrument that has terms substantially similar to the terms of the upper tier instrument (the ''mirror instrument''), the CFCs are tax residents of the same foreign country, and the upper tier CFC includes in income under its tax law (as determined under the principles of § 1.267A–3(a)) amounts accrued with respect to the mirror instrument, then a deduction allowed to the lower tier CFC under such foreign tax law for an amount accrued pursuant to the mirror instrument is not a hybrid deduction (but a deduction allowed to the upper tier CFC under the foreign tax law for an amount accrued with respect to the upper tier instrument is a hybrid deduction).

(iv) *Application limited to items allowed in taxable years ending on or after December 20, 2018; special rule for deductions with respect to equity.* A deduction or other tax benefit, other than a deduction with respect to equity, allowed to a CFC (or a person related to the CFC) under a relevant foreign tax law is taken into account for purposes of this section only if it was allowed with respect to a taxable year under the relevant foreign tax law ending on or after December 20, 2018. A deduction with respect to equity allowed to a CFC under a relevant foreign tax law is taken into account for purposes of this section only if it was allowed with respect to a taxable year under the relevant foreign tax law beginning on or after December 20, 2018.

(3) *Allocating hybrid deductions to shares.* A hybrid deduction is allocated to a share of stock of a CFC to the extent that the hybrid deduction (or amount equivalent to a deduction) relates to an amount paid, accrued, or distributed by the CFC with respect to the share. However, in the case of a hybrid deduction that is a deduction with respect to equity (such as a notional interest deduction), the deduction is allocated to a share of stock of a CFC based on the product of—

(i) The amount of the deduction allowed for all of the equity of the CFC; and

(ii) A fraction, the numerator of which is the value of the share and the denominator of which is the value of all of the stock of the CFC.

(4) *Maintenance of hybrid deduction accounts*—(i) *In general.* A specified owner's hybrid deduction account with respect to a share of stock of a CFC is, as of the close of the taxable year of the CFC, adjusted pursuant to the following rules.

(A) First, the account is increased by the amount of hybrid deductions of the CFC allocated to the share for the taxable year.

(B) [Reserved]

(C) Third, the account is decreased by the amount of hybrid deductions in the account that gave rise to a hybrid dividend or tiered hybrid dividend during the taxable year. If the specified owner has more than one hybrid deduction account with respect to its stock of the CFC, then a pro rata amount in each hybrid deduction account is considered to have given rise to the hybrid dividend or tiered hybrid dividend, based on the amounts in the accounts before applying this paragraph (d)(4)(i)(C).

(ii) [Reserved]

(iii) *Acquisition of account and certain other adjustments*—(A) *In general.* The following rules apply when a person (the *acquirer*) directly or indirectly through a partnership, trust, or estate acquires a share of stock of a CFC from another person (the *transferor*).

(*1*) In the case of an acquirer that is a specified owner of the share immediately after the acquisition, the transferor's hybrid deduction account, if any, with respect to the share becomes the hybrid deduction account of the acquirer.

(*2*) In the case of an acquirer that is not a specified owner of the share immediately after the acquisition, the transferor's hybrid deduction account, if any, is eliminated and accordingly is not thereafter taken into account by any person.

(B) *Additional rules.* The following rules apply in addition to the rules of paragraph (d)(4)(iii)(A) of this section.

(*1*) *Certain section 354 or 356 exchanges.* The following rules apply when a shareholder of a CFC (the CFC, the *target CFC;* the shareholder, the *exchanging shareholder*) exchanges stock of the target CFC for stock of another CFC (the *acquiring CFC*) pursuant to an exchange described in section 354 or 356 that occurs in connection with a transaction described in section 381(a)(2) in which the target CFC is the transferor corporation.

(*i*) In the case of an exchanging shareholder that is a specified owner of one or more shares of stock of the acquiring CFC immediately after the exchange, the exchanging shareholder's hybrid deduction accounts with respect to the shares of stock of the target CFC that it exchanges are attributed to the shares of stock of the acquiring CFC that it receives in the exchange.

(*ii*) In the case of an exchanging shareholder that is not a specified owner of one or more shares of stock of the acquiring CFC immediately after the exchange, the exchanging shareholder's hybrid deduction accounts with respect to its shares of stock of the target CFC are eliminated and accordingly are not thereafter taken into account by any person.

(*2*) *Section 332 liquidations.* If a CFC is a distributor corporation in a transaction described in section 381(a)(1) (the *distributor CFC*) in which a controlled foreign corporation is the acquiring corporation (the *distributee CFC*), then each hybrid deduction account with respect to a share of stock of the distributee CFC is increased pro rata by the sum of the hybrid deduction accounts with respect to shares of stock of the distributor CFC.

(*3*) *Recapitalizations.* If a shareholder of a CFC exchanges stock of the CFC pursuant to a reorganization described in section 368(a)(1)(E) or a transaction to which section 1036 applies, then the shareholder's hybrid deduction accounts with respect to the stock of the CFC that it exchanges are attributed to the shares of stock of the CFC that it receives in the exchange.

(*4*) *Certain distributions involving section 355 or 356.* In the case of a transaction involving a distribution under section 355 (or so much of section 356 as it relates to section 355) by a CFC (the *distributing CFC*) of stock of another CFC (the *controlled CFC*), the balance of the hybrid deduction accounts with respect to stock of the distributing CFC is attributed to stock of the controlled CFC in a manner similar to how earnings and profits of the distributing CFC and controlled CFC are adjusted. To the extent the balance of the hybrid deduction accounts with respect to stock of the distributing CFC is not so attributed to stock of the controlled CFC, such balance remains as the balance of the hybrid deduction accounts with respect to stock of the distributing CFC.

(*5*) *Effect of section 338(g) election*—(*i*) *In general.* If an election under section 338(g) is made with respect to a qualified stock purchase (as described in section 338(d)(3)) of stock of a CFC, then a hybrid deduction account with respect to a share of stock of the old target is not treated as (or attributed to) a hybrid deduction account with respect to a share of stock of the new target. Accordingly, immediately after the deemed asset sale described in § 1.338–1, the balance of a hybrid deduction account with respect to a share of stock of the new target is zero; the account must then be maintained in accordance with the rules of paragraph (d) of this section.

(*ii*) *Special rule regarding carryover FT stock.* Paragraph (d)(4)(iii)(B)(*5*)(*i*) of this section does not apply as to a hybrid deduction account with respect to a share of carryover FT stock (as described in § 1.338–9(b)(3)(i)). A hybrid deduction account with respect to a share of carryover FT stock is attributed to the corresponding share of stock of the new target.

(5) *Determinations and adjustments made during year of transfer in certain cases.* This paragraph (d)(5) applies if on a date other than the date that is the last day of the CFC's taxable year a United States shareholder of the CFC or an upper-tier CFC with respect to the CFC directly or indirectly (as determined under the principles of § 1.245A–5T(g)(3)(ii)) transfers a share of stock of the CFC, and, during the taxable year, but on or before the transfer date, the United States shareholder or upper-tier CFC receives an amount from the CFC that is subject to the rules of section 245A(e) and this section. In such a case, the following rules apply:

(i) As to the United States shareholder or upper-tier CFC and the United States shareholder's or upper-tier CFC's hybrid deduction accounts with respect to each share of stock of the CFC (regardless of whether such share is transferred), the determinations and adjustments under this section that would otherwise be made at the close of the CFC's taxable year are made at the close of the date of the transfer. When making these determinations and adjustments at the close of the date of the transfer, each hybrid deduction account described in the previous sentence is pursuant to paragraph (d)(4)(ii)(A) of this section increased by a ratable portion (based on the number of days in the taxable year within the pre-transfer period to the total number of days in the taxable year) of the hybrid deductions of the CFC allocated to the share for the taxable year, and pursuant to paragraph (d)(4)(ii)(C) of this section decreased by the amount of hybrid deductions in the account that gave rise to a hybrid dividend or tiered hybrid dividend during the portion of the taxable year up to and including the transfer date. Thus, for example, if a United States shareholder of a CFC exchanges stock of the CFC in an exchange described in § 1.367(b)–4(b)(1)(i) and is required to include in income as a deemed dividend the section 1248 amount attributable to the stock exchanged, then: As of the close of the date of the exchange, each of the United States shareholder's hybrid deductions accounts with respect to a share of stock of the CFC is increased by a ratable portion of the hybrid deductions of the CFC allocated to the share for the taxable year (based on the number of days in the taxable year within the pre-transfer period to the total number of days in the taxable year); the deemed dividend is a hybrid dividend to the extent of the sum of the United States shareholder's hybrid deduction accounts with respect to each share of stock of the CFC; and, as the close of the date of the exchange, each of the accounts is decreased by the amount of hybrid deductions in the account that gave rise to a hybrid dividend during the portion of the taxable year up to and including the date of the exchange.

(ii) As to a hybrid deduction account described in paragraph (d)(5)(i) of this section, the adjustments to the account as of the close of the taxable year of the CFC must take into account the adjustments, if any, occurring with respect to the account pursuant to paragraph (d)(5)(i) of this section. Thus, for example, if an acquisition of a share of stock of a CFC occurs on a date other than the date that is the last day of the CFC's taxable year and pursuant to paragraph (d)(4)(iii)(A)(*1*) of this section the acquirer succeeds to the transferor's hybrid deduction account with respect to the share, then, as of the close of the taxable year of the CFC, the account is increased by a ratable portion of the hybrid deductions of the CFC allocated to the share for the taxable year (based on the number of days in the taxable year within the post-transfer period to the total number of days in the taxable year), and, decreased by the amount of hybrid deductions in the account that gave rise to a hybrid dividend or tiered hybrid dividend during the portion of the taxable year following the transfer date.

(6) *Effects of CFC functional currency*—(i) *Maintenance of the hybrid deduction account.* A hybrid deduction account with respect to a share of CFC stock must be maintained in the functional currency (within the meaning of section 985) of the CFC. Thus, for example, the amount of a hybrid deduction and the adjustments described in paragraphs (d)(4)(i)(A) and (B) of this section are determined based on the functional currency of the CFC. In addition, for purposes of this section, the amount of a deduction or other tax benefit allowed to a CFC (or a person related to the CFC) is determined taking into account foreign currency gain or loss recognized with respect to such deduction or other tax benefit under a provision of foreign tax law comparable to section 988 (treatment of certain foreign currency transactions).

(ii) *Determination of amount of hybrid dividend.* This paragraph (d)(6)(ii) applies if a CFC's functional currency is other than the functional currency of a United States shareholder or upper-tier CFC that receives an amount from the CFC that is subject to the rules of section 245A(e) and this section. In such a case, the sum of the United States shareholder's or upper-tier CFC's hybrid deduction accounts with respect to each share of stock of the CFC is, for purposes of determining the extent that a dividend is a hybrid dividend or tiered hybrid dividend, translated into the functional currency of the United States shareholder or upper-tier CFC based on the spot rate (within the meaning of § 1.988–1(d)) as of the date of the dividend.

(e) *Anti-avoidance rule.* Appropriate adjustments are made pursuant to this section, including adjustments that would disregard the transaction or arrangement, if a transaction or arrangement is undertaken with a principal purpose of avoiding the purposes of section 245A(e) and this section. For example, if a specified owner of a share of CFC stock transfers the share to another person, and a principal purpose of the transfer is to shift the hybrid deduction account with respect to the share to the other person or to cause the hybrid deduction account to be eliminated, then for purposes of this section the shifting or elimination of the hybrid deduction account is disregarded as to the transferor. As another example, if a transaction or arrangement is undertaken to affirmatively fail to satisfy the holding period requirement under section 246(c)(5) with a principal purpose of avoiding the tiered hybrid dividend rules described in paragraph (c) of this section, the transaction or arrangement is disregarded for purposes of this section. This paragraph (e) will not apply, however, to disregard (or make other adjustments with respect to) a transaction pursuant to which an instrument or arrangement that gives rise to hybrid deductions is eliminated or otherwise converted into another instrument or arrangement that does not give rise to hybrid deductions.

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

(1) The term *controlled foreign corporation* (or *CFC*) has the meaning provided in section 957.

(2) The term *domestic corporation* means an entity classified as a domestic corporation under section 7701(a)(3) and (4) or otherwise treated as a domestic corporation by the Internal Revenue Code. However, for purposes of this section, a domestic corporation does not include a regulated investment company (as described in section 851), a real estate investment trust (as described in section 856), or an S corporation (as described in section 1361).

(3) The term *person* has the meaning provided in section 7701(a)(1).

(4) The term *related* has the meaning provided in this paragraph (f)(4). A person is related to a CFC if the person is a related person within the meaning of section 954(d)(3). *See also* § 1.954–1(f)(2)(iv)(B)(*1*) (neither section 318(a)(3), nor § 1.958–2(d) or the principles thereof, applies to attribute stock or other interests).

(5) The term *relevant foreign tax law* means, with respect to a CFC, any regime of any foreign country or possession of the United States that imposes an income, war profits, or excess profits tax with respect to income of the CFC, other than a foreign anti-deferral regime under which a person that owns an interest in the CFC is liable to tax. If a foreign country has an income tax treaty with the United States that applies to taxes imposed by a political subdivision or other local authority of that country, then the tax

law of the political subdivision or other local authority is deemed to be a tax law of a foreign country. Thus, the term includes any regime of a foreign country or possession of the United States that imposes income, war profits, or excess profits tax under which—

(i) The CFC is liable to tax as a resident;

(ii) The CFC has a branch that gives rise to a taxable presence in the foreign country or possession of the United States; or

(iii) A person related to the CFC is liable to tax as a resident, provided that under such person's tax law the person is allowed a deduction for amounts paid or accrued by the CFC (because the CFC is fiscally transparent under the person's tax law).

(6) The term *specified owner* means, with respect to a share of stock of a CFC, a person for which the requirements of paragraphs (f)(6)(i) and (ii) of this section are satisfied.

(i) The person is a domestic corporation that is a United States shareholder of the CFC, or is an upper-tier CFC that would be a United States shareholder of the CFC were the upper-tier CFC a domestic corporation (provided that, for purposes of sections 951 and 951A, a domestic corporation that is a United States shareholder of the upper-tier CFC owns (within the meaning of section 958(a), and determined by treating a domestic partnership as foreign) one or more shares of stock of the upper-tier CFC).

(ii) The person owns the share directly or indirectly through a partnership, trust, or estate. Thus, for example, if a domestic corporation directly owns all the shares of stock of an upper-tier CFC and the upper-tier CFC directly owns all the shares of stock of another CFC, the domestic corporation is the specified owner with respect to each share of stock of the upper-tier CFC and the upper-tier CFC is the specified owner with respect to each share of stock of the other CFC.

(7) The term *United States shareholder* has the meaning provided in section 951(b).

(g) *Examples.* This paragraph (g) provides examples that illustrate the application of this section. For purposes of the examples in this paragraph (g), unless otherwise indicated, the following facts are presumed. US1 is a domestic corporation. FX and FZ are CFCs formed at the beginning of year 1, and the functional currency (within the meaning of section 985) of each of FX and FZ is the dollar. FX is a tax resident of Country X and FZ is a tax resident of Country Z. US1 is a United States shareholder with respect to FX and FZ. No distributed amounts are attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a). All instruments are treated as stock for U.S. tax purposes. Only the tax law of the United States contains hybrid mismatch rules.

(1) *Example 1. Hybrid dividend resulting from hybrid instrument*—(i) *Facts.* US1 holds both shares of stock of FX, which have an equal value. One share is treated as indebtedness for Country X tax purposes (''Share A''), and the other is treated as equity for Country X tax purposes (''Share B''). During year 1, under Country X tax law, FX accrues $80x of interest to US1 with respect to Share A and is allowed a deduction for the amount (the ''Hybrid Instrument Deduction''). During year 2, FX distributes $30x to US1 with respect to each of Share A and Share B. For U.S. tax purposes, each of the $30x distributions is treated as a dividend for which, without regard to section 245A(e) and this section as well as § 1.245A–5T, US1 would be allowed a deduction under section 245A(a). For Country X tax purposes, the $30x distribution with respect to Share A represents a payment of interest for which a deduction was already allowed (and thus FX is not allowed an additional deduction for the amount), and the $30x distribution with respect to Share B is treated as a dividend (for which no deduction is allowed).

(ii) *Analysis.* The entire $30x of each dividend received by US1 from FX during year 2 is a hybrid dividend, because the sum of US1's hybrid deduction accounts with respect to each of its shares of FX stock at the end of year 2 ($80x) is at least equal to the amount of the dividends ($60x). *See* paragraph (b)(2) of this section. This is the case for the $30x dividend with respect to Share B even though there are no hybrid deductions allocated to Share B. *See* paragraph (b)(2) of this section. As a result, US1 is not allowed a deduction under section 245A(a) for the entire $60x of hybrid dividends and the rules of section 245A(d) (disallowance of foreign tax credits and deductions) apply. *See* paragraph (b)(1) of this section. Paragraphs (g)(1)(ii)(A) through (D) of this section describe the determinations under this section.

(A) At the end of year 1, US1's hybrid deduction accounts with respect to Share A and Share B are $80x and $0, respectively, calculated as follows.

(*1*) The $80x Hybrid Instrument Deduction allowed to FX under Country X tax law (a relevant foreign tax law) is a hybrid deduction of FX, because the deduction is allowed to FX and relates to or results from an amount accrued with respect to an instrument issued by FX and treated as stock for U.S. tax purposes. *See* paragraph (d)(2)(i) of this section. Thus, FX's hybrid deductions for year 1 are $80x.

(*2*) The entire $80x Hybrid Instrument Deduction is allocated to Share A, because the deduction was accrued with respect to Share A. *See* paragraph (d)(3) of this section. As there are no additional hybrid deductions of FX for year 1, there are no additional hybrid deductions to allocate to either Share A or Share B. Thus, there are no hybrid deductions allocated to Share B.

(*3*) At the end of year 1, US1's hybrid deduction account with respect to Share A is increased by $80x (the amount of hybrid deductions allocated to Share A). *See* paragraph (d)(4)(i)(A) of this section. Because FX did not pay any dividends with respect to either Share A or Share B during year 1 (and therefore did not pay any hybrid dividends or tiered hybrid dividends), no further adjustments are made. *See* paragraph (d)(4)(i)(C) of this section. Therefore, at the end of year 1, US1's hybrid deduction accounts with respect to Share A and Share B are $80x and $0, respectively.

(B) At the end of year 2, and before the adjustments described in paragraph (d)(4)(i)(C) of this section, US1's hybrid deduction accounts with respect to Share A and Share B remain $80x and $0, respectively. This is because there are no hybrid deductions of FX for year 2. *See* paragraph (d)(4)(i)(A) of this section.

(C) Because at the end of year 2 (and before the adjustments described in paragraph (d)(4)(i)(C) of this section) the sum of US1's hybrid deduction accounts with respect to Share A and Share B ($80x, calculated as $80x plus $0) is at least equal to the aggregate $60x of year 2 dividends, the entire $60x dividend is a hybrid dividend. *See* paragraph (b)(2) of this section.

(D) At the end of year 2, US1's hybrid deduction account with respect to Share A is decreased by $60x, the amount of the hybrid deductions in the account that gave rise to a hybrid dividend or tiered hybrid dividend during year 2. *See* paragraph (d)(4)(i)(C) of this section. Because there are no hybrid deductions in the hybrid deduction account with respect to Share B, no adjustments with respect to that account are made under paragraph (d)(4)(i)(C) of this section. Therefore, at the end of year 2 and taking into account the adjustments under paragraph (d)(4)(i)(C) of this section, US1's hybrid deduction account with respect to Share A is $20x ($80x less $60x) and with respect to Share B is $0.

(iii) *Alternative facts—notional interest deductions.* The facts are the same as in paragraph (g)(1)(i) of this section, except that for each of year 1 and year 2 FX is allowed $10x of notional interest deductions with respect to its equity, Share B, under Country X tax law (the ''NIDs''). In addition, during year 2, FX distributes $47.5x (rather than $30x) to US1 with respect to each of Share A and Share B. For U.S. tax purposes, each of the $47.5x distributions is treated as a dividend for which, without regard to section 245A(e) and this section as well as § 1.245A–5T, US1 would be allowed a deduction under section 245A(a). For Country X tax purposes, the $47.5x distribution with respect to Share A represents a payment of interest for which a deduction was already allowed (and thus FX is not allowed an additional deduction for the amount), and the $47.5x distribution with respect to Share B is treated as a dividend (for which no deduction is allowed). The entire $47.5x of each dividend received by US1 from FX during year 2 is a hybrid dividend, because the sum of US1's hybrid deduction accounts with respect to each of its shares of FX stock at the end of year 2 ($80x plus $20x, or $100x) is at least equal to the amount of the dividends ($95x). *See* paragraph (b)(2) of this section. As a result, US1 is not allowed a deduction under section 245A(a) for the $95x hybrid dividend and the rules of section 245A(d) (disallowance of foreign tax credits and deductions) apply. *See* paragraph (b)(1) of this section. Paragraphs (g)(1)(iii)(A) through (D) of this section describe the determinations under this section.

(A) The $10x of NIDs allowed to FX under Country X tax law in year 1 are hybrid deductions of FX for year 1. *See* paragraph (d)(2)(i) of this section. The $10x of NIDs is allocated equally to each of Share A and Share B, because the hybrid deduction is with respect to equity and the shares have an equal value. *See* paragraph (d)(3) of this section. Thus, $5x of the NIDs is allocated to each of Share A and Share B for year 1. For the reasons described in paragraph (g)(1)(ii)(A)(*2*) of this section, the entire $80x Hybrid Instrument Deduction is allocated to Share A. Therefore, at the end of year 1, US1's hybrid deduction accounts with respect to Share A and Share B are $85x and $5x, respectively.

(B) Similarly, the $10x of NIDs allowed to FX under Country X tax law in year 2 are hybrid deductions of FX for year 2, and $5x of the NIDs is allocated to each of Share A and Share B for year 2. *See* paragraphs (d)(2)(i) and (d)(3) of this section. Thus, at the end of year 2 (and before the adjustments described in paragraph (d)(4)(i)(C) of this section), US1's hybrid deduction account with respect to Share A is $90x ($85x plus $5x) and with respect to Share B is $10x ($5x plus $5x). *See* paragraph (d)(4)(i) of this section.

(C) Because at the end of year 2 (and before the adjustments described in paragraph (d)(4)(i)(C) of this section) the sum of US1's hybrid deduction accounts with respect to Share A and Share B ($100x, calculated as $90x plus $10x) is at least equal to the aggregate $95x of year 2 dividends, the entire $95x of dividends are hybrid dividends. *See* paragraph (b)(2) of this section.

(D) At the end of year 2, US1's hybrid deduction accounts with respect to Share A and Share B are decreased by the amount of hybrid deductions in the accounts that gave rise to a hybrid dividend or tiered hybrid dividend during year 2. *See* paragraph (d)(4)(i)(C) of this section. A total of $95x of hybrid deductions in the accounts gave rise to a hybrid dividend during year 2. For the hybrid deduction account with respect to Share A, $85.5x in the account is considered to have given rise to a hybrid deduction (calculated as $95x multiplied by $90x/$100x). *See* paragraph (d)(4)(i)(C) of this section. For the hybrid deduction account with respect to Share B, $9.5x in the account is considered to have given rise to a hybrid deduction (calculated as $95x multiplied by $10x/$100x). *See* paragraph (d)(4)(i)(C) of this section. Thus, following these adjustments, at the end of year 2, US1's hybrid deduction account with respect to Share A is $4.5x ($90x less $85.5x) and with respect to Share B is $0.5x ($10x less $9.5x).

(iv) *Alternative facts—deduction in branch country*—(A) *Facts.* The facts are the same as in paragraph (g)(1)(i) of this section, except that for Country X tax purposes Share A is treated as equity (and thus the Hybrid Instrument Deduction does not exist, and under Country X tax law FX is not allowed a deduction for the $30x distributed in year 2 with respect to Share A). However, FX has a branch in Country Z that gives rise to a taxable presence under Country Z tax law, and for Country Z tax purposes Share A is treated as indebtedness and Share B is treated as equity. Also, during year 1, for Country Z tax purposes, FX accrues $80x of interest to US1 with respect to Share A and is allowed an $80x interest deduction with respect to its Country Z branch income. Moreover, for Country Z tax purposes, the $30x distribution with respect to Share A in year 2 represents a payment of interest for which a deduction was already allowed (and thus FX is not allowed an additional deduction for the amount), and the $30x distribution with respect to Share B in year 2 is treated as a dividend (for which no deduction is allowed).

(B) *Analysis.* The $80x interest deduction allowed to FX under Country Z tax law (a relevant foreign tax law) with respect to its Country Z branch income is a hybrid deduction of FX for year 1. *See* paragraphs (d)(2)(i) and (f)(5) of this section. For reasons similar to those discussed in paragraph (g)(1)(ii) of this section, at the end of year 2 (and before the adjustments described in paragraph (d)(4)(i)(C) of this section), US1's hybrid deduction accounts with respect to Share A and Share B are $80x and $0, respectively, and the sum of the accounts is $80x. Accordingly, the entire $60x of the year 2 dividend is a hybrid dividend. *See* paragraph (b)(2) of this section. Further, for the reasons described in paragraph (g)(1)(ii)(D) of this section, at the end of year 2 and taking into account the adjustments under paragraph (d)(4)(i)(C) of this section, US1's hybrid deduction account with respect to Share A is $20x ($80x less $60x) and with respect to Share B is $0.

(2) *Example 2. Tiered hybrid dividend rule; tax benefit equivalent to a deduction*—(i) *Facts.* US1 holds all the stock of FX, and FX holds all 100 shares of stock of FZ (the "FZ shares"), which have an equal value. The FZ shares are treated as equity for Country Z tax purposes. At the end of year 1, the sum of FX's hybrid deduction accounts with respect to each of its shares of FZ stock is $0. During year 2, FZ distributes $10x to FX with respect to each of the FZ shares, for a total of $1,000x. The $1,000x is treated as a dividend for U.S. and Country Z tax purposes, and is not deductible for Country Z tax purposes. If FX were a domestic corporation, then, without regard to section 245A(e) and this section as well as § 1.245A–5T, FX would be allowed a deduction under section 245A(a) for the $1,000x. Under Country Z tax law, 75% of the corporate income tax paid by a Country Z corporation with respect to a dividend distribution is refunded to the corporation's shareholders (regardless of where such shareholders are tax residents) upon a dividend distribution by the corporation. The corporate tax rate in Country Z is 20%. With respect to FZ's distributions, FX is allowed a refundable tax credit of $187.5x. The $187.5x refundable tax credit is calculated as $1,250x (the amount of pre-tax earnings that funded the distribution, determined as $1,000x (the amount of the distribution) divided by 0.8 (the percentage of pre-tax earnings that a Country Z corporation retains after paying Country Z corporate tax)) multiplied by 0.2 (the Country Z corporate tax rate) multiplied by 0.75 (the percentage of the Country Z tax credit). Under Country Z tax law, FX is not subject to Country Z withholding tax (or any other tax) with respect to the $1,000x dividend distribution.

(ii) *Analysis.* As described in paragraphs (g)(2)(ii)(A) and (B) of this section, the sum of FX's hybrid deduction accounts with respect to each of its shares of FZ stock at the end of year 2 is $937.5x and, as a result, $937.5x of the $1,000x of dividends received by FX from FZ during year 2 is a tiered hybrid dividend. *See* paragraphs (b)(2) and (c)(2) of this section. The $937.5x tiered hybrid dividend is treated for purposes of section 951(a)(1)(A) as subpart F income of FX and US1 must include in gross income its pro rata share of such subpart F income, which is $937.5x. *See* paragraph (c)(1) of this section. This is the case notwithstanding any other provision of the Code, including section 952(c) or section 954(c)(3) or (6). In addition, the rules of section 245A(d) (disallowance of foreign tax credits and deductions) apply with respect to US1's inclusion. *See* paragraph (c)(1) of this section. Paragraphs (g)(2)(ii)(A) through (C) of this section describe the determinations under this section. The characterization of the FZ stock for Country X tax purposes (or for purposes of any other foreign tax law) does not affect this analysis.

(A) The $187.5x refundable tax credit allowed to FX under Country Z tax law (a relevant foreign tax law) is equivalent to a $937.5x deduction, calculated as $187.5x (the amount of the credit) divided by 0.2 (the Country Z corporate tax rate). The $937.5x is a hybrid deduction of FZ because it is allowed to FX (a person related to FZ), it relates to or results from amounts distributed with respect to instruments issued by FZ and treated as stock for U.S. tax purposes, and it has the effect of causing the earnings that funded the distributions to not be included in income under Country Z tax law. *See* paragraph (d)(2)(i) of this section. $9.375x of the hybrid deduction is allocated to each of the FZ shares, calculated as $937.5x (the amount of the hybrid deduction) multiplied by 1/100 (the value of each FZ share relative to the value of all the FZ shares). *See* paragraph (d)(3) of this section. The result would be the same if FX were instead a tax resident of Country Z (and not Country X), FX were allowed the $187.5x refundable tax credit under Country Z tax law, and under Country Z tax law FX were to not include the $1,000x in income (because, for example, Country Z tax law provides Country Z resident corporations a 100% exclusion or dividends received deduction with respect to dividends received from a resident corporation). *See* paragraph (d)(2)(i) of this section.

(B) At the end of year 2, and before the adjustments described in paragraph (d)(4)(i)(C) of this section, the sum of FX's hybrid deduction accounts with respect to each of its shares of FZ stock is $937.5x, calculated as $9.375x (the amount in each account) multiplied by 100 (the number of accounts). *See* paragraph (d)(4)(i) of this section. Accordingly, $937.5x of the $1,000x dividend received by FX from FZ during year 2 is a tiered hybrid dividend. *See* paragraphs (b)(2) and (c)(2) of this section.

(C) At the end of year 2, each of FX's hybrid deduction accounts with respect to its shares of FZ is decreased by the $9.375x in the account that gave rise to a hybrid dividend or tiered hybrid dividend during year 2. *See* paragraph (d)(4)(i)(C) of this section. Thus, following these adjustments, at the end of year 2, each of FX's hybrid deduction accounts with respect to its shares of FZ stock is $0, calculated as $9.375x (the amount in the account before the adjustments described in paragraph (d)(4)(i)(C) of this section) less $9.375x (the adjustment described in paragraph (d)(4)(i)(C) of this section with respect to the account).

(iii) *Alternative facts—imputation system that taxes shareholders.* The facts are the same as in paragraph (g)(2)(i) of this section, except that under Country Z tax law the $1,000x dividend to FX is subject to a 30% gross basis withholding tax, or $300x, and the $187.5x refundable tax credit is applied against and reduces the withholding tax to $112.5x. The $187.5x refundable tax credit provided to FX is not a hybrid deduction because FX was subject to Country Z withholding tax of $300x on the $1,000x dividend (such withholding tax being greater than the $187.5x credit). *See* paragraph (d)(2)(i) of this section. If instead FZ were allowed a $1,000x dividends paid deduction for the $1,000x dividend (and FX were not allowed the refundable tax credit) and the dividend were subject to 5% gross basis withholding tax (or $50x), then $750x of the dividends paid deduction would be a hybrid deduction, calculated as the excess of $1,000x (the dividends paid deduction) over $250x (the amount of income that under Country Z tax law would produce an amount of tax equal to the $50x of withholding tax, calculated as $50x, the amount of withholding tax, divided by 0.2, the Country Z corporate tax rate). *See* paragraph (d)(2)(i) of this section.

(h) *Applicability dates*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies to distributions made after December 31, 2017, provided that such distributions occur during taxable years ending on or after December 20, 2018. However, taxpayers may apply this section in its entirety to distributions made after December 31, 2017 and occurring during taxable years ending before December 20, 2018. In lieu of applying the regulations in this section, taxpayers may apply the provisions matching this section from the Internal Revenue Bulletin (IRB) 2019–03 (*https://www.irs.gov/pub/irs-irbs/irb19-03.pdf*) in their entirety for all taxable years ending on or before April 8, 2020.

(2) [Reserved]

■ **Par. 3.** Sections 1.267A–1 through 1.267A–7 are added to read as follows:

Sec.

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§ 1.267A–1 Disallowance of certain interest and royalty deductions.

(a) *Scope.* This section and §§ 1.267A–2 through 1.267A–5 provide rules regarding when a deduction for any interest or royalty paid or accrued is disallowed under section 267A. Section 1.267A–2 describes hybrid and branch arrangements. Section 1.267A–3 provides rules for determining income inclusions and provides that certain amounts are not amounts for which a deduction is disallowed. Section 1.267A–4 provides an imported mismatch rule. Section 1.267A–5 sets forth definitions and special rules that apply for purposes of section 267A. Section 1.267A–6 illustrates the application of section 267A through examples. Section 1.267A–7 provides applicability dates.

(b) *Disallowance of deduction.* This paragraph (b) sets forth the exclusive circumstances in which a deduction is disallowed under section 267A. Except as provided in paragraph (c) of this section, a specified party's deduction for any interest or royalty paid or accrued (the amount paid or accrued with respect to the specified party, a *specified payment*) is disallowed under section 267A to the extent that the specified payment is described in this paragraph (b). *See also* § 1.267A–5(b)(5) (treating structured payments as interest paid or accrued for purposes of section 267A and the regulations in this part under section 267A). A specified payment is described in this paragraph (b) to the extent that it is—

(1) A disqualified hybrid amount, as described in § 1.267A–2 (hybrid and branch arrangements);

(2) A disqualified imported mismatch amount, as described in § 1.267A–4 (payments offset by a hybrid deduction); or

(3) A specified payment for which the requirements of the anti-avoidance rule of § 1.267A–5(b)(6) are satisfied.

(c) *De minimis exception.* Paragraph (b) of this section does not apply to a specified party for a taxable year in which the sum of the specified party's specified payments that but for this paragraph (c) would be described in paragraph (b) of this section is less than $50,000. For purposes of this paragraph (c), specified parties that are related (within the meaning of § 1.267A–5(a)(14)) are treated as a single specified party.

§ 1.267A–2 Hybrid and branch arrangements.

(a) *Payments pursuant to hybrid transactions*—(1) *In general.* If a specified payment is made pursuant to a hybrid transaction, then, subject to § 1.267A–3(b) (amounts included or includible in income), the payment is a disqualified hybrid amount to the extent that—

(i) A specified recipient of the payment does not include the payment in income, as determined under § 1.267A–3(a) (to such extent, a *no-inclusion*); and

(ii) The specified recipient's no-inclusion is a result of the payment being made pursuant to the hybrid transaction. For purposes of this paragraph (a)(1)(ii), the specified recipient's no-inclusion is a result of the specified payment being made pursuant to the hybrid transaction to the extent that the no-inclusion would not occur were the specified recipient's tax law to treat the payment as interest or a royalty, as applicable. See § 1.267A–6(c)(1) and (2) for examples illustrating the application of paragraph (a) of this section.

(2) *Definition of hybrid transaction*—(i) *In general.* The term *hybrid transaction* means any transaction, series of transactions, agreement, or instrument one or more payments with respect to which are treated as interest or royalties for U.S. tax purposes but are not so treated for purposes of the tax law of a specified recipient of the payment. Examples of a hybrid transaction include an instrument a payment with respect to which is treated as interest for U.S. tax purposes but, for purposes of a specified recipient's tax law, is treated as a distribution with respect to equity or a recovery of principal with respect to indebtedness.

(ii) *Special rules*—(A) *Long-term deferral.* A specified payment is deemed to be made pursuant to a hybrid transaction if the taxable year in which a specified recipient of the payment takes the payment into account in income under its tax law (or, based on all the facts and circumstances, is reasonably expected to take the payment into account in income under its tax law) ends more than 36 months after the end of the taxable year in which the specified party would be allowed a deduction for the payment under U.S. tax law. In addition, if the tax law of a specified recipient of the specified payment does not impose an income tax, then such tax law does not cause the payment to be deemed to be made pursuant to a hybrid transaction under this paragraph (a)(2)(ii)(A). See § 1.267A–6(c)(8) for an example illustrating the application of this paragraph (a)(2)(ii)(A) in the context of the imported mismatch rule.

(B) *Royalties treated as payments in exchange for property under foreign law.* In the case of a specified payment that is a royalty for U.S. tax purposes and for purposes of the tax law of a specified recipient of the payment is consideration received in exchange for property, the tax law of the specified recipient is not treated as causing the payment to be made pursuant to a hybrid transaction.

(C) *Coordination with disregarded payment rule.* A specified payment is not considered made pursuant to a hybrid transaction if the payment is a disregarded payment, as described in paragraph (b)(2) of this section.

(3) *Payments pursuant to securities lending transactions, sale-repurchase transactions, or similar transactions.* This paragraph (a)(3) applies if a specified payment is made pursuant to a repo transaction and is not regarded under a foreign tax law, but another amount connected to the payment (the *connected amount*) is regarded under such foreign tax law. For purposes of this paragraph (a)(3), a *repo transaction* means a transaction one or more payments with respect to which are treated as interest (as defined in § 1.267A–5(a)(12)) or a structured payment (as defined in § 1.267A–5(b)(5)(ii)) for U.S. tax purposes and that is a securities lending transaction or sale-repurchase transaction (including as described in § 1.861–2(a)(7)), or other similar transaction or series of related transactions in which legal title to property is transferred and the property (or similar property, such as securities of the same class and issue) is reacquired or expected to be reacquired. For example, this paragraph (a)(3) applies if a specified payment arising from characterizing a repo transaction of stock in accordance with its substance (that is, characterizing the specified payment as interest) is not regarded as such under a foreign tax law but an amount consistent with the form of the transaction (such as a dividend) is regarded under such foreign tax law. When this paragraph (a)(3) applies, the determination of the identity of a specified recipient of the specified payment under the foreign tax law is made with respect to the connected amount. In addition, if the specified recipient includes the connected amount in income (as determined under § 1.267A–3(a), by treating the connected amount as the specified payment), then the amount of the specified recipient's no-inclusion with respect to the specified payment is correspondingly reduced. Further, the principles of this paragraph (a)(3) apply to cases similar to repo transactions in which a foreign tax law does not characterize the transaction in accordance with its substance. See § 1.267A–6(c)(2) for an example illustrating the application of this paragraph (a)(3).

(4) *Payments pursuant to interest-free loans and similar arrangements.* In the case of a specified payment that is interest for U.S. tax purposes, the following special rules apply:

(i) The payment is deemed to be made pursuant to a hybrid transaction to the extent that—

(A) Under U.S. tax law, the payment is imputed (for example, under section 482 or 7872, including because the instrument pursuant to which it is made is indebtedness but the terms of the instrument provide for an interest rate equal to or less than the risk-free rate or the rate on sovereign debt with similar terms in the relevant foreign currency); and

(B) A tax resident or taxable branch to which the payment is made does not take the payment into account in income under its tax law because such tax law does not impute any interest. The rules of paragraph (b)(4) of this section apply for purposes of determining whether the specified payment is made indirectly to a tax resident or taxable branch.

(ii) A tax resident or taxable branch the tax law of which causes the payment to be deemed to be made pursuant to a hybrid transaction under paragraph (a)(4)(i) of this section is deemed to be a specified recipient of the payment for purposes of paragraph (a)(1) of this section.

(b) *Disregarded payments*—(1) *In general.* Subject to § 1.267A–3(b) (amounts included or includible in income), the excess (if any) of the sum of a specified party's disregarded payments for a taxable year over its dual inclusion income for the taxable year is a disqualified hybrid amount. See § 1.267A–6(c)(3) and (4) for examples illustrating the application of paragraph (b) of this section.

(2) *Definition of disregarded payment*—(i) *In general.* The term *disregarded payment* means a specified payment to the extent that, under the tax law of a tax resident or taxable branch to which the payment is made, the payment is not regarded (for example, because under such tax law it is a payment involving a single taxpayer or members of a group) and, were the payment to be regarded (and treated as interest or a royalty, as applicable) under such tax law, the tax resident or taxable branch would include the payment in income, as determined under § 1.267A–3(a).

(ii) *Special rules*—(A) *Foreign consolidation and similar regimes.* A disregarded payment includes a specified payment that, under the tax law of a tax resident or taxable branch to which the payment is made, is a payment that gives rise to a deduction or similar offset allowed to the tax resident or taxable branch (or group of entities that include the tax resident or taxable branch) under a foreign consolidation, fiscal unity, group relief, loss sharing, or any similar regime.

(B) *Certain payments of a U.S. taxable branch.* In the case of a specified payment of a U.S. taxable branch, the payment is not a disregarded payment to the extent that under the tax law of the tax resident to which the payment is made the payment is otherwise taken into account. See paragraph (c)(2) of this section for an example of when an amount may be otherwise taken into account.

(C) *Coordination with other hybrid and branch arrangements.* A disregarded payment does not include a deemed branch payment described in paragraph (c)(2) of this section, a specified payment pursuant to a repo transaction or similar transaction described in paragraph (a)(3) of this section, or a specified payment pursuant to an interest-free loan or similar transaction described in paragraph (a)(4) of this section.

(3) *Definition of dual inclusion income*—(i) *In general.* With respect to a specified party, the term *dual inclusion income* means the excess, if any, of—

(A) The sum of the specified party's items of income or gain for U.S. tax purposes that are included in the specified party's income, as determined under § 1.267A–3(a) (by treating the items of income or gain as the specified payment; and, in the case of a specified party that is a CFC, by treating U.S. tax law as the CFC's tax law), to the extent the items of income or gain are included in the income of the tax resident or taxable branch to which the disregarded payments are made, as determined under § 1.267A–3(a) (by treating the items of income or gain as the specified payment); over

(B) The sum of the specified party's items of deduction or loss for U.S. tax purposes (other than deductions for disregarded payments), to the extent the items of deduction or loss are allowable (or have been or will be allowable during a taxable year that ends no more than 36 months after the end of the specified party's taxable year) under the tax law of the tax resident or taxable branch to which the disregarded payments are made.

(ii) *Special rule for certain dividends.* An item of income or gain of a specified party that is included in the specified party's income but not included in the income of the tax resident or taxable branch to which the disregarded payments are made is considered described in paragraph (b)(3)(i)(A) of this section to the extent that, under the tax resident's or taxable branch's tax law, the item is a dividend that would have been included in the income of the tax resident or taxable branch but for an exemption, exclusion, deduction, credit, or other similar relief particular to the item, provided that the party paying the item is not allowed a deduction or other tax benefit for it under its tax law. Similarly, an item of income or gain of a specified party that is included in the income of the tax resident or taxable branch to which the disregarded payments are made but not included in the specified party's income is considered described in paragraph (b)(3)(ii)(A) of this section to the extent that, under U.S. tax law, the item is a dividend that would have been included in the income of the specified party but for a dividends received deduction with respect to the dividend (for example, a deduction under section 245A(a)), provided that the party paying the item is not allowed a deduction or other tax benefit for it under its tax law. See § 1.267A–6(c)(3)(iv) for an example illustrating the application of this paragraph (b)(3)(ii).

(4) *Payments made indirectly to a tax resident or taxable branch.* A specified payment made to an entity an interest of which is directly or indirectly (determined under the rules of section 958(a) without regard to whether an intermediate entity is foreign or domestic, or under substantially similar rules under a tax resident's or taxable branch's tax law) owned by a tax resident or taxable branch is considered made to the tax resident or taxable branch to the extent that, under the tax law of the tax resident or taxable branch, the entity to which the payment is made is fiscally transparent (and all intermediate entities, if any, are also fiscally transparent).

(c) *Deemed branch payments*—(1) *In general.* If a specified payment is a deemed branch payment, then the payment is a disqualified hybrid amount if the tax law of the home office provides an exclusion or exemption for income attributable to the branch. See § 1.267A–6(c)(4) for an example illustrating the application of this paragraph (c).

(2) *Definition of deemed branch payment.* The term *deemed branch payment* means, with respect to a U.S. taxable branch that is a U.S. permanent establishment of a treaty resident eligible for benefits under an income tax treaty between the United States and the treaty country, any amount of interest or royalties allowable as a deduction in computing the business profits of the U.S. permanent establishment, to the extent the amount is deemed paid to the home office (or other branch of the home office), is not regarded (or otherwise taken into account) under the home office's tax law (or the other branch's tax law), and, were the payment to be regarded (and treated as interest or a royalty, as applicable) under the home office's tax law (or other branch's tax law), the home office (or other branch) would include the payment in income, as determined under § 1.267A–3(a). An amount may be otherwise taken into account for purposes of this paragraph (c)(2) if, for example, under the home office's tax law a corresponding amount of interest or royalties is allocated and attributable to the U.S. permanent establishment and is therefore not deductible.

(d) *Payments to reverse hybrids*—(1) *In general.* If a specified payment is made to a reverse hybrid, then, subject to § 1.267A–3(b) (amounts included or includible in income), the payment is a disqualified hybrid amount to the extent that—

(i) An investor, the tax law of which treats the reverse hybrid as not fiscally transparent, does not include the payment in income, as determined under § 1.267A–3(a) (to such extent, a *no-inclusion*); and

(ii) The investor's no-inclusion is a result of the payment being made to the reverse hybrid. For purposes of this paragraph (d)(1)(ii), the investor's no-inclusion is a result of the specified payment being made to the reverse hybrid to the extent that the no-inclusion would not occur were the investor's tax law to treat the reverse hybrid as fiscally transparent (and treat the payment as interest or a royalty, as applicable). See § 1.267A–6(c)(5) for an example illustrating the application of paragraph (d) of this section.

(2) *Definition of reverse hybrid.* The term *reverse hybrid* means an entity (regardless of whether domestic or foreign) that is fiscally transparent under the tax law of the country in which it is created, organized, or otherwise established but not fiscally transparent under the tax law of an investor of the entity.

(3) *Payments made indirectly to a reverse hybrid.* A specified payment made to an entity an interest of which is directly or indirectly (determined under the rules of section 958(a) without regard to whether an intermediate entity is foreign or domestic, or under substantially similar rules under a tax resident's or taxable branch's tax law) owned by a reverse hybrid is considered made to the reverse hybrid to the extent that, under the tax law of an investor of the reverse hybrid, the entity to which the payment is made is fiscally transparent (and all intermediate entities, if any, are also fiscally transparent).

(4) *Exception for inclusion by taxable branch in establishment country.* Paragraph (d)(1) of this section does not apply to a specified payment made to a reverse hybrid to the extent that a taxable branch located in the country in which the reverse hybrid is created, organized, or otherwise established (and the activities of which are carried on by one or more investors of the reverse hybrid) includes the payment in income, as determined under § 1.267A–3(a).

(e) *Branch mismatch payments*—(1) *In general.* If a specified payment is a branch mismatch payment, then, subject to § 1.267A–3(b) (amounts included or includible in income), the payment is a disqualified hybrid amount to the extent that—

(i) A home office, the tax law of which treats the payment as income attributable to a branch of the home office, does not include the payment in income, as determined under § 1.267A–3(a) (to such extent, a *no-inclusion*); and

(ii) The home office's no-inclusion is a result of the payment being a branch mismatch payment. For purposes of this paragraph (e)(1)(ii), the home office's no-inclusion is a result of the specified payment being a branch mismatch payment to the extent that the no-inclusion would not occur were the home office's tax law to treat the payment as income that is not attributable a branch of the home office (and treat the payment as interest or a royalty, as applicable). See § 1.267A–6(c)(6) for an example illustrating the application of paragraph (e) of this section.

(2) *Definition of branch mismatch payment.* The term *branch mismatch payment* means a specified payment for which the following requirements are satisfied:

(i) Under a home office's tax law, the payment is treated as income attributable to a branch of the home office; and

(ii) Either—

(A) The branch is not a taxable branch; or

(B) Under the branch's tax law, the payment is not treated as income attributable to the branch.

(f) *Relatedness or structured arrangement limitation.* A specified recipient, a tax resident or taxable branch to which a specified payment is made, an investor, or a home office is taken into account for purposes of paragraphs (a), (b), (d), and (e) of this section, respectively, only if the specified recipient, the tax resident or taxable branch, the investor, or the home office, as applicable, is related (as defined in § 1.267A–5(a)(14)) to the specified party or is a party to a structured arrangement (as defined in § 1.267A–5(a)(20)) pursuant to which the specified payment is made.

§ 1.267A–3 Income inclusions and amounts not treated as disqualified hybrid amounts.

(a) *Income inclusions*—(1) *General rule.* For purposes of section 267A, a tax resident or taxable branch includes in income a specified payment to the extent that, under the tax law of the tax resident or taxable branch—

(i) It takes the payment into account (or has taken the payment into account, or, based on all the facts and circumstances, is reasonably expected to take the payment into account during a taxable year that ends no more than 36 months after the end of the specified party's taxable year) in its income or tax base at the full marginal rate imposed on ordinary income (or, if different, the full marginal rate imposed on interest or a royalty, as applicable); and

(ii) The payment is not reduced or offset by an exemption, exclusion, deduction, credit (other than for withholding tax imposed on the payment), or other similar relief particular to such type of payment. Examples of such reductions or offsets include a participation exemption, a dividends received deduction, a deduction or exclusion with respect to a particular category of income (such as income attributable to a branch, or royalties under a patent box regime), a credit for underlying taxes paid by a corporation from which a dividend is received, and a recovery of basis with respect to stock or a recovery of principal with respect to indebtedness. A specified payment is not considered reduced or offset by a deduction or other similar relief particular to the type of payment if it is offset by a generally applicable deduction or other tax attribute, such as a deduction for depreciation or a net operating loss. For purposes of this paragraph (a)(1)(ii), a deduction may be treated as being generally applicable even if it arises from a transaction related to the specified payment (for example, if the deduction and payment are in connection with a back-to-back financing arrangement).

(2) *Coordination with foreign hybrid mismatch rules.* Whether a tax resident or taxable branch includes in income a specified payment is determined without regard to any defensive or secondary rule contained in hybrid mismatch rules, if any, under the tax law of the tax resident or taxable branch. For purposes of this paragraph (a)(2), a defensive or secondary rule means a provision of hybrid mismatch rules that requires a tax resident or taxable branch to include an amount in income if a deduction for the amount is not disallowed under the payer's tax law. However, a defensive or secondary rule does not include a rule pursuant to which a participation exemption or similar relief particular to a dividend is inapplicable as to a dividend for which the payer is allowed a deduction or other tax benefit under its tax law. Thus, a defensive or secondary rule does not include a rule consistent with recommendation 2.1 in Chapter 2 of OECD/G–20, *Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2: 2015 Final Report* (October 2015).

(3) *Inclusions with respect to reverse hybrids.* With respect to a tax resident or taxable branch that is an investor of a reverse hybrid, whether the investor includes in income a specified payment made to the reverse hybrid is determined without regard to a distribution from the reverse hybrid (or the right to a distribution from the reverse hybrid triggered by the payment). However, if the reverse hybrid distributes all of its income during a taxable year, then, for that year, the determination of whether an investor includes in income a specified payment made to the reverse hybrid is made with regard to one or more distributions from the reverse hybrid during the year, by treating a portion of the specified payment as relating to each distribution during the year. For purposes of this paragraph (a)(3), the portion of the specified payment that is considered to relate to a distribution is the lesser of—

(i) The specified payment multiplied by a fraction, the numerator of which is the amount of the distribution and the denominator of which is the aggregate amount of distributions from the reverse hybrid during the taxable year; and

(ii) The amount of the distribution multiplied by a fraction, the numerator of which is the specified payment and the denominator of which is the sum of all specified payments made to the reverse hybrid during the taxable year.

(4) *Inclusions with respect to certain payments pursuant to hybrid transactions.* This paragraph (a)(4) applies to a specified payment that is interest and that is made pursuant to a hybrid transaction, to the extent that, under the tax law of a specified recipient of the payment, the payment is a recovery of basis with respect to stock or a recovery of principal with respect to indebtedness such that, but for this paragraph (a)(4), a no-inclusion would occur with respect to the specified recipient. In such a case, an amount that is a repayment of principal for U.S. tax purposes and that is or has been paid (or, based on all the facts and circumstances, is reasonably expected to be paid) by the specified party pursuant to the hybrid transaction (such amount, the *principal payment*) is, to the extent included in the income of the specified recipient, treated as correspondingly reducing the specified recipient's no-inclusion with respect to the specified payment. For purposes of this paragraph (a)(4), whether the specified recipient includes the principal payment in income is determined under paragraph (a)(1) of this section, by treating the principal payment as the specified payment and the taxable year period described in paragraph (a)(1) as being composed of taxable years of the specified recipient ending no more than 36 months after the end of the specified party's taxable year during which the specified payment is made (as opposed to, for example, being composed of taxable years of the specified recipient ending no more than 36 months after the end of the specified party's taxable year during which the principal payment is reasonably expected to be made). Moreover, once a principal payment reduces a no-inclusion with respect to a specified payment, it is not again taken into account for purposes of applying this paragraph (a)(4) to another specified payment. See § 1.267A–6(c)(1)(vi) for an example illustrating the application of this paragraph (a)(4).

(5) *Deemed full inclusions and de minimis inclusions.* A preferential rate,

exemption, exclusion, deduction, credit, or similar relief particular to a type of payment that reduces or offsets 90 percent or more of the payment is considered to reduce or offset 100 percent of the payment. In addition, a preferential rate, exemption, exclusion, deduction, credit, or similar relief particular to a type of payment that reduces or offsets 10 percent or less of the payment is considered to reduce or offset none of the payment.

(b) *Certain amounts not treated as disqualified hybrid amounts to extent included or includible in income for U.S. tax purposes*—(1) *In general.* A specified payment, to the extent that but for this paragraph (b) it would be a disqualified hybrid amount (such amount, a *tentative disqualified hybrid amount*), is reduced under the rules of paragraphs (b)(2) through (4) of this section, as applicable. The tentative disqualified hybrid amount, as reduced under such rules, is the disqualified hybrid amount. See § 1.267A–6(c)(3) and (7) for examples illustrating the application of paragraph (b) of this section.

(2) *Included in income of United States tax resident or U.S. taxable branch.* A tentative disqualified hybrid amount is reduced to the extent that a specified recipient that is a tax resident of the United States or a U.S. taxable branch takes the tentative disqualified hybrid amount into account in determining its gross income.

(3) *Includible in income under section 951(a)(1)(A).* A tentative disqualified hybrid amount is reduced to the extent that the tentative disqualified hybrid amount is received by a CFC and includible under section 951(a)(1)(A) (determined without regard to properly allocable deductions of the CFC, qualified deficits under section 952(c)(1)(B), and the earnings and profits limitation under § 1.952–1(c)) in the gross income of a United States shareholder of the CFC. However, if the United States shareholder is a domestic partnership, then the amount includible under section 951(a)(1)(A) in the gross income of the United States shareholder reduces the tentative disqualified hybrid amount only to the extent that a tax resident of the United States would take into account the amount.

(4) *Includible in income under section 951A(a).* A tentative disqualified hybrid amount is reduced to the extent that the tentative disqualified hybrid amount increases a United States shareholder's pro rata share of tested income (as determined under §§ 1.951A–1(d)(2) and 1.951A–2(b)(1)) with respect to a CFC, reduces the shareholder's pro rata share of tested loss (as determined under §§ 1.951A–1(d)(4) and 1.951A–2(b)(2)) of the CFC, or both. However, to the extent that a deduction for the tentative disqualified hybrid amount would be allowed to a tax resident of the United States or a U.S. taxable branch, or would be allowed to a CFC but would be allocated and apportioned to gross income of the CFC that is gross income taken into account in determining subpart F income (as described in section 952) 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)), the reduction provided under this paragraph (b)(4) is equal to the reduction that would be provided under this paragraph (b)(4) but for this sentence multiplied by the difference of 100 percent and the percentage described in section 250(a)(1)(B).

(5) *Includible in income under section 1293.* A tentative disqualified hybrid amount is reduced to the extent that the tentative disqualified hybrid amount is received by a qualified electing fund (as described in section 1295) and is includible under section 1293 in the gross income of a United States person that owns stock of that fund. However, if the United States person is a domestic partnership, then the amount includible under section 1293 in the gross income of the United States person reduces the tentative disqualified hybrid amount only to the extent that a tax resident of the United States would take into account the amount.

§ 1.267A–4 Disqualified imported mismatch amounts.

(a) *Disqualified imported mismatch amounts*—(1) *Rule.* An imported mismatch payment is a disqualified imported mismatch amount to the extent that, under the set-off rules of paragraph (c) of this section, the income attributable to the payment is directly or indirectly offset by a hybrid deduction incurred by a foreign tax resident or foreign taxable branch that is related to the imported mismatch payer (or that is a party to a structured arrangement pursuant to which the payment is made). See § 1.267A–6(c)(8) through (12) for examples illustrating the application of this section.

(2) *Definitions of certain terms.* The following definitions apply for purposes of this section:

(i) A *foreign tax resident* means a tax resident that is not a tax resident of the United States.

(ii) A *foreign taxable branch* means a taxable branch that is not a U.S. taxable branch.

(iii) An *imported mismatch payee* means, with respect to an imported mismatch payment, a foreign tax resident or foreign taxable branch that includes the payment in income, as determined under § 1.267A–3(a).

(iv) An *imported mismatch payer* means, with respect to an imported mismatch payment, the specified party.

(v) An *imported mismatch payment* means a specified payment to the extent that it is neither a disqualified hybrid amount nor included or includible in income in the United States. For purposes of this paragraph (a)(2)(v), a specified payment is included or includible in income in the United States to the extent that, if the payment were a tentative disqualified hybrid amount (as described in § 1.267A–3(b)(1)), it would be reduced under the rules of § 1.267A–3(b)(2) through (5).

(b) *Hybrid deduction*—(1) *In general.* A *hybrid deduction* means any of the following:

(i) A deduction allowed to a foreign tax resident or foreign taxable branch under its tax law for an amount paid or accrued that is interest (including an amount that would be a structured payment under the principles of § 1.267A–5(b)(5)(ii)) or royalty under such tax law, to the extent that a deduction for the amount would be disallowed if such tax law contained rules substantially similar to those under §§ 1.267A–1 through 1.267A–3 and 1.267A–5. Such a deduction is a hybrid deduction regardless of whether or how the amount giving rise to the deduction would be recognized under U.S. tax law.

(ii) A deduction allowed to a foreign tax resident or foreign taxable branch under its tax law with respect to equity (including deemed equity), such as a notional interest deduction (or similar deduction determined with respect to the foreign tax resident's or foreign taxable branch's equity). However, a deduction allowed to a foreign tax resident or foreign taxable branch with respect to equity is a hybrid deduction only to the extent that an investor of the foreign tax resident, or the home office of the foreign taxable branch, would include the amount in income if, for purposes of the investor's or home office's tax law, the amount were interest paid by the foreign tax resident ratably (by value) with respect to the interests of the foreign tax resident, or interest paid by the foreign taxable branch to the home office. For purposes of this paragraph (b)(1)(ii), the rules of § 1.267A–3(a) apply to determine the extent that an investor or home office would include an amount in income, by treating the amount as the specified payment.

(2) *Special rules*—(i) *Foreign tax law contains hybrid mismatch rules.* In the case of a foreign tax resident or foreign taxable branch the tax law of which contains hybrid mismatch rules, only the following deductions allowed to the foreign tax resident or foreign taxable branch under its tax law are hybrid deductions:

(A) A deduction described in paragraph (b)(1)(i) of this section, to the extent that the deduction would be disallowed if the foreign tax resident's or foreign taxable branch's tax law—

(*1*) Contained a rule substantially similar to § 1.267A–2(a)(4) (payments pursuant to interest-free loans and similar arrangements); or

(*2*) Did not permit an inclusion in income in a third country to discharge the application of its hybrid mismatch rules as to the amount giving rise to the deduction when the amount is not included in income in another country as a result of a hybrid or branch arrangement.

(B) A deduction described in paragraph (b)(1)(ii) of this section (deductions with respect to equity).

(ii) *Dual inclusion income used to determine hybrid deductions arising from deemed branch payments in certain cases.* In the case of a foreign taxable branch the tax law of which permits a loss of the foreign taxable branch to be shared with a tax resident or taxable branch (without regard to whether it is in fact so shared or whether there is a tax resident or taxable branch with which the loss can be shared), a deduction allowed to the foreign taxable branch for an amount that would be a deemed branch payment were such tax law to contain a provision substantially similar to § 1.267A–2(c) is a hybrid deduction to the extent of the excess (if any) of the sum of all such amounts over the foreign taxable branch's dual inclusion income (as determined under the principles of § 1.267A–2(b)(3)). The rule in this paragraph (b)(2)(ii) applies without regard to whether the tax law of the home office provides an exclusion or exemption for income attributable to the branch.

(iii) *Certain deductions are hybrid deductions only if allowed for an accounting period beginning on or after December 20, 2018.* A deduction described in paragraph (b)(1)(ii) of this section (deductions with respect to equity), or a deduction that would be disallowed if the foreign tax resident's or foreign taxable branch's tax law contained a rule substantially similar to § 1.267A–2(a)(4) (payments pursuant to interest-free loans and similar arrangements), is a hybrid deduction only if allowed for an accounting period beginning on or after December 20, 2018.

(iv) *Certain deductions of a CFC are not hybrid deductions.* A deduction that but for this paragraph (b)(2)(iv) would be a hybrid deduction is not a hybrid deduction to the extent that the amount paid or accrued giving rise to the deduction is—

(A) A disqualified hybrid amount (but subject to the special rule of paragraph (g) of this section); or

(B) Included or includible in income in the United States. For purposes of this paragraph (b)(2)(iv)(B), an amount is included or includible in income in the United States to the extent that, if the amount were a tentative disqualified hybrid amount (as described in § 1.267A–3(b)(1)), it would be reduced under the rules of § 1.267A–3(b)(2) through (5).

(v) *Loss carryovers.* A hybrid deduction for a particular accounting period includes a loss carryover from another accounting period, but only to the extent that a hybrid deduction incurred in an accounting period ending on or after December 20, 2018, comprises the loss carryover.

(c) *Set-off rules*—(1) *In general.* In the order described in paragraph (c)(2) of this section, a hybrid deduction directly or indirectly offsets the income attributable to an imported mismatch payment to the extent that, under paragraph (c)(3) of this section, the payment directly or indirectly funds the hybrid deduction. The rules of paragraphs (c)(2) and (3) of this section are applied by taking into account the application of paragraph (c)(4) of this section (adjustments to ensure that amounts not taken into account more than once).

(2) *Ordering rules.* The following ordering rules apply for purposes of determining the extent that a hybrid deduction directly or indirectly offsets income attributable to imported mismatch payments.

(i) First, the hybrid deduction offsets income attributable to a factually-related imported mismatch payment that directly or indirectly funds the hybrid deduction. For purposes of this paragraph (c)(2)(i), a *factually-related imported mismatch payment* means an imported mismatch payment that is made pursuant to a transaction, agreement, or instrument entered into pursuant to the same plan or series of related transactions that includes the transaction, agreement, or instrument pursuant to which the hybrid deduction is incurred, provided that a design of the plan or series of related transactions was for the hybrid deduction to offset income attributable to the payment (as determined under the principles of § 1.267A–5(a)(20)(i), by treating the offset as the ''hybrid mismatch'' described in § 1.267A–5(a)(20)(i)).

(ii) Second, to the extent remaining, the hybrid deduction offsets income attributable to an imported mismatch payment (other than a factually-related imported mismatch payment) that directly funds the hybrid deduction.

(iii) Third, to the extent remaining, the hybrid deduction offsets income attributable to an imported mismatch payment (other than a factually-related imported mismatch payment) that indirectly funds the hybrid deduction.

(3) *Funding rules.* The following funding rules apply for purposes of determining the extent that an imported mismatch payment directly or indirectly funds a hybrid deduction.

(i) The imported mismatch payment directly funds a hybrid deduction to the extent that the imported mismatch payee incurs the hybrid deduction.

(ii) The imported mismatch payment indirectly funds a hybrid deduction to the extent that the imported mismatch payee is allocated the hybrid deduction, and provided that the imported mismatch payee is related to the imported mismatch payer (or is a party to a structured arrangement pursuant to which the imported mismatch payment is made).

(iii) The imported mismatch payee is allocated a hybrid deduction to the extent that the imported mismatch payee directly or indirectly makes a funded taxable payment to the foreign tax resident or foreign taxable branch that incurs the hybrid deduction.

(iv) An imported mismatch payee indirectly makes a funded taxable payment to the foreign tax resident or foreign taxable branch that incurs a hybrid deduction to the extent that a chain of funded taxable payments connects the imported mismatch payee, each intermediary foreign tax resident or foreign taxable branch, and the foreign tax resident or foreign taxable branch that incurs the hybrid deduction, and provided that each intermediary foreign tax resident or foreign taxable branch is related to the imported mismatch payer (or is a party to a structured arrangement pursuant to which the imported mismatch payment is made).

(v) The term *funded taxable payment* means an amount paid or accrued by a foreign tax resident or foreign taxable branch under its tax law (other than an amount that gives rise to a hybrid deduction), to the extent that—

(A) The amount is deductible (but, if such tax law contains hybrid mismatch rules, determined without regard to a provision substantially similar to this section);

(B) Another foreign tax resident or foreign taxable branch includes the amount in income, as determined under § 1.267A–3(a) (by treating the amount as the specified payment); and

(C) The amount is neither a disqualified hybrid amount (but subject to the special rule of paragraph (g) of this section) nor included or includible in income in the United States. For purposes of this paragraph (c)(3)(v)(C), an amount is included or includible in income in the United States to the extent that, if the amount were a tentative disqualified hybrid amount (as described in § 1.267A–3(b)(1)), it would be reduced under the rules of § 1.267A–3(b)(2) through (5).

(vi) If a deduction or loss that is not incurred by a foreign tax resident or foreign taxable branch is directly or indirectly made available to offset income of the foreign tax resident or foreign taxable branch under its tax law, then, for purposes of this paragraph (c), the foreign tax resident or foreign taxable branch to which the deduction or loss is made available and the foreign tax resident or foreign taxable branch that incurs the deduction or loss are treated as a single foreign tax resident or foreign taxable branch. For example, if a deduction or loss of one foreign tax resident is made available to offset income of another foreign tax resident under a tax consolidation, fiscal unity, group relief, loss sharing, or any similar regime, then the foreign tax residents are treated as a single foreign tax resident for purposes of this paragraph (c).

(vii) An imported mismatch payee that directly makes a funded taxable payment to the foreign tax resident or foreign taxable branch that incurs a hybrid deduction is allocated the hybrid deduction before the hybrid deduction (to the extent remaining) is allocated to an imported mismatch payee that indirectly makes a funded taxable payment to the foreign tax resident or foreign taxable branch that incurs the hybrid deduction.

(viii) An imported mismatch payee that, through a chain of funded taxable payments consisting of a particular number of funded taxable payments, indirectly makes a funded taxable payment to the foreign tax resident or foreign taxable branch that incurs a hybrid deduction is allocated the hybrid deduction before the hybrid deduction (to the extent remaining) is allocated to an imported mismatch payee that, through a chain of funded taxable payments consisting of a greater number of funded taxable payments, indirectly makes a funded taxable payment to the foreign tax resident or foreign taxable branch that incurs the hybrid deduction.

(4) *Adjustments to ensure amounts not taken into account more than once.* To the extent that the income attributable to an imported mismatch payment is directly or indirectly offset by a hybrid deduction, the imported mismatch payment, the hybrid deduction, and, if applicable, each funded taxable payment comprising the chain of funded taxable payments connecting the imported mismatch payee, each intermediary foreign tax resident or foreign taxable branch, and the foreign tax resident or foreign taxable branch that incurs the hybrid deduction is correspondingly reduced; as a result, such amounts are not again taken into account under this section.

(d) *Calculations based on aggregate amounts during accounting period.* For purposes of this section, amounts are determined on an accounting period basis. Thus, for example, the amount of imported mismatch payments made by an imported mismatch payer to a particular imported mismatch payee is equal to the aggregate amount of all such payments made by the imported mismatch payer during the accounting period.

(e) *Pro rata adjustments.* Amounts are allocated on a pro rata basis if there would otherwise be more than one permissible manner in which to allocate the amounts. Thus, for example, if multiple imported mismatch payers make an imported mismatch payment to a single imported mismatch payee, the sum of such payments exceeds the hybrid deduction incurred by the imported mismatch payee, and the payments are not factually-related imported mismatch payments, then a pro rata portion of each imported mismatch payer's payment is considered to directly fund the hybrid deduction. See § 1.267A–6(c)(9) and (12) for examples illustrating the application of this paragraph (e).

(f) *Special rules regarding manner in which this section is applied*—(1) *Initial application of this section.* This section is first applied without regard to paragraph (f)(2) of this section and by taking into account only the following hybrid deductions:

(i) A hybrid deduction described in paragraph (b)(1)(i) of this section, to the extent that—

(A) The deduction would be disallowed if the foreign tax resident's or foreign taxable branch's tax law contained a rule substantially similar to § 1.267A–2(a)(4) (payments pursuant to interest-free loans and similar arrangements); or

(B) The paid or accrued amount giving rise to the deduction is included in income in a third country but is not included in income in another country as a result of a hybrid or branch arrangement.

(ii) A hybrid deduction described in paragraph (b)(1)(ii) of this section (deductions with respect to equity).

(2) *Subsequent application of this section takes into account certain amounts deemed to be imported mismatch payments.* After this section is applied pursuant to the rules of paragraph (f)(1) of this section, the section is then applied by taking into account only hybrid deductions other than those described in paragraph (f)(1) of this section. In addition, when applying this section in the manner described in the previous sentence, for purposes of determining the extent to which the income attributable to an imported mismatch payment is directly or indirectly offset by a hybrid deduction, an amount paid or accrued by a foreign tax resident or foreign taxable branch that is not a specified party is deemed to be an imported mismatch payment (and such foreign tax resident or foreign taxable branch and a foreign tax resident or foreign taxable branch that includes the amount in income, as determined under § 1.267A–3(a), by treating the amount as the specified payment, are deemed to be an imported mismatch payer and an imported mismatch payee, respectively) to the extent that—

(i) The tax law of such foreign tax resident or foreign taxable branch contains hybrid mismatch rules; and

(ii) The amount is subject to disallowance under a provision of the hybrid mismatch rules substantially similar to this section. See § 1.267A–6(c)(10) and (12) for examples illustrating the application of paragraph (f)(2) of this section.

(g) *Special rule regarding extent to which a disqualified hybrid amount of a CFC prevents a hybrid deduction or a funded taxable payment.* A disqualified hybrid amount of a CFC is taken into account for purposes of paragraph (b)(2)(iv)(A) or (c)(3)(v)(C) of this section (certain deductions not hybrid deductions or funded taxable payments to the extent the amount giving rise to the deduction is a disqualified hybrid amount) only to the extent of the excess (if any) of the disqualified hybrid amount over the sum of the amounts described in paragraphs (g)(1) through (3) of this section. See § 1.267A–6(c)(11) for an example illustrating the application of this paragraph (g).

(1) The disqualified hybrid amount to the extent that, if allowed as a deduction, it would be allocated and apportioned to residual CFC gross income (as described in § 1.951A–2(c)(5)(iii)(B)) of the CFC.

(2) The disqualified hybrid amount to the extent that, if allowed as a deduction, it would be allocated and apportioned (under the rules of section 954(b)(5)) to gross income that is taken into account in determining the CFC's subpart F income (as described in section 952 and § 1.952–1), multiplied by the difference of 100 percent and the percentage of stock (by value) of the CFC that, for purposes of sections 951 and 951A, is owned (within the meaning of section 958(a), and determined by treating a domestic partnership as foreign) by one or more tax residents of the United States that are United States shareholders of the CFC.

(3) The disqualified hybrid amount to the extent that, if allowed as a deduction, it would be allocated and apportioned (under the rules of § 1.951A–2(c)(3)) to gross tested income of the CFC (as described in section 951A(c)(2)(A) and § 1.951A–2(c)(1)), multiplied by the difference of 100 percent and the percentage of stock (by value) of the CFC that, for purposes of sections 951 and 951A, is owned (within the meaning of section 958(a), and determined by treating a domestic partnership as foreign) by one or more tax residents of the United States that are United States shareholders of the CFC.

§ 1.267A–5 Definitions and special rules.

(a) *Definitions.* For purposes of §§ 1.267A–1 through 1.267A–7 the following definitions apply.

(1) The term *accounting period* means a taxable year, or a period of similar length over which, under a provision of hybrid mismatch rules substantially similar to § 1.267A–4, computations similar to those under § 1.267A–4 are made under a foreign tax law.

(2) The term *branch* means a taxable presence of a tax resident in a country other than its country of residence as determined under either the tax resident's tax law or such other country's tax law.

(3) The term *branch mismatch payment* has the meaning provided in § 1.267A–2(e)(2).

(4) The term *controlled foreign corporation* (or *CFC*) has the meaning provided in section 957.

(5) The term *deemed branch payment* has the meaning provided in § 1.267A–2(c)(2).

(6) The term *disregarded payment* has the meaning provided in § 1.267A–2(b)(2).

(7) The term *entity* means any person as described in section 7701(a)(1), including an entity that under §§ 301.7701–1 through 301.7701–3 of this chapter is disregarded as an entity separate from its owner, other than an individual.

(8) The term *fiscally transparent* means, with respect to an entity, fiscally transparent with respect to an item of income as determined under the principles of § 1.894–1(d)(3)(ii) and (iii), without regard to whether a tax resident (either the entity or interest holder in the entity) that derives the item of income is a resident of a country that has an income tax treaty with the United States. In addition, the following special rules apply with respect to an item of income received by an entity:

(i) The entity is fiscally transparent with respect to the item under the tax law of the country in which the entity is created, organized, or otherwise established if, under that tax law, the entity does not take the item into account in its income (without regard to whether such tax law requires an investor of the entity, wherever resident, to separately take into account on a current basis the investor's respective share of the item), and the effect under that tax law is that an investor of the entity is required to take the item into account in its income as if the item were realized directly from the source from which realized by the entity, whether or not distributed.

(ii) The entity is fiscally transparent with respect to the item under the tax law of an investor of the entity if, under that tax law, an investor of the entity takes the item into account in its income (without regard to whether such tax law requires the investor to separately take into account on a current basis the investor's respective share of the item) as if the item were realized directly from the source from which realized by the entity, whether or not distributed.

(iii) The entity is fiscally transparent with respect to the item under the tax law of the country in which the entity is created, organized, or otherwise established if—

(A) That tax law imposes a corporate income tax; and

(B) Under that tax law, neither the entity is required to take the item into account in its income nor an investor of the entity is required to take the item into account in its income as if the item were realized directly from the source from which realized by the entity, whether or not distributed.

(9) The term *home office* means a tax resident that has a branch.

(10) The term *hybrid mismatch rules* means rules, regulations, or other tax guidance substantially similar to section 267A, and includes rules the purpose of which is to neutralize the deduction/no-inclusion outcome of hybrid and branch mismatch arrangements. Examples of such rules would include rules based on, or substantially similar to, the recommendations contained in OECD/G–20, *Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2: 2015 Final Report* (October 2015), and OECD/G–20, *Neutralising the Effects of Branch Mismatch Arrangements, Action 2: Inclusive Framework on BEPS* (July 2017).

(11) The term *hybrid transaction* has the meaning provided in § 1.267A–2(a)(2).

(12) The term *interest* means any amount described in paragraph (a)(12)(i) or (ii) of this section that is paid or accrued, or treated as paid or accrued, for the taxable year or that is otherwise designated as interest expense in paragraph (a)(12)(i) or (ii) of this section.

(i) *In general.* Interest is an amount paid, received, or accrued as compensation for the use or forbearance of money under the terms of an instrument or contractual arrangement, including a series of transactions, that is treated as a debt instrument for purposes of section 1275(a) and § 1.1275–1(d), and not treated as stock under § 1.385–3, or an amount that is treated as interest under other provisions of the Internal Revenue Code (Code) or the regulations in this part. Thus, interest includes, but is not limited to, the following—

(A) Original issue discount (OID);

(B) Qualified stated interest, as adjusted by the issuer for any bond issuance premium;

(C) OID on a synthetic debt instrument arising from an integrated transaction under § 1.1275–6;

(D) Repurchase premium to the extent deductible by the issuer under § 1.163–7(c);

(E) Deferred payments treated as interest under section 483;

(F) Amounts treated as interest under a section 467 rental agreement;

(G) Forgone interest under section 7872;

(H) De minimis OID taken into account by the issuer;

(I) Amounts paid in connection with a sale-repurchase agreement treated as indebtedness under Federal tax principles;

(J) Redeemable ground rent treated as interest under section 163(c); and

(K) Amounts treated as interest under section 636.

(ii) *Swaps with significant nonperiodic payments*—(A) *In general.* Except as provided in paragraphs (a)(12)(ii)(B) and (C) of this section, a swap with significant nonperiodic payments is treated as two separate transactions consisting of an on-market, level payment swap and a loan. The loan must be accounted for by the parties to the contract independently of the swap. The time value component associated with the loan, determined in accordance with § 1.446–3(f)(2)(iii)(A), is recognized as interest expense to the payor.

(B) *Exception for cleared swaps.* Paragraph (a)(12)(ii)(A) of this section does not apply to a cleared swap. The term *cleared swap* means a swap that is cleared by a derivatives clearing organization, as such term is defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), or by a clearing agency, as such term is defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered as a derivatives clearing organization under the Commodity Exchange Act or as a clearing agency under the Securities Exchange Act of 1934, respectively, if the derivatives clearing organization or clearing agency requires the parties to the swap to post and collect margin or collateral.

(C) *Exception for non-cleared swaps subject to margin or collateral requirements.* Paragraph (a)(12)(ii)(A) of this section does not apply to a non-cleared swap that requires the parties to meet the margin or collateral requirements of a Federal regulator or that provides for margin or collateral requirements that are substantially similar to a cleared swap or a non-cleared swap subject to the margin or collateral requirements of a Federal regulator. For purposes of this paragraph (a)(12)(ii)(C), the term *Federal regulator* means the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), or a prudential regulator, as defined in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a), as amended by section 721 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376, Title VII.

(13) The term *investor* means, with respect to an entity, any tax resident or taxable branch that directly or indirectly (determined under the rules of section 958(a) without regard to whether an intermediate entity is foreign or domestic, or under substantially similar rules under a tax resident's or taxable branch's tax law) owns an interest in the entity.

(14) The term *related* has the meaning provided in this paragraph (a)(14). A tax resident or taxable branch is related to a specified party if the tax resident or taxable branch is a related person within the meaning of section 954(d)(3), determined by treating the specified party as the ''controlled foreign corporation'' referred to in section 954(d)(3) and the tax resident or taxable branch as the ''person'' referred to in section 954(d)(3). In addition, for the purposes of this paragraph (a)(14), a tax resident that under §§ 301.7701–1 through 301.7701–3 of this chapter is disregarded as an entity separate from its owner for U.S. tax purposes, as well as a taxable branch, is treated as a corporation. *See also* § 1.954–1(f)(2)(iv)(B)(*1*) (neither section 318(a)(3), nor § 1.958–2(d) or the principles thereof, applies to attribute stock or other interests).

(15) The term *reverse hybrid* has the meaning provided in § 1.267A–2(d)(2).

(16) The term *royalty* includes amounts paid or accrued as consideration for the use of, or the right to use—

(i) Any copyright, including any copyright of any literary, artistic, scientific or other work (including cinematographic films and software);

(ii) Any patent, trademark, design or model, plan, secret formula or process, or other similar property (including goodwill); or

(iii) Any information concerning industrial, commercial or scientific experience, but does not include—

(A) Amounts paid or accrued for after-sales services;

(B) Amounts paid or accrued for services rendered by a seller to the purchaser under a warranty;

(C) Amounts paid or accrued for pure technical assistance; or

(D) Amounts paid or accrued for an opinion given by an engineer, lawyer or accountant.

(17) The term *specified party* means a tax resident of the United States, a CFC (other than a CFC with respect to which there is not a tax resident of the United States that, for purposes of sections 951 and 951A, owns (within the meaning of section 958(a), and determined by treating a domestic partnership as foreign) at least ten percent (by vote or value) of the stock of the CFC), and a U.S. taxable branch. Thus, an entity that is fiscally transparent for U.S. tax purposes is not a specified party, though an owner of the entity may be a specified party. For example, in the case of a payment by a partnership, a domestic corporation that is a partner of the partnership is a specified party and a deduction for its allocable share of the payment is subject to disallowance under section 267A.

(18) The term *specified payment* has the meaning provided in § 1.267A–1(b).

(19) The term *specified recipient* means, with respect to a specified payment, any tax resident that derives the payment under its tax law or any taxable branch to which the payment is attributable under its tax law (or any tax resident that, based on all the facts and circumstances, is reasonably expected to derive the payment under its tax law, or any taxable branch to which, based on all the facts and circumstances, the payment is reasonably expected to be attributable under its tax law). The principles of § 1.894–1(d)(1) apply for purposes of determining whether a tax resident derives (or is reasonably expected to derive) a specified payment under its tax law, without regard to whether the tax resident is a resident of a country that has an income tax treaty with the United States. There may be more than one specified recipient with respect to a specified payment.

(20) The terms *structured arrangement* and *party to a structured arrangement* have the meaning set forth in this paragraph (a)(20).

(i) *Structured arrangement.* A structured arrangement means an arrangement with respect to which one or more specified payments would be a disqualified hybrid amount (or a disqualified imported mismatch amount) without regard to the relatedness limitation in § 1.267A–2(f) (or without regard to the phrase ''that is related to the specified party'' in § 1.267A–4(a)) (either such outcome, a *hybrid mismatch*), provided that, based on all the facts and circumstances (including the terms of the arrangement), the arrangement is designed to produce the hybrid mismatch. Facts and circumstances that indicate the arrangement is designed to produce the hybrid mismatch include the following:

(A) The hybrid mismatch is priced into the terms of the arrangement, including—

(*1*) The pricing of the arrangement is different from what the pricing would have been absent the hybrid mismatch;

(*2*) Features that alter the terms of the arrangement, including its return if the hybrid mismatch is no longer available; or

(*3*) A below-market return absent the tax effects or benefits resulting from the hybrid mismatch.

(B) The arrangement is marketed as tax-advantaged where some or all of the tax advantage derives from the hybrid mismatch.

(C) The arrangement is marketed to tax residents of a country the tax law of which enables the hybrid mismatch.

(ii) *Party to a structured arrangement.* A party to a structured arrangement means a tax resident or taxable branch that participates in the structured arrangement. For purposes of this paragraph (a)(20)(ii), in the case of a tax resident or a taxable branch that is an entity, the tax resident's or taxable branch's participation in a structured arrangement is imputed to its investors. However, a tax resident or taxable branch is considered to participate in the structured arrangement only if—

(A) The tax resident or taxable branch (or a related tax resident or taxable branch) could, based on all the facts and circumstances, reasonably be expected to be aware of the hybrid mismatch; and

(B) The tax resident or taxable branch (or a related tax resident or taxable branch) shares in the value of the tax benefit resulting from the hybrid mismatch.

(21) The term *tax law* of a country includes statutes, regulations, administrative or judicial rulings, and income tax treaties of the country. If a country has an income tax treaty with the United States that applies to taxes imposed by a political subdivision or other local authority of that country, then the tax law of the political subdivision or other local authority is deemed to be a tax law of a country. When used with respect to a tax resident or branch, tax law refers to—

(i) In the case of a tax resident, the tax law of the country or countries where the tax resident is resident; and

(ii) In the case of a branch, the tax law of the country where the branch is located.

(22) The term *taxable branch* means a branch that has a taxable presence under its tax law.

(23) The term *tax resident* means either of the following:

(i) A body corporate or other entity or body of persons liable to tax under the tax law of a country as a resident. For purposes of this paragraph (a)(23)(i), an entity that is created, organized, or otherwise established under the tax law of a country that does not impose a corporate income tax is treated as liable to tax under the tax law of such country as a resident if under the corporate or commercial laws of such country the entity is treated as a body corporate or a company. A body corporate or other entity or body of persons may be a tax resident of more than one country.

(ii) An individual liable to tax under the tax law of a country as a resident. An individual may be a tax resident of more than one country.

(24) The term *United States shareholder* has the meaning provided in section 951(b).

(25) The term *U.S. taxable branch* means a trade or business carried on in the United States by a tax resident of another country, except that if an income tax treaty applies, the term means a permanent establishment of a tax treaty resident eligible for benefits under an income tax treaty between the United States and the treaty country. Thus, for example, a U.S. taxable branch includes a U.S. trade or business of a foreign corporation taxable under section 882(a) or a U.S. permanent establishment of a tax treaty resident.

(b) *Special rules.* For purposes of §§ 1.267A–1 through 1.267A–7, the following special rules apply.

(1) *Coordination with other provisions*—(i) *In general.* Except as provided in paragraph (b)(1)(ii) of this section, a specified payment is subject to section 267A after the application of any other applicable provisions of the Code and regulations in this part. Thus, the determination of whether a deduction for a specified payment is disallowed under section 267A is made with respect to the taxable year for which a deduction for the payment would otherwise be allowed for U.S. tax purposes. *See, for example,* sections 163(e)(3) and 267(a)(3) for rules that may defer the taxable year for which a deduction is allowed. *See also* § 1.882–5(a)(5) (providing that provisions that disallow interest expense apply after the application of § 1.882–5). In addition, provisions that characterize amounts paid or accrued as something other than interest or royalties, such as § 1.894–1(d)(2), govern the treatment of such amounts and therefore such amounts would not be treated as specified payments. Moreover, to the extent that a specified payment is not described in § 1.267A–1(b) when it is subject to section 267A, the payment is not again subject to section 267A at a later time. For example, if for the taxable year in which a specified payment is paid the payment is not described in § 1.267A–1(b) but under section 163(j) a deduction for the payment is deferred, the payment is not again subject to section 267A in the taxable year for which section 163(j) no longer defers the deduction.

(ii) *Section 267A applied before certain provisions.* In addition to the extent provided in any other applicable provision of the Code or regulations in this part, section 267A applies before the application of sections 163(j), 461(l), 465, and 469.

(iii) *Coordination with capitalization and recovery provisions.* To the extent a specified payment is described in § 1.267A–1(b), a deduction for the payment is considered permanently disallowed for all purposes of the Code and regulations in this part and, therefore, the payment is not taken into account for purposes of computing costs that are required to be capitalized and recovered through depreciation, amortization, cost of goods sold, adjustment to basis, or similar forms of recovery under any applicable provision of the Code or in regulations in this part. Thus, for example, to the extent an interest or royalty payment is a specified payment described in § 1.267A–1(b), the payment is not capitalized and included in inventory cost or added to basis under section 263A. As an additional example, to the extent that a debt issuance cost is a specified payment described in § 1.267A–1(b), it is neither capitalized under section 263 or the regulations in this part under section 263 nor recoverable under § 1.446–5.

(iv) *Specified payments arising in taxable years beginning before January 1, 2018.* Section 267A does not apply to a specified payment that is paid or accrued in a taxable year beginning before January 1, 2018, regardless of whether under a provision of the Code or regulations in this part (for example, section 267(a)(3)) a deduction for the payment is deferred to a taxable year beginning after December 31, 2017, or whether the payment is carried over to another taxable year and under another provision of the Code (for example, section 163(j)) is considered paid or accrued in such taxable year.

(2) *Foreign currency gain or loss.* Except as set forth in this paragraph (b)(2), section 988 gain or loss is not taken into account under section 267A. Foreign currency gain or loss recognized with respect to a specified payment is taken into account under section 267A to the extent that a deduction for the specified payment is disallowed under section 267A, provided that the foreign currency gain or loss is described in § 1.988–2(b)(4) (relating to exchange gain or loss recognized by the issuer of a debt instrument with respect to accrued interest) or § 1.988–2(c) (relating to items of expense or gross income or receipts which are to be paid after the date accrued). If a deduction for a specified payment is disallowed under section 267A, then a proportionate amount of foreign currency loss under section 988 with respect to the specified payment is also

disallowed, and a proportionate amount of foreign currency gain under section 988 with respect to the specified payment reduces the amount of the disallowance. For purposes of this paragraph (b)(2), the proportionate amount is the amount of the foreign currency gain or loss under section 988 with respect to the specified payment multiplied by a fraction, the numerator of which is the amount of the specified payment for which a deduction is disallowed under section 267A and the denominator of which is the total amount of the specified payment.

(3) *U.S. taxable branch payments*—(i) *Amounts considered paid or accrued by a U.S. taxable branch.* For purposes of section 267A, a U.S. taxable branch is considered to pay or accrue an amount of interest or royalty equal to either—

(A) The amount of interest or royalty allocable to effectively connected income of the U.S. taxable branch under section 873(a) or 882(c)(1), as applicable; or

(B) In the case of a U.S. taxable branch that is a U.S. permanent establishment of a treaty resident eligible for benefits under an income tax treaty between the United States and the treaty country, the amount of interest or royalty allowable in computing the business profits attributable to the U.S. permanent establishment.

(ii) *Treatment of U.S. taxable branch payments*—(A) *Interest.* Interest considered paid or accrued by a U.S. taxable branch of a foreign corporation under paragraph (b)(3)(i) of this section (the ''U.S. taxable branch interest payment'') is treated as a payment directly to the person to which the interest is payable, to the extent it is paid or accrued with respect to a liability described in § 1.882–5(a)(1)(ii)(A) or (B) (resulting in directly allocable interest) or with respect to a U.S. booked liability, as described in § 1.882–5(d)(2). If the U.S. taxable branch interest payment exceeds in the aggregate the interest paid or accrued on the U.S. taxable branch's directly allocable interest and interest paid or accrued on U.S. booked liabilities, the excess amount is treated as paid or accrued by the U.S. taxable branch on a pro-rata basis to the same persons and pursuant to the same terms that the home office paid or accrued interest, excluding any directly allocable interest or interest paid or accrued on a U.S. booked liability. The rules of this paragraph (b)(3)(ii) for determining to whom interest is paid or accrued apply without regard to whether the U.S. taxable branch interest payment is determined under the method described in § 1.882–5(b) through (d) or the method described in § 1.882–5(e).

(B) *Royalties.* Royalties considered paid or accrued by a U.S. taxable branch under paragraph (b)(3)(i) of this section are treated solely for purposes of section 267A as paid or accrued on a pro-rata basis by the U.S. taxable branch to the same persons and pursuant to the same terms that the home office paid or accrued such royalties.

(C) *Permanent establishments and interbranch payments.* If a U.S. taxable branch is a permanent establishment in the United States, the principles of the rules in paragraphs (b)(3)(ii)(A) and (B) of this section apply with respect to interest and royalties allowed in computing the business profits of a treaty resident eligible for treaty benefits. This paragraph (b)(3)(ii)(C) does not apply to interbranch interest or royalty payments allowed as deduction under certain U.S. income tax treaties (as described in § 1.267A–2(c)(2)).

(4) *Effect on earnings and profits.* The disallowance of a deduction under section 267A does not affect whether the amount paid or accrued that gave rise to the deduction reduces earnings and profits of a corporation. However, for purposes of section 952(c)(1) and § 1.952–1(c), a CFC's earnings and profits are not reduced by a specified payment a deduction for which is disallowed under section 267A, if a principal purpose of the transaction pursuant to which the payment is made is to reduce or limit the CFC's subpart F income.

(5) *Application to structured payments*—(i) *In general.* For purposes of section 267A and the regulations in this part under section 267A, a structured payment (as defined in paragraph (b)(5)(ii of this section) is treated as interest. Thus, a structured payment is treated as subject to section 267A and the regulations in this part under section 267A to the same extent as if the payment were an amount of interest paid or accrued.

(ii) *Structured payment.* A structured payment means any amount described in paragraph (b)(5)(ii)(A) or (B) of this section.

(A) *Substitute interest payments.* A substitute interest payment described in § 1.861–2(a)(7) is treated as a structured payment for purposes of section 267A, unless the payment relates to a sale-repurchase agreement or a securities lending transaction that is entered into by the payor in the ordinary course of the payor's business. This paragraph (b)(5)(ii)(A) does not apply to an amount described in paragraph (a)(12)(i)(I) of this section.

(B) *Amounts economically equivalent to interest*—(*1*) *Principal purpose to reduce interest expense.* Any expense or loss economically equivalent to interest is treated as a structured payment for purposes of section 267A if a principal purpose of structuring the transaction(s) is to reduce an amount incurred by the taxpayer that otherwise would have been described in paragraph (a)(12) or (b)(5)(ii)(A) of this section. For purposes of this paragraph (b)(5)(ii)(B)(*1*), the fact that the taxpayer has a business purpose for obtaining the use of funds does not affect the determination of whether the manner in which the taxpayer structures the transaction(s) is with a principal purpose of reducing the taxpayer's interest expense. In addition, the fact that the taxpayer has obtained funds at a lower pre-tax cost based on the structure of the transaction(s) does not affect the determination of whether the manner in which the taxpayer structures the transaction(s) is with a principal purpose of reducing the taxpayer's interest expense. For purposes of this paragraph (b)(5)(ii)(B), any expense or loss is economically equivalent to interest to the extent that the expense or loss is—

(*i*) Deductible by the taxpayer;

(*ii*) Incurred by the taxpayer in a transaction or series of integrated or related transactions in which the taxpayer secures the use of funds for a period of time;

(*iii*) Substantially incurred in consideration of the time value of money; and

(*iv*) Not described in paragraph (a)(12) or (b)(5)(ii)(A) of this section.

(*2*) *Principal purpose.* Whether a transaction or a series of integrated or related transactions is entered into with a principal purpose described in paragraph (b)(5)(ii)(B)(*1*) of this section depends on all the facts and circumstances related to the transaction(s). A purpose may be a principal purpose even though it is outweighed by other purposes (taken together or separately). Factors to be taken into account in determining whether one of the taxpayer's principal purposes for entering into the transaction(s) include the taxpayer's normal borrowing rate in the taxpayer's functional currency, whether the taxpayer would enter into the transaction(s) in the ordinary course of the taxpayer's trade or business, whether the parties to the transaction(s) are related persons (within the meaning of section 267(b) or 707(b)), whether there is a significant and bona fide business purpose for the structure of the transaction(s), whether the transactions are transitory, for example, due to a circular flow of cash or other property, and the substance of the transaction(s).

(6) *Anti-avoidance rule.* A specified party's deduction for a specified payment is disallowed to the extent that both of the following requirements are satisfied:

(i) The payment (or income attributable to the payment) is not included in the income of a tax resident or taxable branch, as determined under § 1.267A–3(a) (but without regard to the deemed full inclusion rule in § 1.267A–3(a)(5)).

(ii) A principal purpose of the terms or structure of the arrangement (including the form and the tax laws of the parties to the arrangement) is to avoid the application of the regulations in this part under section 267A in a manner that is contrary to the purposes of section 267A and the regulations in this part under section 267A.

§ 1.267A–6 Examples.

(a) *Scope.* This section provides examples that illustrate the application of §§ 1.267A–1 through 1.267A–5.

(b) *Presumed facts.* For purposes of the examples in this section, unless otherwise indicated, the following facts are presumed:

(1) US1, US2, and US3 are domestic corporations that are tax residents solely of the United States.

(2) FW, FX, and FZ are bodies corporate established in, and tax residents of, Country W, Country X, and Country Z, respectively. They are not fiscally transparent under the tax law of any country. They are not specified parties.

(3) Under the tax law of each country, interest and royalty payments are deductible.

(4) The tax law of each country provides a 100 percent participation exemption for dividends received from non-resident corporations.

(5) The tax law of each country, other than the United States, provides an exemption for income attributable to a branch.

(6) Except as provided in paragraphs (b)(4) and (5) of this section, all amounts derived (determined under the principles of § 1.894–1(d)(1)) by a tax resident, or attributable to a taxable branch, are included in income, as determined under § 1.267A–3(a).

(7) Only the tax law of the United States contains hybrid mismatch rules.

(c) *Examples*—(1) *Example 1. Payment pursuant to a hybrid financial instrument*—(i) *Facts.* FX holds all the interests of US1. FX also holds an instrument issued by US1 that is treated as equity for Country X tax purposes and indebtedness for U.S. tax purposes (the FX–US1 instrument). On date 1, US1 pays $50x to FX pursuant to the instrument. The amount is treated as an excludible dividend for Country X tax purposes (by reason of the Country X participation exemption) and as interest for U.S. tax purposes.

(ii) *Analysis.* US1 is a specified party and thus a deduction for its $50x specified payment is subject to disallowance under section 267A. As described in paragraphs (c)(1)(ii)(A) through (C) of this section, the entire $50x payment is a disqualified hybrid amount under the hybrid transaction rule of § 1.267A–2(a) and, as a result, a deduction for the payment is disallowed under § 1.267A–1(b)(1).

(A) US1's payment is made pursuant to a hybrid transaction because a payment with respect to the FX–US1 instrument is treated as interest for U.S. tax purposes but not for purposes of Country X tax law (the tax law of FX, a specified recipient that is related to US1). *See* § 1.267A–2(a)(2) and (f). Therefore, § 1.267A–2(a) applies to the payment.

(B) For US1's payment to be a disqualified hybrid amount under § 1.267A–2(a), a no-inclusion must occur with respect to FX. *See* § 1.267A–2(a)(1)(i). As a consequence of the Country X participation exemption, FX includes $0 of the payment in income and therefore a $50x no-inclusion occurs with respect to FX. *See* § 1.267A–3(a)(1). The result is the same regardless of whether, under the Country X participation exemption, the $50x payment is simply excluded from FX's taxable income or, instead, is reduced or offset by other means, such as a $50x dividends received deduction. *See* § 1.267A–3(a)(1).

(C) Pursuant to § 1.267A–2(a)(1)(ii), FX's $50x no-inclusion gives rise to a disqualified hybrid amount to the extent that it is a result of US1's payment being made pursuant to the hybrid transaction. FX's $50x no-inclusion is a result of the payment being made pursuant to the hybrid transaction because, were the payment to be treated as interest for Country X tax purposes, FX would include $50x in income and, consequently, the no-inclusion would not occur.

(iii) *Alternative facts—multiple specified recipients.* The facts are the same as in paragraph (c)(1)(i) of this section, except that FX holds all the interests of FZ, which is fiscally transparent for Country X tax purposes, and FZ holds all of the interests of US1. Moreover, the FX–US1 instrument is held by FZ (rather than by FX) and US1 makes its $50x payment to FZ (rather than to FX); the payment is derived by FZ under its tax law and by FX under its tax law and, accordingly, both FZ and FX are specified recipients of the payment. Further, the payment is treated as interest for Country Z tax purposes and FZ includes it in income. For the reasons described in paragraph (c)(1)(ii) of this section, FX's no-inclusion causes the payment to be a disqualified hybrid amount. FZ's inclusion in income (regardless of whether Country Z has a low or high tax rate) does not affect the result, because the hybrid transaction rule of § 1.267A–2(a) applies if any no-inclusion occurs with respect to a specified recipient of the payment as a result of the payment being made pursuant to the hybrid transaction.

(iv) *Alternative facts—preferential rate.* The facts are the same as in paragraph (c)(1)(i) of this section, except that for Country X tax purposes US1's payment is treated as a dividend subject to a 4% tax rate, whereas the marginal rate imposed on ordinary income is 20%. FX includes $10x of the payment in income, calculated as $50x multiplied by 0.2 (.04, the rate at which the particular type of payment (a dividend for Country X tax purposes) is subject to tax in Country X, divided by 0.2, the marginal tax rate imposed on ordinary income). *See* § 1.267A–3(a)(1). Thus, a $40x no-inclusion occurs with respect to FX ($50x less $10x). The $40x no-inclusion is a result of the payment being made pursuant to the hybrid transaction because, were the payment to be treated as interest for Country X tax purposes, FX would include the entire $50x in income at the full marginal rate imposed on ordinary income (20%) and, consequently, the no-inclusion would not occur. Accordingly, $40x of US1's payment is a disqualified hybrid amount.

(v) *Alternative facts—no-inclusion not the result of hybridity.* The facts are the same as in paragraph (c)(1)(i) of this section, except that Country X has a pure territorial regime (that is, Country X only taxes income with a domestic source). Although US1's payment is pursuant to a hybrid transaction and a $50x no-inclusion occurs with respect to FX, FX's no-inclusion is not a result of the payment being made pursuant to the hybrid transaction. This is because if Country X tax law were to treat the payment as interest, FX would include $0 in income and, consequently, the $50x no-inclusion would still occur. Accordingly, US1's payment is not a disqualified hybrid amount. *See* § 1.267A–2(a)(1)(ii). The result would be the same if Country X instead did not impose a corporate income tax.

(vi) *Alternative facts—indebtedness under both tax laws but different ordering rules give rise to hybrid transaction; reduction of no-inclusion by reason of inclusion of a principal payment.* The facts are the same as in paragraph (c)(1)(i) of this section, except that the FX–US1 instrument is indebtedness for both U.S. and Country X tax purposes. In addition, the $50x date 1 payment is treated as interest for U.S. tax purposes and a repayment of principal for Country X tax purposes. On date 1, based on all the facts and circumstances (including the terms of the FX–US1 instrument, the tax laws of the United States and Country X, and an absence of a plan pursuant to which FX would dispose of the FX–US1 instrument), it is reasonably expected that on date 2 (a date that is within 36 months after the end of the taxable year of US1 that includes date 1), US1 will pay a total of $200x to FX and that, for U.S. tax purposes, $25x will be treated as interest and $175x as a repayment of principal, and, for Country X tax purposes, $75x will be treated as interest (and included in FX's income) and $125x as a repayment of principal. US1's $50x specified payment is made pursuant to a hybrid transaction and, but for § 1.267A–3(a)(4), a $50x no-inclusion would occur with respect to FX. *See* §§ 1.267A–2(a)(2) and 1.267A–3(a)(1). However, pursuant to § 1.267A–3(a)(4), FX's inclusion in income with respect to $50x of the date 2 amount that is a repayment of principal for U.S. tax purposes is treated as correspondingly reducing FX's no-inclusion with respect to the specified payment. As a result, as to US1's $50x specified payment, a no-inclusion does not occur with respect to FX. *See* § 1.267A–3(a)(4). Therefore, US1's $50x specified payment is not a disqualified hybrid amount. *See* § 1.267A–2(a)(1)(i).

(2) *Example 2. Payment pursuant to a repo transaction*—(i) *Facts.* FX holds all the interests of US1, and US1 holds all the interests of US2. On date 1, US1 and FX enter into a sale and repurchase transaction. Pursuant to the transaction, US1 transfers shares of preferred stock of US2 to FX in exchange for $1,000x, subject to a binding commitment of US1 to reacquire those shares on date 3 for an agreed price, which represents a repayment of the $1,000x plus a financing or time value of money return reduced by the amount of any distributions paid with respect to the preferred stock between dates 1 and 3 that are retained by FX. On date 2, US2 pays a $100x dividend on its preferred stock to FX. For Country X tax purposes, FX is treated as owning the US2 preferred stock and therefore is the beneficial owner of the dividend. For U.S. tax purposes, the transaction is treated as a loan from FX to US1 that is secured by the US2 preferred stock. Thus, for U.S. tax purposes, US1 is treated as owning the US2 preferred stock and is the beneficial owner of the dividend. In addition, for U.S. tax purposes, US1 is treated as paying $100x of interest to FX (an amount corresponding to the $100x dividend paid by US2 to FX). Further, the marginal tax rate imposed on ordinary income under Country X tax law is 25%. Moreover, instead of a participation exemption, Country X tax law provides its tax residents a credit for underlying foreign taxes paid by a non-resident corporation from which a dividend is received; with respect to the $100x dividend received by FX from US2, the credit is $10x.

(ii) *Analysis.* US1 is a specified party and thus a deduction for its $100x specified payment is subject to disallowance under section 267A. As described in paragraphs (c)(2)(ii)(A) through (D) of this section, $40x of the payment is a disqualified hybrid amount under the hybrid transaction rule of § 1.267A–2(a) and, as a result, $40x of the deduction is disallowed under § 1.267A–1(b)(1).

(A) Although US1's $100x interest payment is not regarded under Country X tax law, a connected amount (US2's dividend payment) is regarded and derived by FX under such tax law. Thus, FX is considered a specified recipient with respect to US1's interest payment. *See* § 1.267A–2(a)(3).

(B) US1's payment is made pursuant to a hybrid transaction because a payment with respect to the sale and repurchase transaction is treated as interest for U.S. tax purposes but not for purposes of Country X tax law (the tax law of FX, a specified recipient that is related to US1), which does not regard the payment. *See* § 1.267A–2(a)(2) and (f). Therefore, § 1.267A–2(a) applies to the payment.

(C) For US1's payment to be a disqualified hybrid amount under § 1.267A–2(a), a no-inclusion must occur with respect to FX. *See* § 1.267A–2(a)(1)(i). As a consequence of Country X tax law not regarding US1's payment, FX includes $0 of the payment in income and therefore a $100x no-inclusion occurs with respect to FX. *See* § 1.267A–3(a). However, FX includes $60x of a connected amount (US2's dividend payment) in income, calculated as $100x (the amount of the dividend) less $40x (the portion of the connected amount that is not included in income in Country X due to the foreign tax credit, determined by dividing the amount of the credit, $10x, by 0.25, the tax rate in Country X). *See* § 1.267A–3(a). Pursuant to § 1.267A–2(a)(3), FX's inclusion in income with respect to the connected amount correspondingly reduces the amount of its no-inclusion with respect to US1's payment. Therefore, for purposes of § 1.267A–2(a), FX's no-inclusion with respect to US1's payment is $40x ($100x less $60x). *See* § 1.267A–2(a)(3).

(D) Pursuant to § 1.267A–2(a)(1)(ii), FX's $40x no-inclusion gives rise to a disqualified hybrid amount to the extent that FX's no-inclusion is a result of US1's payment being made pursuant to the hybrid transaction. FX's $40x no-inclusion is a result of US1's payment being made pursuant to the hybrid transaction because, were the sale and repurchase transaction to be treated as a loan from FX to US1 for Country X tax purposes, FX would include US1's $100x interest payment in income (because it would not be entitled to a foreign tax credit) and, consequently, the no-inclusion would not occur.

(iii) *Alternative facts—structured arrangement.* The facts are the same as in paragraph (c)(2)(i) of this section, except that FX is a bank that is unrelated to US1. In addition, the sale and repurchase transaction is a structured arrangement and FX is a party to the structured arrangement. The result is the same as in paragraph (c)(2)(ii) of this section. That is, even though FX is not related to US1, it is taken into account with respect to the determinations under § 1.267A–2(a) because it is a party to a structured arrangement pursuant to which the payment is made. *See* § 1.267A–2(f).

(3) *Example 3. Disregarded payment*—(i) *Facts.* FX holds all the interests of US1. For Country X tax purposes, US1 is a disregarded entity of FX. During taxable year 1, US1 pays $100x to FX pursuant to a debt instrument. The amount is treated as interest for U.S. tax purposes but is disregarded for Country X tax purposes as a transaction involving a single taxpayer. During taxable year 1, US1's only other items of income, gain, deduction, or loss are $125x of gross income (the entire amount of which is included in US1's income) and a $60x item of deductible expense. The $125x item of gross income is included in FX's income, and the $60x item of deductible expense is allowable for Country X tax purposes.

(ii) *Analysis.* US1 is a specified party and thus a deduction for its $100x specified payment is subject to disallowance under section 267A. As described in paragraphs (c)(3)(ii)(A) and (B) of this section, $35x of the payment is a disqualified hybrid amount under the disregarded payment rule of § 1.267A–2(b) and, as a result, $35x of the deduction is disallowed under § 1.267A–1(b)(1).

(A) US1's $100x payment is not regarded under the tax law of Country X (the tax law of FX, a related tax resident to which the payment is made) because under such tax law the payment involves a single taxpayer. *See* § 1.267A–2(b)(2) and (f). In addition, were the tax law of Country X to regard the payment (and treat it as interest), FX would include it in income. Therefore, the payment is a disregarded payment to which § 1.267A–2(b) applies. *See* § 1.267A–2(b)(2).

(B) Under § 1.267A–2(b)(1), the excess (if any) of US1's disregarded payments for taxable year 1 ($100x) over its dual inclusion income for the taxable year is a disqualified hybrid amount. US1's dual inclusion income for taxable year 1 is $65x, calculated as $125x (the amount of US1's gross income that is included in FX's income) less $60x (the amount of US1's deductible expenses, other than deductions for disregarded payments, that are allowable for Country X tax purposes). *See* § 1.267A–2(b)(3). Therefore, $35x is a disqualified hybrid amount ($100x less $65x). *See* § 1.267A–2(b)(1).

(iii) *Alternative facts—non-dual inclusion income arising from hybrid transaction.* The facts are the same as in paragraph (c)(3)(i) of this section, except that US1 holds all the interests of FZ (a specified party that is a CFC) and US1's only item of income, gain, deduction, or loss during taxable year 1 (other than the $100x payment to FX) is $80x paid to US1 by FZ pursuant to an instrument treated as indebtedness for U.S. and Country Z tax purposes and equity for Country X tax purposes (the US1–FZ instrument). The $80x is treated as interest for Country Z and U.S. tax purposes (the entire amount of which is included in US1's income) and is treated as an excludible dividend for Country X tax purposes (by reason of the Country X participation exemption). Paragraphs (c)(3)(iii)(A) and (B) of this section describe the extent to which the specified payments by FZ and US1, each of which is a specified party, are disqualified hybrid amounts.

(A) The hybrid transaction rule of § 1.267A–2(a) applies to FZ's payment because the payment is made pursuant to a hybrid transaction, as a payment with respect to the US1–FZ instrument is treated as interest for U.S. tax purposes but not for purposes of Country X's tax law (the tax law of FX, a specified recipient that is related to FZ). As a consequence of the Country X participation exemption, an $80x no-inclusion occurs with respect to FX, and such no-inclusion is a result of the payment being made pursuant to the hybrid transaction. Thus, but for § 1.267A–3(b), the entire $80x of FZ's payment would be a disqualified hybrid amount. However, because US1 (a tax resident of the United States that is also a specified recipient of the payment) takes the entire $80x payment into account in its gross income, no portion of the payment is a disqualified hybrid amount. *See* § 1.267A–3(b)(2).

(B) The disregarded payment rule of § 1.267A–2(b) applies to US1's $100x payment to FX, for the reasons described in paragraph (c)(3)(ii)(A) of this section. In addition, US1 has no dual inclusion income for taxable year 1 because, as a result of the Country X participation exemption, no portion of FZ's $80x payment to US1 (which is derived by FX under its tax law) is included in FX's income. *See* §§ 1.267A–2(b)(3) and 1.267A–3(a). Therefore, the entire $100x payment from US1 to FX is a disqualified hybrid amount, calculated as $100x (the amount of the payment) less $0 (the amount of dual inclusion income). *See* § 1.267A–2(b)(1).

(iv) *Alternative facts—dual inclusion income despite participation exemption.* The facts are the same as in paragraph (c)(3)(iii) of this section, except that the US1–FZ instrument is treated as indebtedness for U.S. tax purposes and equity for Country Z and Country X tax purposes. In addition, the $80x paid to US1 by FZ is treated as interest for U.S. tax purposes (the entire amount of which is included in US1's income), a dividend for Country Z tax purposes (for which FZ is not allowed a deduction or other tax benefit), and an excludible dividend for Country X tax purposes (by reason of the Country X participation exemption). For the reasons described in paragraph (c)(3)(iii)(A) of this section, the hybrid transaction rule of § 1.267A–2(a) applies to FZ's payment but no portion of the payment is a disqualified hybrid amount. In addition, the disregarded payment rule of § 1.267A–2(b) applies to US1's $100x payment to FX, for the reasons described in paragraph (c)(3)(ii)(B) of this section. US1's dual inclusion income for taxable year 1 is $80x. This is because the $80x paid to US1 by FZ is included in US1's income and, although not included in FX's income, it is a dividend for Country X tax purposes that would have been included in FX's income but for the Country X participation exemption, and FZ is not allowed a deduction or other tax benefit for it under Country Z tax law. *See* § 1.267A–2(b)(3)(ii). Therefore, $20x of US1's $100x payment is a disqualified hybrid amount ($100x less $80x). *See* § 1.267A–2(b)(1).

(4) *Example 4. Payment allocable to a U.S. taxable branch*—(i) *Facts.* FX1 and FX2 are foreign corporations that are bodies corporate established in and tax residents of Country X. FX1 holds all the interests of FX2, and FX1 and FX2 file a consolidated return under Country X tax law. FX2 has a U.S. taxable branch (''USB''). During taxable year 1, FX2 pays $50x to FX1 pursuant to an instrument (the ''FX1–FX2 instrument''). The amount paid pursuant to the instrument is treated as interest for U.S. tax purposes but, as a consequence of the Country X consolidation regime, is treated as a disregarded transaction between group members for Country X tax purposes. Also during taxable year 1, FX2 pays $100x of interest to an unrelated bank that is not a party to a structured arrangement (the instrument pursuant to which the payment is made, the ''bank-FX2 instrument''). FX2's only other item of income, gain, deduction, or loss for taxable year 1 is $200x of gross income. Under Country X tax law, the $200x of gross income is attributable to USB, but is not included in FX2's income because Country X tax law exempts income attributable to a branch. Under U.S. tax law, the $200x of gross income is effectively connected income of USB. Further, under section 882(c)(1), $75x of interest is, for taxable year 1, allocable to USB's effectively connected income. USB has neither liabilities that are directly allocable to it, as described in § 1.882–5(a)(1)(ii)(A), nor U.S. booked liabilities, as defined in § 1.882–5(d)(2).

(ii) *Analysis.* USB is a specified party and thus any interest or royalty allowable as a deduction in determining its effectively connected income is subject to disallowance under section 267A. Pursuant to § 1.267A–5(b)(3)(i)(A), USB is treated as paying $75x of interest, and such interest is thus a specified payment. Of that $75x, $25x is treated as paid to FX1, calculated as $75x (the interest allocable to USB under section 882(c)(1)) multiplied by ⅓ ($50x, FX2's payment to FX1, divided by $150x, the total interest paid by FX2). *See* § 1.267A–5(b)(3)(ii)(A). As described in paragraphs (c)(4)(ii)(A) and (B) of this section, the $25x of the specified payment treated as paid by USB to FX1 is a disqualified hybrid amount under the disregarded payment rule of § 1.267A–2(b) and, as a result, a deduction for that amount is disallowed under § 1.267A–1(b)(1).

(A) USB's $25x payment to FX1 is not regarded under the tax law of Country X (the tax law of FX1, a related tax resident to which the payment is made) because under such tax law it is a disregarded transaction between group members. *See* § 1.267A–2(b)(2) and (f). In addition, were the tax law of Country X to regard the payment (and treat it as interest), FX1 would include it in income. Therefore, the payment is a disregarded payment to which § 1.267A–2(b) applies. *See* § 1.267A–2(b)(2).

(B) Under § 1.267A–2(b)(1), the excess (if any) of USB's disregarded payments for taxable year 1 ($25x) over its dual inclusion income for the taxable year is a disqualified hybrid amount. USB's dual inclusion income for taxable year 1 is $0. This is because, as a result of the Country X exemption for income attributable to a branch, no portion of USB's $200x item of gross income is included in FX2's income. *See* § 1.267A–2(b)(3). Therefore, the entire $25x of the specified payment treated as paid by USB to FX1 is a disqualified hybrid amount, calculated as $25x (the amount of the payment) less $0 (the amount of dual inclusion income). *See* § 1.267A–2(b)(1).

(iii) *Alternative facts—deemed branch payment.* The facts are the same as in paragraph (c)(4)(i) of this section, except that FX2 does not pay any amounts during taxable year 1 (thus, it does not pay the $50x to FX1 or the $100x to the bank). However, under an income tax treaty between the United States and Country X, USB is a U.S. permanent establishment and, for taxable year 1, $25x of royalties is allowable as a deduction in computing the business profits of USB and is deemed paid to FX2. Under Country X tax law, the $25x is not regarded. Accordingly, the $25x is a specified payment that is a deemed branch payment. *See* §§ 1.267A–2(c)(2) and 1.267A–5(b)(3)(i)(B). In addition, the entire $25x is a disqualified hybrid amount for which a deduction is disallowed because the tax law of Country X provides an exclusion or exemption for income attributable to a branch. *See* § 1.267A–2(c)(1).

(5) *Example 5. Payment to a reverse hybrid*—(i) *Facts.* FX holds all the interests of US1 and FY, and FY holds all the interests of FV. FY is an entity established in Country Y, and FV is an entity established in Country V. FY is fiscally transparent for Country Y tax purposes but is not fiscally transparent for Country X tax purposes. FV is fiscally transparent for Country X tax purposes. On date 1, US1 pays $100x to FY. The payment is treated as interest for U.S. tax purposes and Country X tax purposes.

(ii) *Analysis.* US1 is a specified party and thus a deduction for its $100x specified payment is subject to disallowance under section 267A. As described in paragraphs (c)(5)(ii)(A) through (C) of this section, the entire $100x payment is a disqualified hybrid amount under the reverse hybrid rule of § 1.267A–2(d) and, as a result, a deduction for the payment is disallowed under § 1.267A–1(b)(1).

(A) US1's payment is made to a reverse hybrid because FY is fiscally transparent under the tax law of Country Y (the tax law of the country in which it is established) but is not fiscally transparent under the tax law of Country X (the tax law of FX, an investor that is related to US1). *See* § 1.267A–2(d)(2) and (f). Therefore, § 1.267A–2(d) applies to the payment. The result would be the same if the payment were instead made to FV. *See* § 1.267A–2(d)(3).

(B) For US1's payment to be a disqualified hybrid amount under § 1.267A–2(d), a no-inclusion must occur with respect to FX, an investor the tax law of which treats FY as not fiscally transparent. *See* § 1.267A–2(d)(1)(i). Because FX does not derive the $100x payment under Country X tax law (as FY is not fiscally transparent under such tax law), FX includes $0 of the payment in income and therefore a $100x no-inclusion occurs with respect to FX. *See* § 1.267A–3(a).

(C) Pursuant to § 1.267A–2(d)(1)(ii), FX's $100x no-inclusion gives rise to a disqualified hybrid amount to the extent that it is a result of US1's payment being made to the reverse hybrid. FX's $100x no-inclusion is a result of the payment being made to the reverse hybrid because, were FY to be treated as fiscally transparent for Country X tax purposes, FX would include $100x in income and, consequently, the no-inclusion would not occur. The result would be the same if Country X tax law instead viewed US1's payment as a dividend, rather than interest. *See* § 1.267A–2(d)(1)(ii).

(iii) *Alternative facts—inclusion under anti-deferral regime.* The facts are the same as in paragraph (c)(5)(i) of this section, except that, under a Country X anti-deferral regime, FX takes into account $100x attributable to the $100x payment received by FY. If under the rules of § 1.267A–3(a) FX includes the entire attributed amount in income (that is, if FX takes the amount into account in its income at the full marginal rate imposed on ordinary income and the amount is not reduced or offset by certain relief particular to the amount), then a no-inclusion does not occur with respect to FX. As a result, in such a case, no portion of US1's payment would be a disqualified hybrid amount under § 1.267A–2(d).

(iv) *Alternative facts—multiple investors.* The facts are the same as in paragraph (c)(5)(i) of this section, except that FX holds all the interests of FZ, which is fiscally transparent for Country X tax purposes; FZ holds all the interests of FY, which is fiscally transparent for Country Z tax purposes; and FZ includes the $100x payment in income. Thus, each of FZ and FX is an investor of FY, as each directly or indirectly holds an interest of FY. *See* § 1.267A–5(a)(13). A $100x no-inclusion occurs with respect to FX, an investor the tax law of which treats FY as not fiscally transparent. FX's no-inclusion is a result of the payment being made to the reverse hybrid because, were FY to be treated as fiscally transparent for Country X tax purposes, then FX would include $100x in income (as FZ is fiscally transparent for Country X tax purposes). Accordingly, FX's no-inclusion is a result of US1's payment being made to the reverse hybrid and, consequently, the entire $100x payment is a disqualified hybrid amount. However, if instead FZ were not fiscally transparent for Country X tax purposes, then FX's no-inclusion would not be a result of US1's payment being made to the reverse hybrid and, therefore, the payment would not be a disqualified hybrid amount under § 1.267A–2(d).

(v) *Alternative facts—portion of no-inclusion not the result of hybridity.* The facts are the same as in paragraph (c)(5)(i) of this section, except that the $100x is viewed as a royalty for U.S. tax purposes and Country X tax purposes, and Country X tax law contains a patent box regime that provides an 80% deduction with respect to certain royalty income. If the royalty payment would qualify for the Country X patent box deduction were FY to be treated as fiscally transparent for Country X tax purposes, then only $20x of FX's $100x no-inclusion would be the result of the payment being paid to a reverse hybrid, calculated as $100x (the no-inclusion with respect to FX that actually occurs) less $80x (the no-inclusion with respect to FX that would occur if FY were to be treated as fiscally transparent for Country X tax purposes). *See* § 1.267A–2(d)(1)(ii) and 1.267A–3(a)(1)(ii). Accordingly, in such a case, only $20x of US1's payment would be a disqualified hybrid amount under § 1.267A–2(d).

(vi) *Alternative facts—payment to a discretionary trust*—(A) *Facts.* The facts are the same as in paragraph (c)(5)(i) of this section, except that FY is a discretionary trust established in, and a tax resident of, Country Y (and as a result, FY is generally not fiscally transparent for Country Y tax purposes under the principles of § 1.894–1(d)(3)(ii)). In general, under Country Y tax law, FX, an investor of FY, is not required to separately take into account in its income US1's $100x payment received by FY; instead, FY is required to take the payment into account in its income. However, under the trust agreement, the trustee of FY may, with respect to certain items of income received by FY, allocate such an item to FY's beneficiary, FX. When this occurs, then, for Country Y tax purposes, FY does not take the item into account in its income, and FX is required to take the item into account in its income as if it received the item directly from the source from which realized by FY. For Country X tax purposes, FX in all cases does not take into account in its income any item of income received by FY. With respect to the $100x paid from US1 to FY, the trustee allocates the $100x to FX.

(B) *Analysis.* FY is fiscally transparent with respect to US1's $100x payment under the tax law of Country Y (the tax law of the country in which FY is established). *See* § 1.267A–5(a)(8)(i). In addition, FY is not fiscally transparent with respect to US1's $100x payment under the tax law of Country X (the tax law of FX, the investor of FY). *See* § 1.267A–5(a)(8)(ii). Thus, FY is a reverse hybrid with respect to the payment. *See* § 1.267A–2(d)(2) and (f). Therefore, for reasons similar to those discussed in paragraphs (c)(5)(ii)(B) and (C) of this section, the entire $100x payment is a disqualified hybrid amount.

(6) *Example 6. Branch mismatch payment*—(i) *Facts.* FX holds all the interests of US1 and FZ. FZ owns BB, a Country B branch that gives rise to a taxable presence in Country B under Country Z tax law but not under Country B tax law. On date 1, US1 pays $50x to FZ. The amount is treated as a royalty for U.S. tax purposes and Country Z tax purposes. Under Country Z tax law, the amount is treated as income attributable to BB and, as a consequence of County Z tax law exempting income attributable to a branch, is excluded from FZ's income.

(ii) *Analysis.* US1 is a specified party and thus a deduction for its $50x specified payment is subject to disallowance under section 267A. As described in paragraphs (c)(6)(ii)(A) through (C) of this section, the entire $50x payment is a disqualified hybrid amount under the branch mismatch rule of § 1.267A–2(e) and, as a result, a deduction for the payment is disallowed under § 1.267A–1(b)(1).

(A) US1's payment is a branch mismatch payment because under Country Z tax law (the tax law of FZ, a home office that is related to US1) the payment is treated as income attributable to BB, and BB is not a taxable branch (that is, under Country B tax law, BB does not give rise to a taxable presence). *See* § 1.267A–2(e)(2) and (f). Therefore, § 1.267A–2(e) applies to the payment. The result would be the same if instead BB were a taxable branch and, under Country B tax law, US1's payment were treated as income attributable to FZ, the home office, and not BB. *See* § 1.267A–2(e)(2).

(B) For US1's payment to be a disqualified hybrid amount under § 1.267A–2(e), a no-inclusion must occur with respect to FZ. *See* § 1.267A–2(e)(1)(i). As a consequence of the Country Z branch exemption, FZ includes $0 of the payment in income and therefore a $50x no-inclusion occurs with respect to FZ. *See* § 1.267A–3(a).

(C) Pursuant to § 1.267A–2(e)(1)(ii), FZ's $50x no-inclusion gives rise to a disqualified hybrid amount to the extent that it is a result of US1's payment being a branch mismatch payment. FZ's $50x no-inclusion is a result of the payment being a branch mismatch payment because, were the payment to not be treated as income attributable to BB for Country Z tax purposes, FZ would include $50x in income and, consequently, the no-inclusion would not occur.

(7) *Example 7. Reduction of disqualified hybrid amount for certain amounts includible in income*—(i) *Facts.* US1 and FW hold 60% and 40%, respectively, of the interests of FX, and FX holds all the interests of FZ. Each of FX and FZ is a specified party that is a CFC. FX holds an instrument issued by FZ that it is treated as equity for Country X tax purposes and as indebtedness for U.S. tax purposes (the FX–FZ instrument). On date 1, FZ pays $100x to FX pursuant to the FX–FZ instrument. The amount is treated as a dividend for Country X tax purposes and as interest for U.S. tax purposes. In addition, pursuant to section 954(c)(6), the amount is not foreign personal holding company income of FX and, under section 951A, the amount is gross tested income (as described in § 1.951A–2(c)(1)) of FX. Further, were FZ allowed a deduction for the amount, it would be allocated and apportioned to gross tested income (as described in § 1.951A–2(c)(1)) of FZ. Lastly, Country X tax law provides an 80% participation exemption for dividends received from nonresident corporations and, as a result of such participation exemption, FX includes $20x of FZ's payment in income.

(ii) *Analysis.* FZ, a CFC, is a specified party and thus a deduction for its $100x specified payment is subject to disallowance under section 267A. But for § 1.267A–3(b), $80x of FZ's payment would be a disqualified hybrid amount (such amount, a ''tentative disqualified hybrid amount''). *See* §§ 1.267A–2(a) and 1.267A–3(b)(1). Pursuant to § 1.267A–3(b), the tentative disqualified hybrid amount is reduced by $48x. *See* § 1.267A–3(b)(4). The $48x is the tentative disqualified hybrid amount to the extent that it increases US1's pro rata share of tested income with respect to FX under section 951A (calculated as $80x multiplied by 60%). *See* § 1.267A–3(b)(4). Accordingly, $32x of FZ's payment ($80x less $48x) is a disqualified hybrid amount under § 1.267A–2(a) and, as a result, $32x of the deduction is disallowed under § 1.267A–1(b)(1).

(iii) *Alternative facts—United States shareholder is a domestic partnership.* The facts are the same as in paragraph (c)(7)(i) of this section, except that US1 is a domestic partnership, 90% of the interests of which are held by US2 and the remaining 10% of which are held by an individual that is a nonresident alien (as defined in section 7701(b)(1)(B)). Thus, although each of US1 and US2 is a United States shareholder of FX, only US2 has a pro rata share of any tested item of FX. *See* § 1.951A–1(e). In addition, $43.2x of the $80x tentative disqualified hybrid amount increases US2's pro rata share of the tested income of FX (calculated as $80x multiplied by 60% multiplied by 90%). Thus, $36.8x of FZ's payment ($80x less $43.2x) is a disqualified hybrid amount under § 1.267A–2(a). *See* § 1.267A–3(b)(4).

(8) *Example 8. Imported mismatch rule—direct offset*—(i) *Facts.* FX holds all the interests of FW, and FW holds all the interests of US1. FX holds an instrument issued by FW that is treated as equity for Country X tax purposes and indebtedness for Country W tax purposes (the FX–FW

instrument). FW holds an instrument issued by US1 that is treated as indebtedness for Country W and U.S. tax purposes (the FW–US1 instrument). In accounting period 1, FW pays $100x to FX pursuant to the FX–FW instrument. The amount is treated as an excludible dividend for Country X tax purposes (by reason of the Country X participation exemption) and as interest for Country W tax purposes. Also in accounting period 1, US1 pays $100x to FW pursuant to the FW–US1 instrument. The amount is treated as interest for Country W and U.S. tax purposes and is included in FW's income. The FX–FW instrument was not entered into pursuant to the same plan or series of related transactions pursuant to which the FW–US1 instrument was entered into.

(ii) *Analysis.* US1 is a specified party and thus a deduction for its $100x specified payment is subject to disallowance under section 267A. US1's $100x payment is neither a disqualified hybrid amount nor included or includible in income in the United States. *See* § 1.267A–4(a)(2)(v). In addition, FW's $100x deduction is a hybrid deduction because it is a deduction allowed to FW that results from an amount paid that is interest under Country W tax law, and were Country W law to have rules substantially similar to those under §§ 1.267A–1 through 1.267A–3 and 1.267A–5, a deduction for the payment would be disallowed (because under such rules the payment would be pursuant to a hybrid transaction and FX's no-inclusion would be a result of the hybrid transaction). *See* §§ 1.267A–2(a) and 1.267A–4(b). Under § 1.267A–4(a)(2), US1's payment is an imported mismatch payment, US1 is an imported mismatch payer, and FW (the foreign tax resident that includes the imported mismatch payment in income) is an imported mismatch payee. The imported mismatch payment is a disqualified imported mismatch amount to the extent that the income attributable to the payment is directly or indirectly offset by the hybrid deduction incurred by FW (a foreign tax resident that is related to US1). *See* § 1.267A–4(a)(1). Under § 1.267A–4(c)(1), the $100x hybrid deduction directly or indirectly offsets the income attributable to US1's imported mismatch payment to the extent that the payment directly or indirectly funds the hybrid deduction. The entire $100x of US1's payment directly funds the hybrid deduction because FW (the imported mismatch payee) incurs at least that amount of the hybrid deduction. *See* § 1.267A–4(c)(3)(i). Accordingly, the entire $100x payment is a disqualified imported mismatch amount under § 1.267A–4(a)(1) and, as a result, a deduction for the payment is disallowed under § 1.267A–1(b)(2).

(iii) *Alternative facts—long-term deferral.* The facts are the same as in paragraph (c)(8)(i) of this section, except that the FX–FW instrument is treated as indebtedness for Country X and Country W tax purposes, and FW does not pay any amounts pursuant to the instrument during accounting period 1. In addition, under Country W tax law, FW is allowed to deduct interest under the FX–FW instrument as it accrues, whereas under Country X tax law FX does not take into account in its income interest under the FX–FW instrument until the interest is paid. Further, FW accrues $100x of interest during accounting period 1, and FW will not pay such amount to FX for more than 36 months after the end of accounting period 1. The results are the same as in paragraph (c)(8)(ii) of this section. That is, FW's $100x deduction for the accrued interest is a hybrid deduction, *see* §§ 1.267A–2(a), 1.267A–3(a), and 1.267A–4(b), and the income attributable to US1's $100x imported mismatch payment is offset by the hybrid deduction for the reasons described in paragraph (c)(8)(ii) of this section. As a result, a deduction for the payment is disallowed under § 1.267A–1(b)(2). The result would be the same even if the FX–FW instrument is expected to be redeemed or capitalized before the $100x of interest is paid such that FX will never take into account in its income (and therefore will not include in income) the $100x of interest.

(iv) *Alternative facts—notional interest deduction.* The facts are the same as in paragraph (c)(8)(i) of this section, except that there is no FX–FW instrument and thus FW does not pay any amounts to FX during accounting period 1. However, during accounting period 1, FW is allowed a $100x notional interest deduction with respect to its equity under Country W tax law. Pursuant to § 1.267A–4(b)(1)(ii), FW's notional interest deduction is a hybrid deduction. The results are the same as in paragraph (c)(8)(ii) of this section. That is, the income attributable to US1's $100x imported mismatch payment is offset by FW's hybrid deduction for the reasons described in paragraph (c)(8)(ii) of this section. As a result, a deduction for the payment is disallowed under § 1.267A–1(b)(2). The result would be the same if the tax law of Country W contains hybrid mismatch rules because FW's deduction is a deduction with respect to equity. *See* § 1.267A–4(b)(2)(i).

(v) *Alternative facts—foreign hybrid mismatch rules prevent hybrid deduction.* The facts are the same as in paragraph (c)(8)(i) of this section, except that the tax law of Country W contains hybrid mismatch rules, and under such rules FW is not allowed a deduction for the $100x that it pays to FX pursuant to the FX–FW instrument. The $100x paid by FW therefore does not give rise to a hybrid deduction. *See* § 1.267A–4(b). Accordingly, because the income attributable to US1's payment to FW is not directly or indirectly offset by a hybrid deduction, the payment is not a disqualified imported mismatch amount. Therefore, a deduction for the payment is not disallowed under § 1.267A–1(b)(2).

(9) *Example 9. Imported mismatch rule—indirect offsets and pro rata allocations*—(i) *Facts.* FX holds all the interests of FZ, and FZ holds all the interests of US1 and US2. FX has a Country B branch that, for Country X and Country B tax purposes, gives rise to a taxable presence in Country B and is therefore a taxable branch (''BB''). Under the Country B-Country X income tax treaty, BB is a permanent establishment entitled to deduct expenses properly attributable to BB for purposes of computing its business profits under the treaty. In addition, BB is deemed to pay a royalty to FX for the right to use intangibles developed by FX equal to cost plus y%. The deemed royalty is a deductible expense properly attributable to BB under the Country B-Country X income tax treaty. For Country X tax purposes, any transactions between BB and X are disregarded. The deemed royalty is $80x for accounting period 1. Country B tax law does not permit a loss of a taxable branch to be shared with a tax resident or another taxable branch. In addition, an instrument issued by FZ to FX is properly reflected as an asset on the books and records of BB (the FX–FZ instrument). The FX–FZ instrument is treated as indebtedness for Country X, Country Z, and Country B tax purposes. In accounting period 1, FZ pays $80x to FX pursuant to the FX–FZ instrument; the amount is treated as interest for Country X, Country Z, and Country B tax purposes, and is treated as income attributable to BB for Country X and Country B tax purposes (but, for Country X tax purposes, is excluded from FX's income as a consequence of the Country X exemption for income attributable to a branch). Further, in accounting period 1, US1 and US2 pay $60x and $40x, respectively, to FZ pursuant to instruments that are treated as indebtedness for Country Z and U.S. tax purposes; the amounts are treated as interest for Country Z and U.S. tax purposes and are included in FZ's income. Lastly, neither the instrument pursuant to which US1 pays the $60x nor the instrument pursuant to which US2 pays the $40x was entered into pursuant to a plan or series of related transactions that includes the transaction or agreement giving rise to BB's deduction for the deemed royalty.

(ii) *Analysis.* US1 and US2 are specified parties and thus deductions for their specified payments are subject to disallowance under section 267A. Neither of the payments is a disqualified hybrid amount, nor is either of the payments included or includible in income in the United States. *See* § 1.267A–4(a)(2)(v). In addition, BB's $80x deduction for the deemed royalty is a hybrid deduction because it is a deduction allowed to BB that results from an amount paid that is treated as a royalty under Country B tax law (regardless of whether a royalty deduction would be allowed under U.S. law), and were Country B tax law to have rules substantially similar to those under §§ 1.267A–1 through 1.267A–3 and 1.267A–5, a deduction for the payment would be disallowed because under such rules the payment would be a deemed branch payment and Country X has an exclusion for income attributable to a branch. *See* §§ 1.267A–2(c) and 1.267A–4(b). Under § 1.267A–4(a)(2), each of US1's and US2's payments is an imported mismatch payment, US1 and US2 are imported mismatch payers, and FZ (the foreign tax resident that includes the imported mismatch payments in income) is an imported mismatch payee. The imported mismatch payments are disqualified imported mismatch amounts to the extent that the income attributable to the payments is directly or indirectly offset by the hybrid deduction incurred by BB (a foreign taxable branch that is related to US1 and US2). *See* § 1.267A–4(a). Under § 1.267A–4(c)(1), the $80x hybrid deduction directly or indirectly offsets the income attributable to the imported mismatch payments to the extent that the payments directly or indirectly fund the hybrid deduction. Paragraphs (c)(9)(ii)(A) and (B) of this section describe the extent to which the imported mismatch payments directly or indirectly fund the hybrid deduction.

(A) Neither US1's nor US2's payment directly funds the hybrid deduction because FZ (the imported mismatch payee) does not incur the hybrid deduction. *See* § 1.267A–4(c)(3)(i). To determine the extent to which the payments indirectly fund the hybrid deduction, the amount of the hybrid deduction that is allocated to FZ must be determined. *See* § 1.267A–4(c)(3)(ii). FZ is allocated the hybrid deduction to the extent that it directly or indirectly makes a funded taxable payment to BB (the foreign taxable branch that incurs the hybrid deduction). *See* § 1.267A–4(c)(3)(iii). The $80x that FZ pays pursuant to the FX–FZ instrument is a funded taxable payment of FZ to BB. *See* § 1.267A–4(c)(3)(v). Therefore, because FZ makes a funded taxable payment to BB that is at least equal to the amount of the hybrid deduction, FZ is allocated the entire amount of the hybrid deduction. *See* § 1.267A–4(c)(3)(iii).

(B) But for US2's imported mismatch payment, the entire $60x of US1's imported mismatch payment would indirectly fund the hybrid deduction because FZ is allocated at least that amount of the hybrid deduction. *See* § 1.267A–4(c)(3)(ii). Similarly, but for US1's imported mismatch payment, the entire $40x of US2's imported mismatch payment would indirectly fund the hybrid deduction because FZ is allocated at least that amount of the hybrid deduction. *See* § 1.267A–4(c)(3)(ii). However, because the sum of US1's and US2's imported mismatch payments to FZ ($100x) exceeds the hybrid deduction allocated to FZ ($80x), pro rata adjustments must be made. *See* § 1.267A–4(e). Thus, $48x of US1's imported mismatch payment is considered to indirectly fund the hybrid deduction, calculated as $80x (the amount of the hybrid deduction) multiplied by 60% ($60x, the amount of US1's imported mismatch payment to FZ, divided by $100x, the sum of the imported mismatch payments that US1 and US2 make to FZ). Similarly, $32x of US2's imported mismatch payment is considered to indirectly fund the hybrid deduction, calculated as $80x (the amount of the hybrid deduction) multiplied by 40% ($40x, the amount of US2's imported mismatch payment to FZ, divided by $100x, the sum of the imported mismatch payments that US1 and US2 make to FZ). Accordingly, $48x of US1's imported mismatch payment, and $32x of US2's imported mismatch payment, are disqualified imported mismatch amounts under § 1.267A–4(a)(1) and, as a result, deductions for such amounts are disallowed under § 1.267A–1(b)(2).

(iii) *Alternative facts—loss made available through foreign group relief regime.* The facts are the same as in paragraph (c)(9)(i) of this section, except that FZ holds all the interests in FZ2, a body corporate that is a tax resident of Country Z, FZ2 (rather than FZ) holds all the interests of US1 and US2, and US1 and US2 make their respective $60x and $40x payments to FZ2 (rather than to FZ). Further, in accounting period 1, a $10x loss of FZ is made available to offset income of FZ2 through a Country Z foreign group relief regime. Pursuant to § 1.267A–4(c)(3)(vi), FZ and FZ2 are treated as a single foreign tax resident for purposes of § 1.267A–4(c) because a loss that is not incurred by FZ2 (FZ's $10x loss) is made available to offset income of FZ2 under the Country Z group relief regime. Accordingly, the results are the same as in paragraph (c)(9)(ii) of this section. That is, by treating FZ and FZ2 as a single foreign tax resident for purposes of § 1.267A–4(c), BB's hybrid deduction offsets the income attributable to US1's and US2's imported mismatch payments to the same extent as described in paragraph (c)(9)(ii) of this section.

(10) *Example 10. Imported mismatch rule—ordering rules and rule deeming certain payments to be imported mismatch payments*—(i) *Facts.* FX holds all the interests of FW, and FW holds all the interests of US1, US2, and FZ. FZ holds all the interests of US3. FX transfers cash to FW in exchange for an instrument that is treated as equity for Country X tax purposes and indebtedness for Country W tax purposes (the FX–FW instrument). FW transfers cash to US1 in exchange for an instrument that is treated as indebtedness for Country W and U.S. tax purposes (the FW–US1 instrument). The FX–FW instrument and the FW–US1 instrument were entered into pursuant to a plan a design of which was for deductions incurred by FW pursuant to the FX–FW instrument to offset income attributable to payments by US1 pursuant to the FW–US1 instrument. In accounting period 1, FW pays $125x to FX pursuant to the FX–FW instrument; the amount is treated as an excludible dividend for Country X tax purposes (by reason of the Country X participation exemption regime) and as interest for Country W tax purposes. Also in accounting period 1, US1 pays $50x to FW pursuant to the FW–US1 instrument; US2 pays $50x to FW pursuant to an instrument treated as indebtedness for Country W and U.S. tax purposes (the FW–US2 instrument); US3 pays $50x to FZ pursuant to an instrument treated as indebtedness for Country Z and U.S. tax purposes (the FZ–US3 instrument); and FZ pays $50x to FW pursuant to an instrument treated as indebtedness for Country W and Country Z tax purposes (FW–FZ instrument). The amounts paid by US1, US2, US3, and FZ are treated as interest for purposes of the relevant tax laws and are included in the income of FW (in the case of US1's, US2's and FZ's payment) or FZ (in the case of US3's payment). Lastly, neither the FW–US2 instrument, the FW–FZ instrument, nor the FZ–US3 instrument was entered into pursuant to a plan or series of related transactions that includes the transaction pursuant to which the FX–FW instrument was entered into.

(ii) *Analysis.* US1, US2, and US3 are specified parties (but FZ is not a specified party, see § 1.267A–5(a)(17)) and thus deductions for US1's, US2's, and US3's specified payments are subject to disallowance under section 267A. None of the specified payments is a disqualified hybrid amount, nor is any of the payments included or includible in income in the United States. *See* § 1.267A–4(a)(2)(v). Under § 1.267A–4(a)(2), each of the payments is an imported mismatch payment, US1, US2, and US3 are imported mismatch payers, and FW and FZ (the foreign tax residents that include the imported mismatch payments in income) are imported mismatch payees. The imported mismatch payments are disqualified imported mismatch amounts to the extent that the income attributable to the payments is directly or indirectly offset by FW's $125x hybrid deduction. *See* § 1.267A–4(a)(1) and (b). Under § 1.267A–4(c)(1), the $125x hybrid deduction directly or indirectly offsets the income attributable to the imported mismatch payments to the extent that the payments directly or indirectly fund the hybrid deduction. Paragraphs (c)(10)(ii)(A) through (C) of this section describe the extent to which the imported mismatch payments directly or indirectly fund the hybrid deduction and are therefore disqualified hybrid amounts for which a deduction is disallowed under § 1.267A–1(b)(2).

(A) First, the $125x hybrid deduction offsets the income attributable to US1's imported mismatch payment, a factually-related imported mismatch payment that directly funds the hybrid deduction. *See* § 1.267A–4(c)(2)(i). The entire $50x of US1's payment directly funds the hybrid deduction because FW (the imported mismatch payee) incurs at least that amount of the hybrid deduction. *See* § 1.267A–4(c)(3)(i). Accordingly, the entire $50x of the payment is a disqualified imported mismatch amount under § 1.267A–4(a)(1).

(B) Second, the remaining $75x hybrid deduction offsets the income attributable to US2's imported mismatch payment, a factually-unrelated imported mismatch payment that directly funds the remaining hybrid deduction. *See* § 1.267A–4(c)(2)(ii). The entire $50x of US2's payment directly funds the remaining hybrid deduction because FW (the imported mismatch payee) incurs at least that amount of the remaining hybrid deduction. *See* § 1.267A–4(c)(3)(i). Accordingly, the entire $50x of the payment is a disqualified imported mismatch amount under § 1.267A–4(a)(1).

(C) Third, the remaining $25x hybrid deduction offsets the income attributable to US3's imported mismatch payment, a factually-unrelated imported mismatch payment that indirectly funds the remaining hybrid deduction. *See* § 1.267A–4(c)(2)(iii). The imported mismatch payment indirectly funds the remaining hybrid deduction to the extent that FZ (the imported mismatch payee) is allocated the remaining hybrid deduction. *See* § 1.267A–4(c)(3)(ii). FZ is allocated the remaining hybrid deduction to the extent that it directly or indirectly makes a funded taxable payment to FW (the tax resident that incurs the hybrid deduction). *See* § 1.267A–4(c)(3)(iii). The $50x that FZ pays to FW pursuant to the FW–FZ instrument is a funded taxable payment of FZ to FW. *See* § 1.267A–4(c)(3)(v). Therefore, because FZ makes a funded taxable payment to FW that is at least equal to the amount of the remaining hybrid deduction, FZ is allocated the remaining hybrid deduction. *See* § 1.267A–4(c)(3)(iii). Accordingly, $25x of US3's payment indirectly funds the $25x remaining hybrid deduction and, consequently, $25x of US3's payment is a disqualified imported mismatch amount under § 1.267A–4(a)(2).

(iii) *Alternative facts—amount deemed to be an imported mismatch payment.* The facts are the same as in paragraph (c)(10)(i) of this section, except that US1 is not a domestic corporation but instead is a body corporate that is only a tax resident of Country E (hereinafter, ''FE'') (thus, for purposes of this paragraph (c)(10)(iii), the FW–US1 instrument is instead issued by FE and is the ''FW–FE instrument''). In addition, the tax law of Country E contains hybrid mismatch rules and the $50x FE pays to FW pursuant to the FW–FE instrument is subject to disallowance under a provision of the hybrid mismatch rules substantially similar to § 1.267A–4. Pursuant to § 1.267A–4(f)(2), the $50x that FE pays to FW pursuant to the FW–FE instrument is deemed to be an imported mismatch payment for purposes of determining the extent to which the income attributable to an imported mismatch payment is offset by FW's hybrid deduction (a hybrid deduction other than one described in § 1.267A–4(f)(1)). The results are the same as in paragraphs (c)(10)(ii)(B) and (C) of this section. That is, by treating the $50x that FE pays to FW as an imported mismatch payment, and for reasons similar to those described in paragraphs (c)(10)(ii)(A) through (C) of this section, $50x of FW's $125x hybrid deduction offsets income attributable to FE's imported mismatch payment, $50x of the remaining $75x hybrid deduction offsets income attributable to US2's imported mismatch payment, and the remaining $25x hybrid deduction offsets income attributable to US3's imported mismatch payment. Accordingly, the entire $50x of US2's payment is a disqualified imported mismatch amount, and $25x of US3's payment is a disqualified imported mismatch amount.

(iv) *Alternative facts—amount deemed to be an imported mismatch payment and ''waterfall'' approach.* The facts are the same as in paragraph (c)(10)(i) of this section, except that FZ holds all of the interests of US3 indirectly through FE, a body corporate that is only a tax resident of Country E (hereinafter, ''FE''), and US3 makes its $50x payment to FE (rather than to FZ); such amount is treated as interest for Country E tax purposes and is included in FE's income. In addition, during accounting period 1, FE pays $50x to FZ pursuant to an instrument; such amount is treated as interest for Country E and Country Z tax purposes, and is included in FZ's income. Further, the tax law of Country E contains hybrid mismatch rules and the $50x FE pays to FZ pursuant to the instrument is subject to disallowance under a provision of the hybrid mismatch rules substantially similar to § 1.267A–4. For purposes of determining the extent to which the income attributable to an imported mismatch payment is directly or indirectly offset by a hybrid deduction, the $50x that FE pays to FZ is deemed to be an imported mismatch payment (and FE and FZ are deemed to be an imported mismatch payer and imported mismatch payee, respectively). *See* § 1.267A–4(f)(2). With respect to US1 and US2, the results are the same as described in paragraphs (c)(10)(ii)(A) and (B) of this section. No portion of US3's payment is a disqualified imported mismatch amount because, by treating the $50x that FE pays to FZ as an imported mismatch payment, the remaining $25x of FW's hybrid deduction offsets income attributable to FE's imported mismatch payment. This is because the remaining $25x of FW's hybrid deduction is indirectly funded solely by FE's imported mismatch payment (as opposed to also being funded by US3's imported mismatch payment), as FZ (the imported mismatch payee with respect to FE's payment) directly makes a funded taxable payment to FW, whereas FE (the imported mismatch payee with respect to US3's payment) indirectly makes a funded taxable payment to FW. *See* § 1.267A–4(c)(3)(ii) through (v) and (vii).

(11) *Example 11. Imported mismatch rule—hybrid deduction of a CFC*—(i) *Facts.* FX holds all the interests of US1, and FX and US1 hold 80% and 20%, respectively, of the interests of FZ, a specified party that is a CFC. US1 also holds all the interests of US2, and FX also holds all the interests of FY. FY is an entity established in Country Y, and is fiscally transparent for Country Y tax purposes but is not fiscally transparent for Country X tax purposes. In accounting period 1, US2 pays $100x to FZ pursuant to an instrument (the FZ–US2 instrument). The amount is treated as interest for U.S. tax purposes and Country Z tax purposes, and is included in FZ's income; in addition, for U.S. tax purposes, the amount is foreign personal holding company income of FZ. Also in accounting period 1, FZ pays $100x to FY pursuant to an instrument (the FY–FZ instrument). The amount is treated as interest for U.S. tax purposes and Country Z tax purposes, and none of the amount is included in FX's income. Under Country Z tax law, FZ is allowed a deduction for its entire $100x payment. Under § 1.267A–2(d), the entire $100x of FZ's payment is a disqualified hybrid amount (by reason of being made to a reverse hybrid) and, as a result, a deduction for the payment is disallowed under § 1.267A–1(b)(1); in addition, if a deduction were allowed for the $100x, it would be allocated and apportioned (under the rules of section 954(b)(5)) to gross subpart F income of FZ. Lastly, the FZ–US2 instrument was not entered into pursuant to a plan or series of related transactions that includes the transaction pursuant to which the FY–FZ instrument was entered into.

(ii) *Analysis.* US2 is a specified party and thus a deduction for its $100x specified payment is subject to disallowance under section 267A. As described in paragraphs (c)(11)(ii)(A) through (C) of this section, $80x of US2's payment is a disqualified imported mismatch amount for which a deduction is disallowed under § 1.267A–1(b)(2).

(A) $80x of US2's specified payment is an imported mismatch payment, calculated as $100x (the amount of the payment) less $0 (the disqualified hybrid amount with respect to the payment) less $20 (the amount of the payment that is included or includible in income in the United States). *See* § 1.267A–4(a)(2)(v). US2 is an imported mismatch payer and FZ (a foreign tax resident that includes the imported mismatch in income) is an imported mismatch payee. *See* § 1.267A–4(a)(2).

(B) But for § 1.267A–4(b)(2)(iv), the entire $100x deduction allowed to FZ under its tax law would be a hybrid deduction. *See* §§ 1.267A–2(d) and 1.267A–4(b)(1). However, pursuant to § 1.267A–4(b)(2)(iv), only $80x of the deduction is a hybrid deduction, calculated as $100x (the deduction to the extent that it would be a hybrid deduction but for § 1.267A–4(b)(2)(iv)) less $20x (the extent that FZ's payment giving rise to the deduction is a disqualified hybrid amount that is taken into account for purposes of § 1.267A–4(b)(2)(iv)(A)), less $0 (the extent that FZ's payment giving rise to the deduction is included or includible in income in the United States). *See* § 1.267A–4(b)(2)(iv). The $20x disqualified hybrid amount that is taken into account for purposes of § 1.267A–4(b)(2)(iv)(A) is calculated as $100x (the extent that FZ's payment is a disqualified hybrid amount) less $80x ($100x, the disqualified hybrid amount to the extent that, if allowed as a deduction, it would be allocated and apportioned to gross subpart F income, multiplied by 80%, the difference of 100% and the percentage of the stock (by value) of FZ that is owned by US1)). *See* § 1.267A–4(g).

(C) The $80x hybrid deduction offsets the income attributable to US2's imported mismatch payment, an imported mismatch payment that directly funds the hybrid deduction. *See* § 1.267A–4(c)(2)(ii). The entire $80x of US2's imported mismatch payment directly funds the hybrid deduction because FZ (the imported mismatch payee) incurs at least that amount of the hybrid deduction. *See* § 1.267A–4(c)(3)(i). Accordingly, the entire $80x of US2's imported mismatch payment is a disqualified imported mismatch amount under § 1.267A–4(a)(1).

(12) *Example 12. Imported mismatch rule—application first with respect to certain hybrid deductions, then with respect to other hybrid deductions*—(i) *Facts.* FX holds all the interests of FZ, and FZ holds all the interests of each of US1 and FE. The tax law of Country E contains hybrid mismatch rules. FX holds an instrument issued by FZ that is treated as equity for Country X tax purposes and indebtedness for Country Z tax purposes (the FX–FZ instrument). In accounting period 1, FZ pays $10x to FX pursuant to the FX–FZ instrument. The amount is treated as an excludible dividend for Country X tax purposes (by reason of the Country X participation exemption) and as interest for Country Z tax purposes. Also in accounting period 1, FZ is allowed a $90x notional interest deduction with respect to its equity under Country Z tax law. In addition, in accounting period 1, US1 pays $100x to FZ pursuant to an instrument (the FZ–US1 instrument); the amount is treated as interest for U.S. tax purposes and Country Z tax purposes, and is included in FZ's income. Further, in accounting period 1, FE pays $40x to FZ pursuant to an instrument (the FZ–FE instrument); the amount is treated as

interest for Country E and Country Z tax purposes, is included in FZ's income, and is subject to disallowance under a provision of Country E hybrid mismatch rules substantially similar to § 1.267A–4. Lastly, neither the FZ–US1 instrument nor the FZ–FE instrument was entered into pursuant to a plan or series of related transactions that includes the transaction pursuant to which the FX–FZ instrument was entered into.

(ii) *Analysis.* US1 is a specified party and thus a deduction for its $100x specified payment is subject to disallowance under section 267A. As described in paragraphs (c)(12)(ii)(A) through (D) of this section, $92x of US1's payment is a disqualified imported mismatch amount for which a deduction is disallowed under § 1.267A–1(b)(2).

(A) The entire $100x of US1's specified payment is an imported mismatch payment. *See* § 1.267A–4(a)(2)(v). US1 is an imported mismatch payer and FZ (a foreign tax resident that includes the imported mismatch payment in income) is an imported mismatch payee. *See* § 1.267A–4(a)(2).

(B) FZ has $100x of hybrid deductions (the $10x deduction for the payment pursuant to the FX–FZ instrument plus the $90x notional interest deduction). *See* § 1.267A–4(b). Pursuant to § 1.267A–4(f)(1), § 1.267A–4 is first applied by taking into account only the $90x hybrid deduction consisting of the notional interest deduction; in addition, for purposes of applying § 1.267A–4 in this manner, FE's $40x payment is not treated as an imported mismatch payment. Thus, the $90x hybrid deduction offsets the income attributable to US1's imported mismatch payment, an imported mismatch payment that directly funds the hybrid deduction. *See* § 1.267A–4(c)(2)(ii). Moreover, $90x of US1's imported mismatch payment directly funds the hybrid deduction because FZ (the imported mismatch payee) incurs at least that amount of the hybrid deduction. *See* § 1.267A–4(c)(3)(i).

(C) Section § 1.267A–4 is next applied by taking into account only the $10x hybrid deduction consisting of the deduction for the payment pursuant to the FX–FZ instrument. *See* § 1.267A–4(f)(2). When applying § 1.267A–4 in this manner, and for purposes of determining the extent to which the income attributable to an imported mismatch payment is directly or indirectly offset by a hybrid deduction, FE's $40x payment is treated as an imported mismatch payment. *See* § 1.267A–4(f)(2). In addition, US1's imported mismatch payment is reduced from $100x to $10x. *See* § 1.267A–4(c)(4). But for FE's imported mismatch payment, the entire $10x of US1's imported mismatch payment would directly fund the $10x hybrid deduction because FZ incurred at least that amount of the hybrid deduction. *See* § 1.267A–4(c)(3)(i). Similarly, but for US1's imported mismatch payment, the entire $40x of FE's imported mismatch payment would directly fund the $10x hybrid deduction because FZ incurred at least that amount of the hybrid deduction. *See* § 1.267A–4(c)(3)(i). However, because the sum of US1's and FE's imported mismatch payments to FZ ($50x) exceeds the hybrid deduction incurred by FZ ($10x), pro rata adjustments must be made. *See* § 1.267A–4(e). Thus, $2x of US1's imported mismatch payment is considered to directly fund the hybrid deduction, calculated as $10x (the amount of the hybrid deduction) multiplied by 20% ($10x, the amount of US1's imported mismatch payment to FZ, divided by $50x, the sum of the imported mismatch payments that US1 and FE make to FZ). Similarly, $8x of FE's imported mismatch payment is considered to directly fund the hybrid deduction, calculated as $10x (the amount of the hybrid deduction) multiplied by 80% ($40x, the amount of FE's imported mismatch payment to FZ, divided by $50x, the sum of the imported mismatch payments that US1 and FE make to FZ). Accordingly, $2x of FZ's $10x hybrid deduction offsets income attributable to US1's $10x imported mismatch payment, and $8x of the hybrid deduction offsets income attributable to FE's $40x imported mismatch payment.

(D) Therefore, $92x of US1's imported mismatch payment is a disqualified imported mismatch amount, calculated as $90x (the amount that is a disqualified imported mismatch amount determined by applying § 1.267A–4 in the manner set forth in § 1.267A–4(f)(1)) plus $2x (the amount that is a disqualified imported mismatch amount determined by applying § 1.267A–4 in the manner set forth in § 1.267A–4(f)(2)). *See* § 1.267A–4(a)(1) and (f).

(iii) *Alternative facts—amount deemed to be an imported mismatch payment solely funds hybrid instrument deduction.* The facts are the same as in paragraph (c)(12)(i) of this section, except that FZ holds all of the interests of US1 indirectly through FE, and US1 makes its $100x payment to FE (rather than to FZ); such amount is treated as interest for U.S. and Country E tax purposes, and is included in FE's income. Moreover, FE pays $100x to FZ (rather than $40x); such amount is included in FZ's income, and is subject to disallowance under a provision of Country E hybrid mismatch rules substantially similar to § 1.267A–4. As described in paragraphs (c)(12)(iii)(A) through (D) of this section, $90x of US1's payment is a disqualified imported mismatch amount for which a deduction is disallowed under § 1.267A–1(b)(2).

(A) The entire $100x of US1's specified payment is an imported mismatch payment. *See* § 1.267A–4(a)(2)(v). US1 is an imported mismatch payer and FE (a foreign tax resident that includes the imported mismatch payment in income) is an imported mismatch payee. *See* § 1.267A–4(a)(2).

(B) FZ has $100x of hybrid deductions. *See* § 1.267A–4(b). Pursuant to § 1.267A–4(f)(1), § 1.267A–4 is first applied by taking into account only the $90x hybrid deduction consisting of the notional interest deduction; in addition, for purposes of applying § 1.267A–4 in this manner, FE's $100x payment is not treated as an imported mismatch payment. Thus, the $90x hybrid deduction offsets the income attributable to US1's imported mismatch payment, an imported mismatch payment that indirectly funds the hybrid deduction. *See* § 1.267A–4(c)(2)(iii). The imported mismatch payment indirectly funds the hybrid deduction because FE (the imported mismatch payee) is allocated the deduction, as FE makes a funded taxable payment (the $100x payment to FZ) that is at least equal to the amount of the deduction. *See* § 1.267A–4(c)(3)(ii), (iii), and (v).

(C) Section § 1.267A–4 is next applied by taking into account only the $10x hybrid deduction consisting of the deduction for the payment pursuant to the FX–FZ instrument. *See* § 1.267A–4(f)(2). For purposes of applying § 1.267A–4 in this manner, FE's $100x payment is reduced from $100x to $10x, and similarly US1's imported mismatch payment is reduced from $100x to $10x. *See* § 1.267A–4(c)(4). Further, FE's $10x payment is treated as an imported mismatch payment. *See* § 1.267A–4(f)(2). The entire $10x of FE's imported mismatch payment directly funds the hybrid deduction because FZ (the imported mismatch payee with respect to FE's imported mismatch payment) incurs at least that amount of the hybrid deduction. *See* § 1.267A–4(c)(3)(i). Accordingly, the $10x hybrid deduction offsets the income attributable to FE's imported mismatch payment, and none of the income attributable to US1's imported mismatch payment.

(D) Therefore, $90x of US1's imported mismatch payment is a disqualified imported mismatch amount, calculated as $90x (the amount that is a disqualified imported mismatch amount determined by applying § 1.267A–4 in the manner set forth in § 1.267A–4(f)(1)) plus $0 (the amount that is a disqualified imported mismatch amount determined by applying § 1.267A–4 in the manner set forth in § 1.267A–4(f)(2)). *See* § 1.267A–4(a)(1) and (f).

§ 1.267A–7 Applicability dates.

(a) *General rule.* Except as provided in paragraph (b) of this section, §§ 1.267A–1 through 1.267A–6 apply to taxable years ending on or after December 20, 2018, provided that such taxable years begin after December 31, 2017. However, taxpayers may apply the regulations in §§ 1.267A–1 through 1.267A–6 in their entirety for taxable years beginning after December 31, 2017, and ending before December 20, 2018. In lieu of applying the regulations in §§ 1.267A–1 through 1.267A–6, taxpayers may apply the provisions matching §§ 1.267A–1 through 1.267A–6 from the Internal Revenue Bulletin (IRB) 2019–03 (*https://www.irs.gov/pub/irs-irbs/irb19-03.pdf*) in their entirety for all taxable years ending on or before April 8, 2020.

(b) *Special rules.* The following special rules apply regarding applicability dates:

(1) Sections 1.267A–2(a)(4) (payments pursuant to interest-free loans and similar arrangements), (b) (disregarded payments), (c) (deemed branch payments), and (e) (branch mismatch transactions), 1.267A–4 (imported mismatch rule), and 1.267A–5(b)(5) (structured payments), except as provided in paragraph (b)(5) of this

section, apply to taxable years beginning on or after December 20, 2018.

(2) Section 1.267A–5(a)(20) (defining structured arrangement), as well as the portions of §§ 1.267A–1 through 1.267A–3 that relate to structured arrangements and that are not otherwise described in paragraph (b) of this section, apply to taxable years beginning on or after December 20, 2018. However, in the case of a specified payment made pursuant to an arrangement entered into before December 22, 2017, § 1.267A–5(a)(20), and the portions of §§ 1.267A–1 through 1.267A–3 that relate to structured arrangements and that are not otherwise described in paragraph (b) of this section, apply to taxable years beginning after December 31, 2020.

(3) Except as provided in paragraph (b)(4) of this section, the rules provided in § 1.267A–5(a)(12)(ii) (swaps with significant nonperiodic payments) apply to notional principal contracts entered into on or after April 8, 2021. However, taxpayers may apply the rules provided in § 1.267A–5(a)(12)(ii) to notional principal contracts entered into before April 8, 2021.

(4) For a notional principal contract entered into before April 8, 2021, the interest equivalent rules provided in § 1.267A–5(b)(5)(ii)(B) (applied without regard to the references to § 1.267A–5(a)(12)(ii)) apply to a notional principal contract entered into on or after April 8, 2020.

(5) Section 1.267A–5(b)(5)(ii)(B) (interest equivalent rules) applies to transactions entered into on or after April 8, 2020.

■ **Par. 4** Section 1.1503(d)–1 is amended by:

■ 1. In paragraph (b)(2)(i), removing the word ''and''.

■ 2. In paragraph (b)(2)(ii), removing the second period and adding in its place ''; and''.

■ 3. Adding paragraph (b)(2)(iii).

■ 4. Redesignating paragraph (c) as paragraph (d).

■ 5. Adding new paragraph (c).

■ 6. In newly redesignated paragraph (d)(1), removing the language ''(c)'' and ''(c)(2)'' and adding the language ''(d)'' and ''(d)(2)'' in their places, respectively.

■ 7. In the first sentence of newly redesignated paragraph (d)(2)(ii) introductory text, removing the language ''(c)(2)(i)'' and adding the language ''(d)(2)(i)'' in its place.

The additions read as follows:

§ 1.1503(d)–1 Definitions and special rules for filings under section 1503(d).

* * * * *

(b) * * *

(2) * * *

(iii) A domestic consenting corporation (as defined in § 301.7701–3(c)(3)(i) of this chapter), as provided in paragraph (c)(1) of this section. See § 1.1503(d)–7(c)(41) for an example illustrating the application of section 1503(d) to a domestic consenting corporation.

* * * * *

(c) *Treatment of domestic consenting corporation as a dual resident corporation*—(1) *Rule.* A domestic consenting corporation is treated as a dual resident corporation under paragraph (b)(2)(iii) of this section for a taxable year if, on any day during the taxable year, the following requirements are satisfied:

(i) Under the tax law of a foreign country where a specified foreign tax resident is tax resident, the specified foreign tax resident derives or incurs (or would derive or incur) items of income, gain, deduction, or loss of the domestic consenting corporation (because, for example, the domestic consenting corporation is fiscally transparent under such tax law).

(ii) The specified foreign tax resident bears a relationship to the domestic consenting corporation that is described in section 267(b) or 707(b). See § 1.1503(d)–7(c)(41) for an example illustrating the application of paragraph (c) of this section.

(2) *Definitions.* The following definitions apply for purposes of this paragraph (c).

(i) The term *fiscally transparent* means, with respect to a domestic consenting corporation or an intermediate entity, fiscally transparent as determined under the principles of § 1.894–1(d)(3)(ii) and (iii), without regard to whether a specified foreign tax resident is a resident of a country that has an income tax treaty with the United States.

(ii) The term *specified foreign tax resident* means a body corporate or other entity or body of persons liable to tax under the tax law of a foreign country as a resident.

* * * * *

■ **Par. 5.** Section 1.1503(d)–3 is amended by adding the language ''or (3)'' after the language ''paragraph (e)(2)'' in paragraph (e)(1) introductory text and adding paragraph (e)(3) to read as follows:

§ 1.1503(d)–3 Foreign use.

* * * * *

(e) * * *

(3) *Exception for domestic consenting corporations.* Paragraph (e)(1) of this section will not apply so as to deem a foreign use of a dual consolidated loss incurred by a domestic consenting corporation that is a dual resident corporation under § 1.1503(d)–1(b)(2)(iii).

§ 1.1503(d)–6 [Amended]

■ **Par. 6.** Section 1.1503(d)–6 is amended by:

■ 1. Removing the language ''a foreign government'' and ''a foreign country'' in paragraph (f)(5)(i) and adding the language ''a government of a country'' and ''the country'' in their places, respectively.

■ 2. Removing the language ''a foreign government'' in paragraph (f)(5)(ii) and adding the language ''a government of a country'' in its place.

■ 3. Removing the language ''the foreign government'' in paragraph (f)(5)(iii) and adding the language ''a government of a country'' in its place.

■ **Par. 7.** Section 1.1503(d)–7 is amended by:

■ 1. Designating *Examples 1* through *40* of paragraph (c) as paragraphs (c)(1) through (40), respectively.

■ 2. In newly designated paragraphs (c)(1) through (40), removing ''Alternative Facts'' and adding ''Alternative facts'' in its place wherever it appears.

■ 3. For each newly designated paragraph listed in the table, remove the language in the ''Remove'' column and add in its place the language in the ''Add'' column:

Paragraph	Remove	Add
(c)(2)(iii)	paragraph (i) of this *Example 2*	paragraph (c)(2)(i) of this section.
(c)(5)(iii)	paragraph (i) of this *Example 5*	paragraph (c)(5)(i) of this section.
(c)(5)(iv)	paragraph (iii), of this *Example 5*	paragraph (c)(5)(iii) of this section.
(c)(6)(iii)	paragraph (i) of this *Example 6*	paragraphs (c)(6)(i) of this section.
(c)(10)(iii)	paragraph (i) of this *Example 10*	paragraph (c)(10)(i) of this section.
(c)(10)(iii)	paragraph (ii) of this *Example 10*	paragraph (c)(10)(ii) of this section.
(c)(11)(iii)	paragraph (i) of this *Example 11*	paragraph (c)(11)(i) of this section.
(c)(13)(iii) and (iv)	paragraph (i) of this *Example 13*	paragraph (c)(13)(i) of this section.

Paragraph	Remove	Add
(c)(17)(iii)	paragraph (i) of this *Example 17*	paragraph (c)(17)(i) of this section.
(c)(18)(iii)	paragraph (i) of this *Example 18*	paragraph (c)(18)(i) of this section.
(c)(19)(iii)	paragraph (i) of this *Example 19*	paragraph (c)(19)(i) of this section.
(c)(21)(iii)	paragraph (i) of this *Example 21*	paragraph (c)(21)(i) of this section.
(c)(21)(iv)	paragraph (iii) of this *Example 21*	paragraph (c)(21)(iii) of this section.
(c)(21)(v)	paragraph (iv) of this *Example 21*	paragraph (c)(21)(iv) of this section.
(c)(31)(iii)	paragraph (i) of this *Example 31*	paragraph (c)(31)(i) of this section.
(c)(33)(iii)	paragraph (i) of this *Example 33*	paragraph (c)(33)(i) of this section.
(c)(35)(iii)	paragraph (i) of this *Example 35*	paragraph (c)(35)(i) of this section.
(c)(40)(iii)	paragraph (i) of this *Example 40*	paragraph (c)(40)(i) of this section.
(c)(40)(iii)	paragraph (ii) of this *Example 40*	paragraph (c)(40)(ii) of this section.

■ 4. In newly designated paragraphs (c)(29)(i)(A) and (c)(38)(i)(A), adding headings to the tables.

■ 5. Adding paragraph (c)(41).

The additions read as follows:

§ 1.1503(d)–7 Examples.

* * * * *

(c) * * *

(29) * * *

(i) * * *

(A) * * *

Table 1 to paragraph (c)(29)(i)(A)

* * * * *

(38) * * *

(i) * * *

(A)

Table 2 to paragraph (c)(38)(i)(A)

* * * * *

(41) *Example 41. Domestic consenting corporation—treated as dual resident corporation*—(i) *Facts.* FSZ1, a Country Z entity that is subject to Country Z tax on its worldwide income or on a residence basis and is classified as a foreign corporation for U.S. tax purposes, owns all the interests in DCC, a domestic eligible entity that has filed an election to be classified as an association. Under Country Z tax law, DCC is fiscally transparent. For taxable year 1, DCC's only item of income, gain, deduction, or loss is a $100x deduction and such deduction comprises a $100x net operating loss of DCC. For Country Z tax purposes, FSZ1's only item of income, gain, deduction, or loss, other than the $100x loss attributable to DCC, is $60x of operating income.

(ii) *Result.* DCC is a domestic consenting corporation because by electing to be classified as an association, it consents to be treated as a dual resident corporation for purposes of section 1503(d). *See* § 301.7701–3(c)(3) of this chapter. For taxable year 1, DCC is treated as a dual resident corporation under § 1.1503(d)–1(b)(2)(iii) because FSZ1 (a specified foreign tax resident that bears a relationship to DCC that is described in section 267(b) or 707(b)) derives or incurs items of income, gain, deduction, or loss of DCC. *See* § 1.1503(d)–1(c). FSZ1 derives or incurs items of income, gain, deduction, or loss of DCC because, under Country Z tax law, DCC is fiscally transparent. Thus, DCC has a $100x dual consolidated loss for taxable year 1. *See* § 1.1503(d)–1(b)(5). Because the loss is available to, and in fact does, offset income of FSZ1 under Country Z tax law, there is a foreign use of the dual consolidated loss in year 1. Accordingly, the dual consolidated loss is subject to the domestic use limitation rule of § 1.1503(d)–4(b). The result would be the same if FSZ1 were to indirectly own its DCC stock through an intermediate entity that is fiscally transparent under Country Z tax law, or if an individual were to wholly own FSZ1 and FSZ1 were a disregarded entity. In addition, the result would be the same if FSZ1 had no items of income, gain, deduction, or loss, other than the $100x loss attributable to DCC.

(iii) *Alternative facts—DCC not treated as a dual resident corporation.* The facts are the same as in paragraph (c)(41)(i) of this section, except that DCC is not fiscally transparent under Country Z tax law and thus under Country Z tax law FSZ1 does not derive or incur items of income, gain, deduction, or loss of DCC. Accordingly, DCC is not treated as a dual resident corporation under § 1.1503(d)–1(b)(2)(iii) for year 1 and, consequently, its $100x net operating loss in that year is not a dual consolidated loss.

(iv) *Alternative facts—mirror legislation.* The facts are the same as in paragraph (c)(41)(i) of this section, except that, under provisions of Country Z tax law that constitute mirror legislation under § 1.1503(d)–3(e)(1) and that are substantially similar to the recommendations in Chapter 6 of OECD/G–20, *Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2: 2015 Final Report* (October 2015), Country Z tax law prohibits the $100x loss attributable to DCC from offsetting FSZ1's income that is not also subject to U.S. tax. As is the case in paragraph (c)(41)(ii) of this section, DCC is treated as a dual resident corporation under § 1.1503(d)–1(b)(2)(iii) for year 1 and its $100x net operating loss is a dual consolidated loss. Pursuant to § 1.1503(d)–3(e)(3), however, the dual consolidated loss is not deemed to be put to a foreign use by virtue of the Country Z mirror legislation. Therefore, DCC is eligible to make a domestic use election for the dual consolidated loss.

■ **Par. 8.** Section 1.1503(d)–8 is amended by removing the language ''§ 1.1503(d)–1(c)'' and adding in its place the language ''§ 1.1503(d)–1(d)'' wherever it appears in paragraphs (b)(3)(i) and (iii) and adding paragraphs (b)(6) and (7) to read as follows:

§ 1.1503(d)–8 Effective dates.

* * * * *

(b) * * *

(6) *Rules regarding domestic consenting corporations.* Section 1.1503(d)–1(b)(2)(iii) and (c), as well § 1.1503(d)–3(e)(1) and (3), apply to determinations under §§ 1.1503(d)–1 through 1.1503(d)–7 relating to taxable years ending on or after December 20, 2018. For taxable years ending before December 20, 2018, see § 1.1503(d)–3(e)(1) as contained in 26 CFR part 1 revised as of April 1, 2018.

(7) *Compulsory transfer triggering event exception.* Section 1.1503(d)–6(f)(5)(i) through (iii) applies to transfers that occur on or after December 20, 2018. For transfers occurring before December 20, 2018, see § 1.1503(d)–6(f)(5)(i) through (iii) as contained in 26 CFR part 1 revised as of April 1, 2018. However, taxpayers may consistently apply § 1.1503(d)–6(f)(5)(i) through (iii) to transfers occurring before December 20, 2018.

■ **Par. 9.** Section 1.6038–2 is amended by adding paragraphs (f)(13) and (14) and (m)(3) to read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations.

* * * * *

(f) * * *

(13) *Amounts involving hybrid transactions or hybrid entities under section 267A.* If for the annual accounting period, the corporation pays or accrues interest or royalties for which a deduction is disallowed under section 267A and the regulations in this part under section 267A of the Internal Revenue Code, then Form 5471 (or successor form) must contain such information about the disallowance in the form and manner and to the extent prescribed by the form, instruction, publication, or other guidance.

(14) *Hybrid dividends under section 245A(e).* If for the annual accounting period, the corporation pays or receives a hybrid dividend or a tiered hybrid dividend under section 245A(e) and the regulations in this part under section 245A(e) of the Internal Revenue Code, then Form 5471 (or successor form)

must contain such information about the hybrid dividend or tiered hybrid dividend in the form and manner and to the extent prescribed by the form, instruction, publication, or other guidance. Form 5471 (or successor form) must also contain any other information relating to the rules of section 245A(e) and the regulations in this part under section 245A(e) of the Internal Revenue Code (including information related to a specified owner's hybrid deduction account), as prescribed by the form, instruction, publication, or other guidance.

* * * * *

(m) * * *

(3) *Rules relating to certain hybrid arrangements.* Paragraphs (f)(13) and (14) of this section apply with respect to information for annual accounting periods beginning on or after December 20, 2018.

■ **Par. 10.** Section 1.6038–3 is amended by:

■ 1. Adding paragraph (g)(3).

■ 2. Redesignating paragraph (1) at the end of the section as paragraph (l).

■ 3. In newly redesignated paragraph (l), revising the heading and adding a sentence at the end.

The additions and revision read as follows:

§ 1.6038–3 Information returns required of certain United States persons with respect to controlled foreign partnerships (CFPs).

* * * * *

(g) * * *

(3) *Amounts involving hybrid transactions or hybrid entities under section 267A.* In addition to the information required pursuant to paragraphs (g)(1) and (2) of this section, if, during the partnership's taxable year for which the Form 8865 is being filed, the partnership paid or accrued interest or royalties for which a deduction is disallowed under section 267A and the regulations in this part under section 267A, the controlling fifty-percent partners must provide information about the disallowance in the form and manner and to the extent prescribed by Form 8865 (or successor form), instruction, publication, or other guidance.

* * * * *

(l) *Applicability dates.* * * * Paragraph (g)(3) of this section applies for taxable years of a foreign partnership beginning on or after December 20, 2018.

■ **Par. 11.** Section 1.6038A–2 is amended by adding paragraph (b)(5)(iii) and adding a sentence at the end of paragraph (g) to read as follows:

§ 1.6038A–2 Requirement of return.

* * * * *

(b) * * *

(5) * * *

(iii) If, for the taxable year, a reporting corporation pays or accrues interest or royalties for which a deduction is disallowed under section 267A and the regulations in this part under section 267A, then the reporting corporation must provide such information about the disallowance in the form and manner and to the extent prescribed by Form 5472 (or successor form), instruction, publication, or other guidance.

* * * * *

(g) * * * Paragraph (b)(5)(iii) of this section applies with respect to information for annual accounting periods beginning on or after December 20, 2018.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 12.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 13.** Section 301.7701–3 is amended by revising the sixth sentence of paragraph (a) and adding paragraph (c)(3) to read as follows:

§ 301.7701–3 Classification of certain business entities.

(a) *In general.* * * * Paragraph (c) of this section provides rules for making express elections, including a rule under which a domestic eligible entity that elects to be classified as an association consents to be subject to the dual consolidated loss rules of section 1503(d). * * *

* * * * *

(c) * * *

(3) *Consent to be subject to section 1503(d)*—(i) *Rule.* A domestic eligible entity that elects to be classified as an association consents to be treated as a dual resident corporation for purposes of section 1503(d) (such an entity, a *domestic consenting corporation*), for any taxable year for which it is classified as an association and the condition set forth in § 1.1503(d)–1(c)(1) of this chapter is satisfied.

(ii) *Transition rule—deemed consent.* If, as a result of the applicability date (see paragraph (c)(3)(iii) of this section) relating to paragraph (c)(3)(i) of this section, a domestic eligible entity that is classified as an association has not consented to be treated as a domestic consenting corporation pursuant to paragraph (c)(3)(i) of this section, then the domestic eligible entity is deemed to consent to be so treated as of its first taxable year beginning on or after December 20, 2019. The first sentence of this paragraph (c)(3)(ii) does not apply if the domestic eligible entity elects, on or after December 20, 2018 and effective before its first taxable year beginning on or after December 20, 2019, to be classified as a partnership or disregarded entity such that it ceases to be a domestic eligible entity that is classified as an association. For purposes of the election described in the second sentence of this paragraph (c)(3)(ii), the sixty month limitation under paragraph (c)(1)(iv) of this section is waived.

(iii) *Applicability date.* The sixth sentence of paragraph (a) of this section and paragraph (c)(3)(i) of this section apply to a domestic eligible entity that on or after December 20, 2018 files an election to be classified as an association (regardless of whether the election is effective before December 20, 2018). Paragraph (c)(3)(ii) of this section applies as of December 20, 2018.

* * * * *

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: February 26, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106013–19]

RIN 1545–BP22

Guidance Involving Hybrid Arrangements and the Allocation of Deductions Attributable to Certain Disqualified Payments Under Section 951A (Global Intangible Low-Taxed Income)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that adjust hybrid deduction accounts to take into account earnings and profits of a controlled foreign corporation that are included in income by a United States shareholder. This document also contains proposed regulations that address, for purposes of the conduit financing rules, arrangements involving equity interests that give rise to deductions (or similar benefits) under foreign law. Further, this document contains proposed regulations relating to the treatment of certain payments under the global intangible low-taxed income (GILTI) provisions. The proposed regulations affect United States shareholders of foreign corporations and persons that make payments in connection with certain hybrid arrangements.

DATES: Written or electronic comments and requests for a public hearing must be received by June 8, 2020.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–106013–19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG–106013–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under section 951A, Jorge M. Oben at (202) 317–6934; concerning all other proposed regulations, Richard F. Owens at (202) 317–6501; concerning submissions of comments or requests for a public hearing, Regina L. Johnson at (202) 317–6901 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

I. Section 245A(e)—Hybrid Dividends

Section 245A(e) was added to the Internal Revenue Code (''Code'') by the Tax Cuts and Jobs Act, Public Law 115–97 (2017) (the ''Act''), which was enacted on December 22, 2017. Section 245A(e) and the final regulations under section 245A(e), which are published in the Rules and Regulations section of this issue of the **Federal Register** (the ''section 245A(e) final regulations''), neutralize the double non-taxation effects of a hybrid dividend or tiered hybrid dividend through either denying the section 245A(a) dividends received deduction with respect to the dividend or requiring an inclusion under section 951(a)(1)(A) with respect to the dividend, depending on whether the dividend is received by a domestic corporation or a controlled foreign corporation (''CFC''). The section 245A(e) final regulations require that certain shareholders of a CFC maintain a hybrid deduction account with respect to each share of stock of the CFC that the shareholder owns, and provide that a dividend received by the shareholder from the CFC is a hybrid dividend or tiered hybrid dividend to the extent of the sum of those accounts. A hybrid deduction account with respect to a share of stock of a CFC reflects the amount of hybrid deductions of the CFC that have been allocated to the share, reduced by the amount of hybrid deductions that gave rise to a hybrid dividend or tiered hybrid dividend.

II. Section 1.881–3—Conduit Financing Arrangements

A. In General

Section 7701(l) of the Code authorizes the Secretary to prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any two or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent the avoidance of any tax imposed by the Code. In prescribing such regulations, the legislative history to section 7701(l) states that ''it would be within the proper scope of the provision for the Secretary to issue regulations dealing with multi-party financing transactions involving . . . equity investments.'' H.R. Conf. Rep. No. 103–213, at 655 (1993).

On August 11, 1995, the Treasury Department and the IRS published in the **Federal Register** final regulations (TD 8611, 60 FR 40997) that allow the IRS to disregard the participation of one or more intermediate entities in a financing arrangement where such entities are acting as conduit entities, and to recharacterize the financing arrangement as a transaction directly between the remaining parties to the financing arrangement for purposes of imposing tax under sections 871, 881, 1441, and 1442.

B. Limited Treatment of Equity Interests as Financing Transactions

Section 1.881–3(a)(2)(i)(A) defines a financing arrangement to mean a series of transactions by which one person (the ''financing entity'') advances money or other property, or grants rights to use property, and another person (the ''financed entity'') receives money or other property, or rights to use property, if the advance and receipt are effected through one or more other persons (''intermediate entities''). Except in cases in which § 1.881–3(a)(2)(i)(B) applies (special rule to treat two or more related persons as a single intermediate entity in the absence of a financing transaction between the related persons), the regulations apply only if ''financing transactions,'' as defined in § 1.881–3(a)(2)(ii), link the financing entity, each of the intermediate entities, and the financed entity. Section 1.881–3(a)(2)(ii)(A) and (B) limit the definition of financing transaction in the case of equity investments to stock in a corporation (or a similar interest in a partnership, trust, or other person) that is subject to certain redemption, acquisition, or payment rights or requirements (''redeemable equity'').

If it is determined that an intermediate entity is participating as a conduit entity in a conduit financing arrangement, the financing arrangement may be recharacterized as a transaction directly between the remaining parties (in most cases, the financing entity and the financed entity). *See* § 1.881–3(a)(3)(ii)(A). The portion of the financed entity's payments subject to this recharacterization is determined under § 1.881–3(d)(1)(i). Under § 1.881–3(d)(1)(i), if the aggregate principal amount of the financing transactions to which the financed entity is a party exceeds the aggregate principal amount linking any of the parties to the financing arrangement, then the recharacterized portion is determined by multiplying the payment by a fraction the numerator of which is the lowest aggregate principal amount of the financing transactions linking any of the parties to the financing transaction and the denominator of which is the aggregate principal amounts linking the financed entity to the financing arrangement. Conversely, if the aggregate principal amount of the financing transactions to which the financed entity is a party is less than or equal to the aggregate principal amount of the financing transactions linking any of the parties to the financing arrangement, the entire amount of the payment is recharacterized.

C. Hybrid Instruments

On December 22, 2008, the Treasury Department and the IRS published in the **Federal Register** (73 FR 78252) a notice of proposed rulemaking (REG–113462–08) (''2008 proposed regulations'') that proposed adding § 1.881–3(a)(2)(i)(C) to the conduit financing regulations to treat an entity disregarded as an entity separate from its owner for U.S. tax purposes as a person for purposes of determining whether a conduit financing arrangement exists. The preamble to the 2008 proposed regulations provides that the Treasury Department and the IRS are also studying transactions where a financing entity advances cash or other property to an intermediate entity in exchange for a hybrid instrument (that is, an instrument treated as debt under the tax laws of the foreign country in which the intermediary is resident and equity for U.S. tax purposes), and states that they may issue separate guidance to address the treatment under § 1.881–3 of certain hybrid instruments.

The preamble to the 2008 proposed regulations presents two possible approaches to hybrid instruments and requests comments on those and other possible approaches and factors that should be considered. The first approach would treat all transactions involving hybrid instruments between a financing entity and an intermediate entity as *per se* financing transactions under § 1.881–3(a)(2)(ii)(A). The second approach would treat only certain hybrid instruments as financing transactions based on specific factors or criteria. Only one comment was received. The comment suggested that the Treasury Department and the IRS take a more targeted approach in identifying specific transactions where there is evidence of limited taxation in the intermediary jurisdiction as a direct consequence of the hybrid instrument.

On December 9, 2011, the Treasury Department and the IRS published in the **Federal Register** final regulations (TD 9562, 76 FR 76895) that adopted the 2008 proposed regulations' treatment of disregarded entities under § 1.881–3 without substantive changes. The preamble to the final regulations states that the Treasury Department and the IRS would continue to study the treatment of hybrid instruments in financing transactions.

III. Section 951A—Global Intangible Low-Taxed Income

Section 951A, added to the Code by the Act, requires a United States shareholder of any CFC for any taxable year to include in gross income the shareholder's global intangible low-taxed income (''GILTI inclusion amount'') for such taxable year. On October 10, 2018, the Treasury Department and the IRS published in the **Federal Register** proposed regulations (REG–104390–18, 83 FR 51072) implementing section 951A. On June 21, 2019, the Treasury Department and the IRS published in the **Federal Register** final regulations (''GILTI final regulations'') (TD 9866, 84 FR 29288) that adopted the proposed regulations, with revisions.

The GILTI final regulations include a rule that provides that a deduction or loss attributable to basis created by reason of a transfer of property from a CFC to a related CFC during the period after December 31, 2017, the final date for measuring earnings and profits (''E&P'') for purposes of section 965, and before the date on which section 951A first applies with respect to the transferor CFC's income (for example, December 1, 2018, for a CFC with a taxable year ending November 30) (the ''disqualified period,'' and such basis, ''disqualified basis''), is allocated and apportioned solely to residual CFC gross income. *See* § 1.951A–2(c)(5)(i). Residual CFC gross income is gross income other than gross tested income, subpart F income, or income effectively connected with a trade or business in the United States. *See* § 1.951A–2(c)(5)(iii)(B). The rule also provides that any depreciation, amortization, or cost recovery allowances attributable to disqualified basis are not properly allocable to property produced or acquired for resale under section 263, 263A, or 471. *See* § 1.951A–2(c)(5)(i). The purpose of the rule is to ensure that taxpayers cannot take advantage of the disqualified period to engage in transactions that allowed taxpayers to enhance their tax attributes, including by reducing their tested income or increasing their tested loss over time, without resulting in any current tax cost. *See* 84 FR 29299.

Explanation of Provisions

I. Rules Under Section 245A(e) To Reduce Hybrid Deduction Accounts

A. In General

As discussed in part II.C.2 of the Summary of Comments and Explanation of Revisions of the section 245A(e) final regulations, the Treasury Department and the IRS have determined that hybrid deduction accounts with respect to stock of a CFC should be reduced in certain cases. In particular, the accounts should generally be reduced to the extent that earnings and profits of the CFC that have not been subject to foreign tax as a result of certain hybrid arrangements are, by reason of certain provisions (not including section 245A(e)), ''included in income'' in the United States (that is, taken into account in income and not offset by, for example, a deduction or credit particular to the inclusion). By adjusting the accounts in this manner, section 245A(e) neutralizes the double non-taxation effects of certain hybrid arrangements in a manner consistent with the results that would arise were the sheltered earnings and profits (that is, the earnings and profits that were not subject to foreign tax as a result of the arrangement) distributed as a dividend for which the section 245A(a) deduction is not allowed. In such a case, the dividend consisting of the sheltered earnings and profits would generally be taken into account in a United States shareholder's gross income, and the United States shareholder would generally be taxed at the U.S. corporate statutory rate and allowed neither a dividends received deduction for the dividend nor other relief particular to the dividend (such as foreign tax credits).

The proposed regulations thus provide a new rule that, as part of the end-of-the-year adjustments to a hybrid deduction account, reduces the account by three categories of amounts included in the gross income of a domestic corporation with respect to the share. *See* proposed § 1.245A(e)–1(d)(4)(i)(B). The first category relates to an inclusion under section 951(a)(1)(A) (''subpart F inclusion'') with respect to the share, and the second relates to a GILTI inclusion amount with respect to the share. *See* proposed § 1.245A(e)–1(d)(4)(i)(B)(*1*) and (*2*). The third category is for inclusions under sections 951(a)(1)(B) and 956 with respect to the share, to the extent the inclusion occurs by reason of the application of section 245A(e) to the hypothetical distribution described in § 1.956–1(a)(2). *See* proposed § 1.245A(e)–1(d)(4)(i)(B)(*3*).

An amount in the third category provides a dollar-for-dollar reduction of the account because, due to the lack of an availability of deductions or credits particular to the amount (including foreign tax credits) to offset or reduce such amount, the entirety of such amount is assumed to be included in income in the United States. *See, for example,* § 1.960–2(b)(1) (no foreign income taxes are deemed paid under section 960(a) with respect to an inclusion under section 951(a)(1)(B)).

As discussed in part I.B of this Explanation of Provisions, the entirety of an amount in the first or second category may not be included in income in the United States and, as a result, such an amount does not provide a dollar-for-dollar reduction of the account. In addition, the reduction of the account for these amounts cannot exceed the hybrid deductions allocated to the share for the taxable year multiplied by the ratio of the subpart F income or tested income, as applicable, of the CFC for the taxable year to the CFC's taxable income. *See* proposed § 1.245A(e)–1(d)(4)(i)(B)(*1*)(*ii*) and (d)(4)(i)(B)(*2*)(*ii*); *see also* proposed § 1.245A(e)–1(d)(4)(i)(B)(*1*)(*iii*) and (d)(4)(i)(B)(*2*)(*iii*) (in certain cases, excess amounts are allocated to other hybrid deduction accounts and reduce those accounts). This limitation is, for example, intended to prevent a subpart F inclusion for a taxable year from removing from the account hybrid deductions incurred in a prior taxable year, because such hybrid deductions generally represent an amount of prior year earnings that were not subject to foreign tax as a result of a hybrid arrangement, and the subpart F inclusion in the current year does not subject such earnings to U.S. tax (but rather, subjects certain current year earnings to U.S. tax). In addition, because hybrid deductions incurred in the current taxable year may ratably shelter from foreign tax each type of earnings of a CFC (as opposed to, for example, only sheltering from foreign tax earnings of a type that the United States views as attributable to subpart F income), the limitation is generally intended to ensure that, for example, a subpart F inclusion does not remove from the account hybrid deductions that sheltered from foreign tax current year earnings of a type that the United States views as attributable to income other than subpart F income.

B. Adjusted Subpart F and GILTI Inclusions

The proposed regulations generally reduce a hybrid deduction account with respect to a share of stock of a CFC by an ''adjusted subpart F inclusion'' or an ''adjusted GILTI inclusion'' (or both) with respect to the share. *See* proposed § 1.245A(e)–1(d)(4)(i)(B)(*1*) and (*2*). An adjusted subpart F inclusion or an adjusted GILTI inclusion is intended to measure, in an administrable manner, the extent to which a domestic corporation's subpart F inclusion or GILTI inclusion amount is likely included in income in the United States, taking into account foreign tax credits associated with the inclusion and, in the case of a GILTI inclusion amount, the deduction under section 250(a)(1)(B).

The starting point in determining an adjusted subpart F inclusion with respect to a share of stock of a CFC is identifying a domestic corporation's pro rata share of the CFC's subpart F income, and then attributing such inclusion to particular shares of stock of the CFC. *See* proposed § 1.245A(e)–1(d)(4)(ii)(A). For purposes of attributing the inclusion, the proposed regulations provide that the principles of section 951(a)(2) and § 1.951–1(b) and (e) apply.

Once the amount of the subpart F inclusion attributable to the share is determined, the ''associated foreign income taxes'' with respect to the amount must be determined. *See* proposed § 1.245A(e)–1(d)(4)(ii)(A) and (D). The term associated foreign income taxes means the amount of current year tax allocated and apportioned to the subpart F income groups of the CFC, to the extent allocated to the share. *See* proposed § 1.245A(e)–1(d)(4)(ii)(D)(*1*) and (d)(4)(ii)(E). The computation of associated foreign income taxes does not take into account any limitations on foreign tax credits, such as under section 904, because doing so would involve considerable complexity. These rules are intended to approximate, in an administrable manner, deemed paid credits resulting from the application of section 960(a) that are eligible to be claimed with respect to the subpart F inclusion attributable to the share.

The final step is to adjust, pursuant to a two-step process, the subpart F inclusion attributable to the share, to approximate the tax effect of the associated foreign income taxes. *See* proposed § 1.245A(e)–1(d)(4)(ii)(A). First, the associated foreign income taxes are added to the subpart F inclusion, to reflect that when a domestic corporation claims section 960 credits it includes in gross income under section 78 an amount equal to such credits. *See* proposed § 1.245A(e)–1(d)(4)(ii)(A)(*1*). Second, an amount equal to the amount of income offset by the associated foreign income taxes—calculated as the associated foreign tax credits divided by the corporate tax rate—is subtracted from the sum of the amounts described in the previous sentence. *See* proposed § 1.245A(e)–1(d)(4)(ii)(A)(*2*). The difference of the amounts is the adjusted subpart F inclusion with respect to the share.[1]

Similar rules apply for purposes of determining an adjusted GILTI inclusion with respect to a share of stock of a CFC. However, special rules account for the fact that the computation of foreign tax credits under section 960(d) takes into account a domestic corporation's inclusion percentage (as described in § 1.960–2(c)(2)) and the 80 percent limit in section 960(d)(1). *See* proposed § 1.245A(e)–1(d)(4)(ii)(B)(*3*) and (d)(4)(ii)(D)(*2*). In addition, a special rule accounts for the effect of a section 250 deduction that a domestic corporation may claim related to GILTI. *See* proposed § 1.245A(e)–1(d)(4)(ii)(B)(*2*).

C. Applicability Date

The proposed rules relating to hybrid deduction accounts are proposed to apply to taxable years ending on or after the date that final regulations are published in the **Federal Register**. For taxable years before taxable years covered by such final regulations, a taxpayer may apply the rules set forth in the final regulations, provided that it consistently applies the rules to those taxable years. *See* section 7805(b)(7). In addition, a taxpayer may rely on the proposed rules with respect to any period before the date that the proposed regulations are published as final regulations in the **Federal Register**, provided that it consistently does so.

II. Conduit Regulations Under § 1.881–3 To Address Equity Interests That Give Rise to Deductions or Other Benefits Under Foreign Law

A. Overview

Under the current conduit financing regulations, an instrument that is treated as equity for U.S. tax purposes (and is not redeemable equity described in § 1.881–3(a)(2)(ii)(B)) generally will not be characterized as a financing transaction, even though the instrument gives rise to a deduction or other benefit under the tax laws of the issuer's jurisdiction. For example, an instrument that is treated as stock (that is not redeemable equity) for U.S. tax purposes, but as indebtedness under the

[1] Thus, for example, in a case in which the subpart F inclusion attributable to a share is \$94.75x and the associated foreign income taxes with respect to such is \$5.25x, the adjusted subpart F inclusion with respect to the share would be \$75x, calculated as \$100x (\$94.75x + \$5.25x) less \$25x (\$5.25x ÷ 21%).

laws of the issuer's jurisdiction, would not be characterized as a financing transaction under the current regulations.

The Treasury Department and the IRS have determined that these types of instruments can be used to inappropriately avoid the application of the conduit financing regulations and, therefore, the proposed regulations expand the definition of equity interests treated as a financing transaction by taking into account the tax treatment of the instrument under the tax law of the relevant foreign country, which is generally the country where the equity issuer resides. The Treasury Department and the IRS have determined that, while these types of instruments are characterized as equity for U.S. tax purposes, they still raise conduit financing concerns if they are either indebtedness under the issuer's tax law or provide benefits similar to indebtedness under the issuer's tax law. For example, a financing company may have an incentive to form a corporation in a country that allows a tax benefit, such as a notional interest deduction with respect to equity, that encourages the routing of income through the intermediary issuer in functionally the same manner as when an intermediate entity issues a debt instrument that is treated as a financing transaction under the current regulations. Similarly, a financing entity may form an intermediate corporation in a country to take advantage of the country's purported integration regime that provides a substantial refund of the issuer's corporate tax paid upon a distribution to a related shareholder, and the shareholder is not taxable on that distribution under the laws of the intermediate country. The Treasury Department and IRS have concluded that these structures raise concerns similar to those Congress intended to address when it enacted sections 267A and 245A(e) regarding arrangements that ''exploit differences in the treatment of a transaction or entity under the laws of two or more tax jurisdictions . . .'' *See* S. Comm. on the Budget, Reconciliation Recommendations Pursuant to H. Con. Res. 71, S. Print No. 115–20, at 389 (2017).

The Treasury Department and the IRS have determined that the conduit regulations should apply in these cases generally based on benefits that are associated with an equity interest, rather than targeting only particular transactions based on specific factors or criteria as recommended by a comment, because these arrangements are often deliberately structured and a more limited approach could be easily circumvented or difficult to administer. However, even if the equity interests of an intermediate entity are treated as a financing transaction under the proposed regulations, the intermediate entity will not be a conduit entity if, for example, its participation in the financing arrangement is not pursuant to a tax avoidance plan. *See* § 1.881–3(b).

B. Treatment of Equity Interests That Give Rise to Deductions or Other Benefits Under Foreign Law

The proposed regulations expand the types of equity interests treated as a financing transaction to include stock or a similar interest if under the tax laws of a foreign country where the issuer is a resident, the issuer is allowed a deduction or another tax benefit for an amount paid, accrued or distributed with respect to the stock or similar interest. Similarly, if the issuer maintains a taxable presence, referred to as a permanent establishment (''PE'') under the laws of many foreign countries without regard to a treaty, and such country allows a deduction (including a notional deduction) for an amount paid, accrued or distributed with respect to the deemed equity or capital of the PE, the amount of the deemed equity or capital will be treated as a financing transaction. *See* proposed § 1.881–3(a)(2)(ii)(B)(*1*)(*iv*). The proposed regulations also treat stock or a similar interest as a financing transaction if a person related to the issuer, generally a shareholder or other interest holder in an entity, is entitled to a refund (including a credit) or similar tax benefit for taxes paid by the issuer to its country of residence, without regard to the person's tax liability with respect to the payment, accrual or distribution under the laws of the issuer. *See* proposed § 1.881–3(a)(2)(ii)(B)(*1*)(*v*).

An equity interest treated as a financing transaction under the proposed regulations would include, for example, stock that gives rise to a notional interest deduction under the tax laws of the foreign country in which the issuer is a tax resident or the tax laws of the country in which the issuer maintains a permanent establishment to which a financing payment is attributable. However, if an equity interest constitutes a financing transaction because the issuer is allowed a notional interest deduction and is one of the financing transactions that links a party to the financing arrangement, the proposed regulations limit the portion of the financed entity's payment that is recharacterized under § 1.881–3(d)(1)(i) to the financing transaction's principal amount as determined under § 1.881–3(d)(1)(ii), multiplied by the applicable rate used to compute the issuer's notional interest deduction in the year of the financed entity's payment. *See* proposed § 1.881–3(d)(1)(iii). This limitation is intended to recharacterize only the portion of the payment that can be traced to the notional interest deduction on the principal amount of the equity on which the notational deduction is based. Notional interest deductions may also accrue with respect to equity composed of retained earnings, not related to the financing transaction, and therefore are not taken into account under this rule.

The proposed regulations also make conforming changes to reflect the application of these rules in the context of Chapter 4 withholding (sections 1471 and 1472).

C. Interaction With Section 267A

While the proposed conduit regulations may apply to many of the same instruments identified in the final regulations under section 267A issued in the Rules and Regulations section of this issue of the **Federal Register** (the ''section 267A final regulations''), in some respects the proposed conduit regulations have a broader scope than those rules in order to prevent the use of conduit entities from inappropriately obtaining the benefits of an applicable U.S. income tax treaty. For example, the imported mismatch rules in the section 267A final regulations, in determining whether a deduction for an interest or royalty payment is disallowed by reason of the income attributable to the payment being offset by an offshore deduction, only take into account offshore deductions that produce a deduction/no inclusion (''D/NI'') outcome as a result of hybridity. A D/NI outcome is not a result of hybridity if, for example, the no-inclusion occurs because the foreign tax law does not impose a corporate income tax.

The existing conduit regulations, in contrast, already apply whether or not there is a D/NI outcome with respect to an offshore financing transaction. The proposed regulations will now also cover, without regard to how the transaction is treated for U.S. tax purposes (as debt or equity), any financing transaction where the intermediate entity is allowed a deduction or other tax benefit similar to those described in the section 267A final regulations and applicable in the imported mismatch context.

D. Applicability Date

The proposed rules relating to conduit transactions are proposed to apply to payments made on or after the date that final regulations are published in the **Federal Register**.

III. Rules Under Section 951A To Address Certain Disqualified Payments Made During the Disqualified Period

A. In General

As discussed in part III of the Background of this preamble, the GILTI final regulations provide that (i) a deduction or loss attributable to disqualified basis created by reason of a transfer from a CFC to a related CFC during the disqualified period is allocated and apportioned solely to residual CFC gross income, and (ii) any depreciation, amortization, or cost recovery allowances attributable to disqualified basis are not properly allocable to property produced or acquired for resale under section 263, 263A, or 471. *See* § 1.951A–2(c)(5)(i).

The Treasury Department and the IRS understand that, in addition to the transactions circumscribed by the rules in § 1.951A–2(c)(5), taxpayers also may have entered into transactions in which, for example, a CFC that licensed property to a related CFC received pre-payments of royalties due under the license from the related CFC, which did not constitute subpart F income. Although the recipient of the pre-payments (''related recipient CFC'') would generally have been required to include the royalties in income upon payment during the disqualified period, when they would not have affected amounts included under section 965 with respect to the related recipient CFC and also would not have given rise to gross tested income under section 951A, the related CFC that made the pre-payment would generally only be allowed to deduct the payment over time as economic performance occurred. *See* section 461. Accordingly, the related CFC that made the pre-payment would claim deductions that reduce tested income (or increase tested loss) during taxable years to which section 951A applies, even though the corresponding income would not have been subject to tax under section 951 (including as a result of section 965) or section 951A.

The Treasury Department and the IRS have determined that the deductions attributable to pre-payments (including, but not limited to, deductions attributable to prepaid rents and royalties) should be subject to similar treatment as the final GILTI regulations' treatment of deductions or loss attributable to disqualified basis. Accordingly, proposed § 1.951A–2(c)(6) treats a deduction by a CFC related to a deductible payment to a related recipient CFC during the disqualified period as allocated and apportioned solely to residual CFC gross income, as defined in § 1.951A–2(c)(5)(iii)(B), and provides that any deduction related to such a payment is not properly allocable to property produced or acquired for resale under section 263, 263A, or 471, consistent with § 1.951A–2(c)(5)(i) and the authority therefor described in the preamble to the final GILTI regulations. *See* 84 FR 29298–29300. This rule applies only to the extent the payments would constitute income described in section 951A(c)(2)(A)(i) and § 1.951A–2(c)(1), without regard to whether section 951A applies. *See* proposed § 1.951A–2(c)(6)(ii)(A).

B. Applicability Date

The proposed rules relating to section 951A are proposed to apply to taxable years of foreign corporations ending on or after April 7, 2020, and to taxable years of United States shareholders in which or with which such taxable years end. *See* section 7805(b)(1)(B). Given the applicability date, these rules would effectively be limited to payments made during the disqualified period that give rise to deductions or loss in taxable years of foreign corporations ending on or after April 7, 2020 and would not, for example, affect payments made during the disqualified period for which the associated deduction or loss is taken into account in the year paid.

Special Analyses

I. Regulatory Planning and Review

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 preliminary Executive Order 13771 designation for this proposed rulemaking is regulatory.

The proposed regulations have been designated by the Office of Management and Budget's Office of Information and Regulatory Affairs as significant under Executive Order 12866 pursuant to section 1(b) the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

A. Background

The Act introduced two new provisions, sections 245A(e) and 267A, that affect the treatment of hybrid arrangements and a new section, 951A, which imposes tax on United States shareholders with respect to certain earnings of their CFCs.[2] The Treasury Department and the IRS previously issued proposed regulations under sections 245A(e) and 267A and are issuing final regulations simultaneously with these current proposed regulations. The Treasury Department and IRS have also previously issued final regulations (REG–104390–18, 83 FR 51072), which provided additional rules implementing section 951A. In addition to these rules, the Treasury Department and the IRS previously provided guidance regarding conduit financing arrangements under sections 881 and 7701(l). *See* TD 8611, 60 FR 40997 and TD 9562, 76 FR 76895.

Section 245A(e) disallows the dividends received deduction (DRD) for any dividend received by a U.S. shareholder from a CFC if the dividend is a hybrid dividend. In addition, section 245A(e) treats hybrid dividends between CFCs with a common U.S. shareholder as subpart F income. The statute defines a hybrid dividend as an amount received from a CFC for which a deduction would be allowed under section 245A(a) and for which the CFC received a deduction or other tax benefit in a foreign country. This disallowance of the DRD for hybrid dividends and the treatment of hybrid dividends as subpart F income neutralizes the double non-taxation that these dividends might otherwise be produced by these dividends.[3] The section 245A(e) final regulations require that taxpayers maintain ''hybrid deduction accounts'' to track a CFC's (or a person related to a CFC's) hybrid deductions allowed in foreign jurisdictions across sources and years. The section 245A(e) final regulations then provide that a dividend received by a U.S. shareholder from the

[2] Hybrid arrangements are tax-avoidance tools used by certain multinational corporations (MNCs) that have operations both in the U.S. and a foreign country. These hybrid arrangements use differences in tax treatment by the U.S. and a foreign country to reduce taxes in one or both jurisdictions. Hybrid arrangements can be ''hybrid entities,'' in which a taxpayer is treated as a flow-through or disregarded entity in one country but as a corporation in another, or ''hybrid instruments,'' which are financial transactions that are treated as debt in one country and as equity in another.

[3] The tax treatment under which certain payments are deductible in one jurisdiction and not included in income in a second jurisdiction is referred to as a deduction/no-inclusion outcome (''D/NI outcome'').

CFC is a hybrid dividend to the extent of the sum of those accounts.

These proposed regulations also include rules regarding conduit financing arrangements.[4] Under the current conduit financing regulations, a ''financing arrangement'' means a series of transactions by which one entity (the financing entity) advances money or other property to another entity (the financed entity) through one or more intermediaries. If the IRS determines that a principal purpose of such an arrangement is to avoid U.S. tax, the IRS may disregard the participation of intermediate entities. As a result, U.S.-source payments from the financed entity are, for U.S. withholding tax purposes, treated as being made directly to the financing entity.

For example, consider a foreign entity that is seeking to finance its U.S. subsidiary but is not entitled to U.S. tax treaty benefits; thus, U.S.-source payments made to this entity are not entitled to reduced withholding tax rates. Instead of lending money directly to the U.S. subsidiary, the foreign entity might loan money to an affiliate residing in a treaty jurisdiction and have the affiliate lend on to the U.S. subsidiary in order to access U.S. tax treaty benefits.

Under the current conduit financing regulations, if the IRS determines that a principal purpose of such an arrangement is to avoid U.S. tax, the IRS may disregard the participation of the affiliate. As a result, U.S.-source interest payments from the U.S. subsidiary are, for U.S. withholding tax purposes, treated as being made directly to the foreign entity.

In general, the current conduit financing regulations apply only if ''financing transactions,'' as defined under the regulations, link the financing entity, the intermediate entities, and the financed entity. Under the current conduit financing regulations, an instrument that is equity for U.S. tax purposes generally will not be treated as a ''financing transaction'' unless it provides the holder significant redemption rights. This is the case even if the instrument gives rise to a deduction under the laws of the foreign jurisdiction (*e.g.,* perpetual debt). As a result, the current conduit financing regulations would not apply, and the U.S.-source payment might be entitled to a lower rate of U.S. withholding tax.

The proposed regulations also implement items in section 951A of the Act. Section 951A provides for the taxation of global intangible low-taxed income (GILTI), effective beginning with the first taxable year of a CFC that begins after December 31. 2017. The GILTI final regulations address the treatment of a deduction or loss attributable to basis created by certain transfers of property from one CFC to a related CFC after December 31, 2017, but before the date on which section 951A first applies to the transferring CFC's income. Those regulations state that such a deduction or loss is allocated to residual CFC gross income; that is, income that is not attributable to tested income, subpart F income, or income effectively connected with a trade or business in the United States.

B. Overview of Proposed Regulations

These proposed regulations address three main issues: (i) Adjustments to hybrid deduction accounts under section 245A(e) and the final regulations; (ii) conduit financing arrangements that use certain equity interests that allow the issuer a deduction or other tax benefit under foreign tax law; and (iii) certain payments between related CFCs during a disqualified period under section 951A and the GILTI final regulations.

First, the proposed regulations address adjustments to hybrid deduction accounts under section 245A(e) and the final regulations. The section 245A(e) final regulations stipulate that hybrid deduction accounts should generally be reduced to the extent that earnings and profits of the CFC that have not been subject to foreign tax as a result of certain hybrid arrangements are included in income in the United States by some provision other than section 245A(e). The proposed regulations provide new rules for reducing hybrid deduction accounts by reason of income inclusions attributable to subpart F, GILTI, and sections 951(a)(1)(B) and 956. An inclusion due to subpart F or GILTI reduces a hybrid deduction account only to the extent that the inclusion is not offset by a deduction or credit, such as a foreign tax credit, that likely will be afforded to the inclusion. Because deductions and credits are typically not available to offset income inclusions under section 951(a)(1)(B) and 956, these inclusions reduce a hybrid deduction account dollar-for-dollar.

Second, the proposed regulations address conduit financing arrangements under § 1.881–3 by expanding the types of transactions classified as financing transactions. The proposed rules state that if the issuer of a financial instrument is allowed a deduction or tax benefit for an amount paid, accrued, or distributed with respect to a stock or similar interest under the tax law of the foreign jurisdiction where the issuer is a resident, then it may now be characterized as a financing transaction even though the instrument is equity for U.S. tax purposes. Accordingly, the conduit financing regulations would apply to multiple-party financing arrangements using these types of instruments, which include certain types of hybrid instruments. This change essentially aligns the conduit regulations with the policy of section 267A by discouraging the exploitation of differences in treatment of financial instruments across jurisdictions. While section 267A and the final regulations apply only if the D/NI outcome is a result of the use of a hybrid entity or instrument, the conduit financing regulations apply regardless of causation and instead look to whether there is a tax avoidance plan. Thus, this new rule will address economically similar transactions that section 267A and the section 267A final regulations do not cover.

Finally, the proposed regulations address certain payments made after December 31, 2017, but before the date of the start of the first fiscal year for the transferor CFC for which 951A applies (the ''disqualified period'') in which payments, such as pre-payments of royalties, create income during the disqualified period and a corresponding deduction or loss claimed in taxable years after the disqualified period. Absent the proposed regulations, those deductions or losses could have been used to reduce tested income or increase tested losses, among other benefits. However, under the proposed regulations, these deductions will no longer provide such a tax benefit, and will instead be allocated to residual CFC income, similar to deductions or losses from certain property transfers in the disqualified period under the GILTI final regulations.

C. Need for the Proposed Regulations

A failure to reduce hybrid deduction accounts by certain earnings of a CFC that are indirectly included in the income of a U.S. shareholder may result in double taxation for some taxpayers—

[4] On December 22, 2008, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–113462–08) (''2008 proposed regulations'') that proposed adding § 1.881–3(a)(2)(i)(C) to the conduit financing regulations. The preamble to the 2008 proposed regulations provides that the Treasury Department and the IRS are also studying transactions where a financing entity advances cash or other property to an intermediate entity in exchange for a hybrid instrument (that is, an instrument treated as debt under the tax laws of the foreign country in which the intermediary is resident and equity for U.S. tax purposes), and states that they may issue separate guidance to address the treatment under § 1.881–3 of certain hybrid instruments.

for example, those which have subpart F or GILTI income inclusions.

Failure to address certain equity interests under the conduit financing regulations may allow some MNCs to avoid U.S. tax by shifting additional income towards conduit financing arrangements that use financial instruments treated as equity for U.S. tax purposes but as debt in a foreign jurisdiction. These arrangements are economically similar to the hybrid arrangements that are addressed by the Act and by the section 267A final regulations and to other arrangements covered by the conduit financing regulations, but they have not yet been addressed themselves.

The Treasury Department and IRS are aware that certain transactions that accelerate income, but do not give rise to a disposition of property (*e.g.,* prepayments of royalties from a related CFC) fall outside the purview of the GILTI final regulations. In order for the Code to treat similar transactions similarly, these types of transactions need to be addressed by regulation.

D. 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 regulations.

2. Economic Analysis of Specific Provisions and Alternatives Considered

i. Section 245A(e)—Adjustment of Hybrid Deduction Account

Under the final regulations, taxpayers must maintain hybrid deduction accounts to track income of a CFC that was sheltered from foreign tax due to hybrid arrangements, so that it may be included in U.S. income under section 245A(e) when paid as a dividend. The proposed regulations address how hybrid deduction accounts should be adjusted to account for earnings and profits of a CFC included in U.S. income due to certain provisions other than section 245A(e). The proposed regulations provide rules reducing a hybrid deduction account for three categories of inclusions: Subpart F inclusions, GILTI inclusions, and inclusions under sections 951(a)(1)(B) and 956.

One option for addressing the treatment of earnings and profits included in U.S. income due to provisions other than section 245A(e) would be to not issue additional guidance beyond current tax rules and thus not to adjust hybrid deduction accounts to account for such inclusions. This would be the simplest approach among those considered, but under this approach, some income could be subject to double taxation in the United States. For example, if no adjustment is made, to the extent that a CFC's earnings and profits were sheltered from foreign tax as a result of certain hybrid arrangements, the section 245A DRD would be disallowed for an amount of dividends equal to the amount of the sheltered earnings and profits, even if some of the sheltered earnings and profits were included in the income of a U.S. shareholder under the subpart F rules. The U.S. shareholder would be subject to tax on both the dividends and on the subpart F inclusion. Owing to this double taxation, this approach is not proposed by the Treasury Department and the IRS.

A second option would be to reduce hybrid deduction accounts by amounts included in gross income under the three categories; that is, without regard to deductions or credits that may offset the inclusion. While this option is also relatively simple, it could lead to double non-taxation and thus would give rise to results not intended by the statute. Subpart F and GILTI inclusions may be offset by—and thus may not be fully taxed in the United States as a result of—foreign tax credits and, in the case of GILTI, the section 250 deduction.[5] Therefore, this option for reducing hybrid deduction accounts may result in some income that was sheltered from foreign tax due to hybrid arrangements also escaping full U.S. taxation. This double non-taxation is economically inefficient because otherwise similar activities are taxed differently, incentivizing wasteful avoidance activities.

A third option, which is the option proposed by the Treasury Department and the IRS, is to reduce hybrid deduction accounts by the amount of the inclusions from the three categories, but only to the extent that the inclusions are likely not offset by foreign tax credits or, in the case of GILTI, the section 250 deduction. For subpart F and GILTI inclusions, the proposed regulations stipulate adjustments to be made to account for the foreign tax credits and the section 250 deduction available to GILTI income. These adjustments are intended to provide a precise, administrable manner for measuring the extent to which a subpart F or GILTI inclusion is included in U.S. income and not shielded by foreign tax credits or deductions. This option results in an outcome aligned with statutory intent, as it generally ensures that the section 245A DRD is disallowed (and thus a dividend is included in U.S. income without any regard for foreign tax credits) only for amounts that were sheltered from foreign tax by reason of a hybrid arrangement but that have not yet been subject to U.S. tax.

Relative to a no-action baseline, the proposed regulations provide taxpayers with new instruction regarding how to adjust hybrid deduction accounts to account for earnings and profits that are included in U.S. income by reason of certain provisions other than section 245A(e). This new instruction avoids possible double taxation. Double taxation is inconsistent with the intent and purpose of the statute and is economically inefficient because it may result in otherwise similar income streams facing different tax treatment, incentivizing taxpayers to finance operations with specific income streams and activities that may not be the most economically productive.

The Treasury Department and IRS estimate that this provision will impact an upper bound of approximately 2,000 taxpayers. This estimate is based on the top 10 percent of taxpayers (by gross receipts) that filed a domestic corporate income tax return for tax year 2017 with a Form 5471 attached, because only domestic corporations that are U.S. shareholders of CFCs are potentially affected by section 245A(e).[6]

This estimate is an upper bound on the number of large corporations affected because it is based on all transactions, even though only a portion of such transactions involve hybrid arrangements. The tax data do not report whether these reported dividends were part of a hybrid arrangement because such information was not relevant for calculating tax prior to the Act. In addition, this estimate is an upper bound because the Treasury Department and the IRS anticipate that fewer taxpayers would engage in hybrid arrangements going forward as the statute and § 1.245A(e)–1 would make such arrangements less beneficial to taxpayers.

[5] Typically, deductions or credits are not available to offset income inclusions under sections 951(a)(1)(B) and 956, the third category addressed by the proposed regulations.

[6] Because of the complexities involved, primarily only large taxpayers engage in hybrid arrangements. The estimate that the top 10 percent of otherwise-relevant taxpayers (by gross receipts) are likely to engage in hybrid arrangements is based on the judgment of the Treasury Department and IRS.

ii. Conduit Financing Regulations To Address Equity Interests That Give Rise to Deductions or Other Benefits Under Foreign law

The conduit financing regulations allow the IRS to disregard intermediate entities in a multiple-party financing arrangement for the purposes of determining withholding tax rates if the instruments used in the arrangement are considered ''financing transactions.'' Financing transactions generally exclude instruments that are treated as equity for U.S. tax purposes unless they have significant redemption features. Thus, in the absence of further guidance, the conduit financing regulations would not apply to certain arrangements using certain hybrid instruments or other instruments that are eligible for deductions in the jurisdiction of the issuer but treated as equity under U.S. law. This would allow payments made under these arrangements to continue to be eligible for reduced withholding tax rates through a conduit structure.

One option for addressing the current disparate treatment would be to not change the conduit financing regulations, which currently treat equity as a financing transaction only if it has specific redemption features; this is the no-action baseline. This option is not proposed by the Treasury Department and the IRS, since it is inconsistent with the Treasury Department's and the IRS's ongoing efforts to address financing transactions that use hybrid instruments, as discussed in the 2008 proposed regulations.

A second option considered would be to treat as a financing transaction an instrument that is equity for U.S. tax purposes but debt for purposes of the issuer's jurisdiction of residence. This approach would prevent taxpayers from using this type of hybrid instrument to engage in treaty shopping through a conduit jurisdiction. However, this approach would not cover certain cases, such as if a jurisdiction offers a tax benefit to non-debt instruments (*e.g.,* a notional interest deduction with respect to equity).

A third option, which is adopted in these proposed regulations, is to treat as a financing transaction any instrument that is equity for U.S. tax purposes and which entitles its issuer or its shareholder a deduction or similar tax benefit in the issuer's resident jurisdiction or in the jurisdiction where the resident has a permanent establishment. This rule is broader than the second option. It covers all instruments that give rise to deductions or similar tax benefits, such as credits, rather than only those instruments that are treated as debt. This rule also covers instruments where a financing payment is attributable to a permanent establishment of the issuer, and the tax laws of the permanent establishment's jurisdiction allow a deduction or similar treatment for the instrument. This will prevent issuers from routing transactions through their permanent establishments to avoid the anti-conduit rules. The Treasury Department and the IRS adopted this third option since it will most efficiently, and in a manner that is clear and administrable, prevent inappropriate avoidance of the conduit financing regulations. The Treasury Department and the IRS project that this third option will ensure that similar financing arrangements are treated similarly by the tax system.

Relative to a no-action baseline, the proposed regulations are likely to incentivize some taxpayers to shift away from conduit financing arrangements and hybrid arrangements. The Treasury Department and the IRS project little to no overall economic loss, or even an economic gain, from this shift because conduit arrangements are generally not economically productive arrangements and are typically pursued only for tax-related reasons. The Treasury Department and the IRS recognize, however, that as a result of these provisions, some taxpayers may face a higher effective tax rate, which may lower their economic activity.

The Treasury Department and the IRS have not undertaken more precise quantitative estimates of either of these economic effects because we do not have readily available data or models to estimate with reasonable precision: (i) The types or volume of conduit arrangements that taxpayers would likely use under the proposed regulations or under the no-action baseline; or (ii) the effects of those arrangements on businesses' overall economic performance, including possible differences in compliance costs. In the absence of such quantitative estimates, the Treasury Department and the IRS project that the proposed regulations will best enhance U.S. economic performance relative to the no-action baseline and relative to other alternative regulatory approaches and because they most comprehensively ensure that similar financing arrangements are treated similarly by the tax system.

The Treasury Department and the IRS estimate that the number of taxpayers potentially affected by the proposed conduit financing regulations will be an upper bound of approximately 7,000 taxpayers. This estimate is based on the top 10 percent of taxpayers (by gross receipts) that filed a domestic corporate income tax return with a Form 5472, ''Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business,'' attached because primarily foreign entities that advance money or other property to a related U.S. entity through one or more foreign intermediaries are potentially affected by the conduit financing regulations.[7]

This estimate is an upper bound on the number of large corporations affected because it is based on all domestic corporate arrangements involving foreign related parties, even though only a portion of such arrangements are conduit financing arrangements that use hybrid instruments. The tax data do not report whether these arrangements were part of a conduit financing arrangement because such information is not provided on tax forms. In addition, this estimate is an upper bound because the Treasury Department and the IRS anticipate that fewer taxpayers would engage in conduit financing arrangements that use hybrid instruments going forward as the proposed conduit financing regulations would make such arrangements less beneficial to taxpayers.

iii. Rules Under Section 951A To Address Certain Disqualified Payments Made During the Disqualified Period

The final 951A regulations include a rule that addresses certain transactions involving asset transfers between related CFCs during the disqualified period that may have the effect of reducing GILTI inclusions due to timing differences between when a transaction occurs and when resulting deductions are claimed. The disqualified period of a CFC is the period between December 31, 2017, which is the last earnings and profits 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.

The proposed regulations refine this rule to extend its applicability to other transactions for which similar timing differences can arise. For example, suppose that a CFC licensed property to a related CFC for ten years and received pre-payments of royalties during the

[7] Because of the complexities involved, primarily only large taxpayers engage in conduit financing arrangements. The estimate that the top 10 percent of otherwise-relevant taxpayers (by gross receipts) are likely to engage in conduit financing arrangements is based on the judgment of the Treasury Department and IRS.

disqualified period from the related CFC. Since these prepayments were received by the licensor CFC during the disqualified period, they would not have affected amounts included under section 965 nor given rise to GILTI tested income. However, the licensee CFC that made the payments would not have claimed the total of the corresponding deductions during the disqualified period, since the timing of deductions are generally tied to economic performance over the period of use. The licensee CFC would claim deductions over the ten years of the contract, and since these deductions would be claimed during taxable years when section 951A is in effect, these deductions would reduce GILTI tested income or increase GILTI tested loss. Thus, this type of transaction could lower overall income inclusions for the U.S. shareholder of these CFCs in a manner that does not accurately reflect the earnings of the CFCs over time.

The Treasury Department and the IRS propose that all deductions attributable to payments to a related CFC during the disqualified period should be allocated and apportioned to residual CFC gross income. These deductions will not thereby reduce tested, subpart F or effectively connected income. This rule provides similar treatment to transactions involving prepayments as the rule in the GILTI final regulations provides to asset transfers between related CFCs during the disqualified period.

Relative to a no-action baseline, the proposed regulations harmonize the treatment of similar transactions. Since this rule applies to deductions resulting from transactions that occurred during the disqualified period and not to any new transactions, the Treasury Department and the IRS do not expect changes in taxpayer behavior under the proposed regulations, relative to the no-action baseline.

The Treasury Department and the IRS estimate that the number of taxpayers potentially affected by these proposed regulations will be an upper bound of approximately 25,000 to 35,000 taxpayers. This estimate is 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 section 951A. This estimate is an upper bound because it is based on all filers subject to section 951A, even though only a portion of such taxpayers may have engaged in the pre-payment transactions during the disqualified period described in the proposed regulations. Therefore, the Treasury Department and the IRS estimate that the number of taxpayers potentially affected by these proposed regulations will be substantially less than 25,000 to 35,000 taxpayers.

II. Paperwork Reduction Act

Pursuant to § 1.6038–2(f)(14), certain U.S. shareholders of a CFC must provide information relating to the CFC and the rules of section 245A(e) on Form 5471, ''Information Return of U.S. Persons With Respect to Certain Foreign Corporations,'' (OMB control number 1545–0123), as the form or other guidance may prescribe. The proposed regulations do not impose any additional information collection requirements relating to section 245A(e). However, the proposed regulations provide guidance regarding certain computations required under section 245A(e), and such could affect the information required to be reported on Form 5471. For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (''PRA''), the reporting burden associated with § 1.6038–2(f)(14) is reflected in the PRA submission for Form 5471. See the chart at the end of this part II of this Special Analyses section for the status of the PRA submission for Form 5471. As described in the Special Analyses section the preamble to the section 245A(e) final regulations, and as set forth in the chart below, the IRS estimates the number of affected filers to be 2,000.

Pursuant to § 1.6038–5, certain U.S. shareholders of a CFC must provide information relating to the CFC and the U.S. shareholder's GILTI inclusion under section 951A on new Form 8992, ''U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI),'' (OMB control number 1545–0123), as the form or other guidance may prescribe. The proposed regulations do not impose any additional information collection requirements relating to section 951A. However, the proposed regulations provide guidance regarding computations required under section 951A for taxpayers who engaged in certain transactions during the disqualified period, and such guidance could affect the information required to be reported by these taxpayers on Form 8992. For purposes of the PRA, the reporting burden associated with the collection of information under § 1.6038–5 is reflected in the PRA submission for Form 8992. See the chart at the end of this part II of this Special Analyses section for the status of the PRA submission for Form 8992. As discussed in the Special Analyses section of the preamble to the proposed regulations under section 951A (REG–104390–18, 83 FR 51072), and as set forth in the chart below, the IRS estimates the number of filers subject to § 1.6038–5 to be 25,000 to 35,000. Since the proposed regulations only apply to taxpayers who engaged in certain transactions during the disqualified period, the IRS estimates that the number of filers affected by the proposed regulations and subject to the collection of information in § 1.6038–5 will be significantly less than 25,000 to 35,000.

There is no existing collection of information relating to conduit financing arrangements, and the proposed regulations do not impose any new information collection requirements relating to conduit financing arrangements. Therefore, a PRA analysis is not required with respect to the proposed regulations relating to conduit financing arrangements.

As a result, the IRS estimates the number of filers affected by these proposed regulations to be the following.

TAX FORMS IMPACTED

Collection of information	Number of respondents (estimated, rounded to nearest 1,000)	Forms in which information may be collected
§ 1.6038–2(f)(14)	2,000	Form 5471 (Schedule I).
§ 1.6038–5	25,000–35,000	Form 8992.

Source: IRS data (MeF, DCS, and Compliance Data Warehouse)

The current status of the PRA submissions related to the tax forms associated with the information collections in §§ 1.6038–2(f)(14) and 1.6038–5 is provided in the accompanying table. The reporting burdens associated with the information collections in §§ 1.6038–2(f)(14) and 1.6038–5 are included in the aggregated burden estimates for OMB control number 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). The overall burden estimates provided in 1545–0123 are aggregate amounts that relate to the entire package of forms associated with the OMB control number, and are therefore not accurate for future calculations needed to assess the burden specific to certain regulations, such as the information collections under § 1.6038–2(f)(14) or § 1.6038–5. No burden estimates specific to the proposed regulations are currently available. The Treasury Department and the IRS have not identified any burden estimates, including those for 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. Changes in those estimates will capture both changes made by the Act and those that arise out of discretionary authority exercised in the proposed 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 related to the forms described and ways for the IRS to minimize the paperwork burden. Proposed revisions (if any) to these forms that reflect the information collections related to the proposed 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 Number(s)	Status
Form 5471	Business (NEW Model)	1545–0123	Published in the **Federal Register** on 9/30/19 (84 FR 51718). Public Comment period closed on 11/29/19. Approved by OMB through 1/31/2021.
	Link: *https://www.federalregister.gov/documents/2019/09/30/2019-21068/proposed-collection-comment-request-for-forms-1065-1066-1120-1120-c-1120-f-1120-h-1120-nd-1120-s.*		
	Individual (NEW Model)	1545–0074	Published in the **Federal Register** on 9/30/19 (84 FR 51712). Public Comment period closed on 11/29/19. Approved by OMB through 1/31/2021.
	Link: *https://www.federalregister.gov/documents/2019/09/30/2019-21066/proposed-collection-comment-request-for-form-1040-form-1040nr-form-1040nr-ez-form-1040x-1040-sr-and-u.*		
Form 8992	Business (NEW Model)	1545–0123	Published in the **Federal Register** on 9/30/19 (84 FR 51718). Public Comment period closed on 11/29/19. Approved by OMB through 1/31/2021.
	Link: *https://www.federalregister.gov/documents/2019/09/30/2019-21068/proposed-collection-comment-request-for-forms-1065-1066-1120-1120-c-1120-f-1120-h-1120-nd-1120-s.*		

III. Regulatory Flexibility Act

It is hereby certified that this notice of proposed rulemaking 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).

These proposed regulations, if finalized, would amend certain computations required under section 245A(e) or section 951A. As discussed in the Special Analyses accompanying the preambles to the section 245A(e) final regulations and the proposed regulations under section 951A (REG–104390–18, 83 FR 51072), as well as in this part III of the Special Analyses, the Treasury Department and the IRS project that a substantial number of domestic small business entities will not be subject to sections 245A(e) and 951A, and therefore, the existing requirements in §§ 1.6038–2(f)(14) and 1.6038–5 will not have a significant economic impact on a substantial number of small entities.

The small entities that are subject to section 245A(e) and § 1.6038–2(f)(14) are controlling U.S. shareholders of a CFC that engage in a hybrid arrangement, and the small entities that are subject to section 951A and § 1.6038–5 are U.S. shareholders of a CFC. A CFC is a foreign corporation in which more than 50 percent of its stock is owned by U.S. shareholders, measured either by value or voting power. A U.S. shareholder is any U.S. person that owns 10 percent or more of a foreign corporation's stock, measured either by value or voting power, and a controlling U.S. shareholder of a CFC is a U.S. person that owns more than 50 percent of the CFC's stock.

The Treasury Department and the IRS estimate that there are only a small number of taxpayers having gross receipts below either $25 million (or $41.5 million for financial entities) who would potentially be affected by these regulations.[8] Our estimate of those entities who could potentially be affected is based on our review of those taxpayers who filed a domestic corporate income tax return in 2016 with gross receipts below either $25 million (or $41.5 million for financial institutions) who also reported dividends on a Form 5471. The Treasury Department and the IRS estimate that the number of small entities potentially affected by these regulations will be between 1 and 6 percent of all affected entities regardless of size.

The Treasury Department and the IRS cannot readily identify from these data amounts that are received pursuant to hybrid arrangements because those amounts are not separately reported on tax forms. Thus, dividends received as reported on Form 5471 are an upper

[8] This estimate is limited to those taxpayers who report gross receipts above $0.

bound on the amount of hybrid arrangements by these taxpayers.

The Treasury Department and the IRS estimated the upper bound of the relative cost of the statutory and regulatory hybrids provisions, as a percentage of revenue, for these taxpayers as (i) the statutory tax rate of 21 percent multiplied by dividends received as reported on Form 5471, divided by (ii) the taxpayer's gross receipts. Based on this calculation, the Treasury Department and the IRS estimate that the upper bound of the relative cost of these statutory and regulatory provisions is above 3 percent for more than half of the small entities described in the preceding paragraph. Because this estimate is an upper bound, a smaller subset of these taxpayers (including potentially zero taxpayers) is likely to have a cost above three percent of gross receipts.

Notwithstanding this certification, the Treasury Department and IRS invite comments about the impact this proposal may have on 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 business.

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 rules.

All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, then notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Shane M. McCarrick and Richard F. Owens 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 1.245A(e)–1 is amended by:

■ 1. Adding paragraphs (d)(4)(i)(B) and (d)(4)(ii).

■ 2. Adding a sentence at the end of the introductory text of paragraph (g).

■ 3. Adding paragraphs (g)(1)(v) and (h)(2).

The additions read as follows:

§ 1.245A(e)–1 Special rules for hybrid dividends.

* * * * *

(d) * * *

(4) * * *

(i) * * *

(B) Second, the account is decreased (but not below zero) pursuant to the rules of paragraphs (d)(4)(i)(B)(*1*) through (*3*) of this section, in the order set forth in this paragraph (d)(4)(i)(B).

(*1*) *Adjusted subpart F inclusions*—(*i*) *In general.* Subject to the limitation in paragraph (d)(4)(i)(B)(*1*)(*ii*) of this section, the account is reduced by an adjusted subpart F inclusion with respect to the share for the taxable year, as determined pursuant to the rules of paragraph (d)(4)(ii) of this section.

(*ii*) *Limitation.* The reduction pursuant to paragraph (d)(4)(i)(B)(*1*)(*i*) of this section cannot exceed the hybrid deductions of the CFC allocated to the share for the taxable year multiplied by a fraction, the numerator of which is the subpart F income of the CFC for the taxable year and the denominator of which is the taxable income (as determined under § 1.952–2(b)) of the CFC for the taxable year. However, if the denominator of the fraction would be zero or less, then the fraction is considered to be zero.

(*iii*) *Special rule allocating reductions across accounts in certain cases.* This paragraph (d)(4)(i)(B)(*1*)(*iii*) applies after each of the specified owner's hybrid deduction accounts with respect to its shares of stock of the CFC are adjusted pursuant to paragraph (d)(4)(i)(B)(*1*)(*i*) of this section but before the accounts are adjusted pursuant to paragraph (d)(4)(i)(B)(*2*) of this section, to the extent that one or more of the hybrid deduction accounts would have been reduced by an amount pursuant to paragraph (d)(4)(i)(B)(*1*)(*i*) of this section but for the limitation in paragraph (d)(4)(i)(B)(*1*)(*ii*) of this section (the aggregate of the amounts that would have been reduced but for the limitation, the *excess amount,* and the accounts that would have been reduced by the excess amount, the *excess amount accounts*). When this paragraph (d)(4)(i)(B)(*1*)(*iii*) applies, the specified owner's hybrid deduction accounts other than the excess amount accounts (if any) are ratably reduced by the lesser of the excess amount and the difference of the following two amounts: The hybrid deductions of the CFC allocated to the specified owner's shares of stock of the CFC for the taxable year multiplied by the fraction described in paragraph (d)(4)(i)(B)(*1*)(*ii*) of this section; and the reductions pursuant to paragraph (d)(4)(i)(B)(*1*)(*i*) of this section with respect to the specified owner's shares of stock of the CFC.

(*2*) *Adjusted GILTI inclusions*—(*i*) *In general.* Subject to the limitation in paragraph (d)(4)(i)(B)(*2*)(*ii*) of this section, the account is reduced by an adjusted GILTI inclusion with respect to the share for the taxable year, as determined pursuant to the rules of paragraph (d)(4)(ii) of this section.

(*ii*) *Limitation.* The reduction pursuant to paragraph (d)(4)(i)(B)(*2*)(*i*) of this section cannot exceed the hybrid deductions of the CFC allocated to the share for the taxable year multiplied by a fraction, the numerator of which is the tested income of the CFC for the taxable year and the denominator of which is the taxable income (as determined under § 1.952–2(b)) of the CFC for the taxable year. However, if the denominator of the fraction would be zero or less, then the fraction is considered to be zero.

(*iii*) *Special rule allocating reductions across accounts in certain cases.* This paragraph (d)(4)(i)(B)(*2*)(*iii*) applies after each of the specified owner's hybrid deduction accounts with respect to its shares of stock of the CFC are adjusted pursuant to paragraph (d)(4)(i)(B)(*2*)(*i*) of this section but before the accounts are adjusted pursuant to paragraph (d)(4)(i)(B)(*3*) of this section, to the extent that one or more of the hybrid deduction accounts would have been reduced by an amount pursuant to paragraph (d)(4)(i)(B)(*2*)(*i*) of this section but for the limitation in paragraph (d)(4)(i)(B)(*2*)(*ii*) of this section (the aggregate of the amounts that would have been reduced but for the limitation, the *excess amount,* and the accounts that would have been reduced by the excess amount, the *excess amount accounts*). When this paragraph (d)(4)(i)(B)(*2*)(*iii*) applies, the specified owner's hybrid deduction accounts other than the excess amount accounts (if any) are ratably reduced by the lesser of the excess amount and the difference of the following two amounts: The hybrid deductions of the CFC allocated to the specified owner's shares of stock of the CFC for the taxable year multiplied by the fraction described in paragraph (d)(4)(i)(B)(*2*)(*ii*) of this section; and the reductions pursuant to paragraph (d)(4)(i)(B)(*2*)(*i*) of this section with respect to the specified owner's shares of stock of the CFC.

(*3*) *Certain section 956 inclusions.* The account is reduced by an amount included in the gross income of a domestic corporation under sections 951(a)(1)(B) and 956 with respect to the share for the taxable year of the domestic corporation in which or with which the CFC's taxable year ends, to the extent so included by reason of the application of section 245A(e) and this section to the hypothetical distribution described in § 1.956–1(a)(2).

* * * * *

(ii) *Rules regarding adjusted subpart F and GILTI inclusions.* (A) The term *adjusted subpart F inclusion* means, with respect to a share of stock of a CFC for a taxable year of the CFC, a domestic corporation's pro rata share of the CFC's subpart F income included in gross income under section 951(a)(1)(A) for the taxable year of the domestic corporation in which or with which the CFC's taxable year ends, to the extent attributable to the share (as determined under the principles of section 951(a)(2) and § 1.951–1(b) and (e)), adjusted by—

(*1*) Adding to the amount the associated foreign income taxes with respect to the amount; and

(*2*) Subtracting from such sum the quotient of the associated foreign income taxes divided by the percentage described in section 11(b).

(B) The term *adjusted GILTI inclusion* means, with respect to a share of stock of a CFC for a taxable year of the CFC, a domestic corporation's GILTI inclusion amount (within the meaning of § 1.951A–1(c)(1)) for the U.S. shareholder inclusion year (within the meaning of § 1.951A–1(f)(7)), to the extent attributable to the share (as determined under paragraph (d)(4)(ii)(C) of this section), adjusted by—

(*1*) Adding to the amount the associated foreign income taxes with respect to the amount;

(*2*) Multiplying such sum by the difference of 100 percent and the percentage described in section 250(a)(1)(B); and

(*3*) Subtracting from such product the quotient of 80 percent of the associated foreign income taxes divided by the percentage described in section 11(b).

(C) A domestic corporation's GILTI inclusion amount for a U.S. shareholder inclusion year is attributable to a share of stock of the CFC based on a fraction—

(*1*) The numerator of which is the domestic corporation's pro rata share of the tested income of the CFC for the U.S. shareholder inclusion year, to the extent attributable to the share (as determined under the principles of § 1.951A–1(d)(2)); and

(*2*) The denominator of which is the aggregate of the domestic corporation's pro rata share of the tested income of each tested income CFC (as defined in § 1.951A–2(b)(1)) for the U.S. shareholder inclusion year.

(D) The term *associated foreign income taxes* means—

(*1*) With respect to a domestic corporation's pro rata share of the subpart F income of the CFC included in gross income under section 951(a)(1)(A) and attributable to a share of stock of a CFC for a taxable year of the CFC, current year tax (as described in § 1.960–1(b)(4)) allocated and apportioned under § 1.960–1(d)(3)(ii) to the subpart F income groups (as described in § 1.960–1(b)(30)) of the CFC for the taxable year, to the extent allocated to the share under paragraph (d)(4)(ii)(E) of this section; and

(*2*) With respect to a domestic corporation's GILTI inclusion amount under section 951A attributable to a share of stock of a CFC for a taxable year of the CFC, current year tax (as described in § 1.960–1(b)(4)) allocated and apportioned under § 1.960–1(d)(3)(ii) to the tested income groups (as described in § 1.960–1(b)(33)) of the CFC for the taxable year, to the extent allocated to the share under paragraph (d)(4)(ii)(F) of this section, multiplied by the domestic corporation's inclusion percentage (as described in § 1.960–2(c)(2)).

(E) Current year tax allocated and apportioned to a subpart F income group of a CFC for a taxable year is allocated to a share of stock of the CFC by multiplying the foreign income tax by a fraction—

(*1*) The numerator of which is the domestic corporation's pro rata share of the subpart F income of the CFC for the taxable year, to the extent attributable to the share (as determined under the principles of section 951(a)(2) and § 1.951–1(b) and (e)); and

(*2*) The denominator of which is the subpart F income of the CFC for the taxable year.

(F) Current year tax allocated and apportioned to a tested income group of a CFC for a taxable year is allocated to a share of stock of the CFC by multiplying the foreign income tax by a fraction—

(*1*) The numerator of which is the domestic corporation's pro rata share of tested income of the CFC for the taxable year, to the extent attributable to the share (as determined under the principles § 1.951A–1(d)(2)); and

(*2*) The denominator of which is the tested income of the CFC for the taxable year.

* * * * *

(g) * * * No amounts are included in the gross income of US1 under sections 951(a)(1)(A), 951A(a), or 951(a)(1)(B) and 956.

(1) * * *

(v) *Alternative facts—account reduced by adjusted GILTI inclusion.* The facts are the same as in paragraph (g)(1)(i) of this section, except that for taxable year 1 FX has $130x of gross tested income and $10.5x of current year tax (as described in § 1.960–1(b)(4)) that is allocated and apportioned under § 1.960–1(d)(3)(ii) to the tested income groups of FX. In addition, FX has $119.5x of tested income ($130x of gross tested income, less the $10.5x of current year tax deductions properly allocable to the gross tested income). Further, of US1's pro rata share of the tested income ($119.5x), $80x is attributable to Share A and $39.5x is attributable to Share B (as determined under the principles of § 1.951A–1(d)(2)). Moreover, US1's net deemed tangible income return (as defined in § 1.951A–1(c)(3)) for taxable year 1 is $71.7x, and US1 does not own any stock of a CFC other than its stock of FX. Thus, US1's GILTI inclusion amount (within the meaning of § 1.951A–1(c)(1)) for taxable year 1, the U.S. shareholder inclusion year, is $47.8x (net CFC tested income of $119.5x, less net deemed tangible income return of $71.7x) and US1's inclusion percentage (as described in § 1.960–2(c)(2)) is 40 ($47.8x/$119.5x). At the end of year 1, US1's hybrid deduction account with respect to Share A is: first, increased by $80x (the amount of hybrid deductions allocated to Share A); and second, decreased by $10x (the sum of the adjusted GILTI inclusion with respect to Share A, and the adjusted GILTI inclusion with respect to Share B that is allocated to the hybrid deduction account with respect to Share A) to $70x. *See* paragraphs (d)(4)(i)(A) and (B) of this section. In year 2, the entire $30x of each dividend received by US1 from FX during year 2 is a hybrid dividend, because the sum of US1's hybrid deduction accounts with respect to each of its shares of FX stock at the end of year 2 ($70x) is at least equal to the amount of the dividends ($60x). *See* paragraph (b)(2) of this section. At the end of year 1, US1's hybrid deduction account with respect to Share A is decreased by $60x (the amount of the hybrid deductions in the account that give rise to a hybrid dividend or tiered hybrid dividend during year 1) to $10x. *See* paragraph (d)(4)(i)(C) of this section. Paragraphs (g)(1)(v)(A) through (C) of this section describe the computations pursuant to paragraph (d)(4)(i)(B)(*2*) of this section.

(A) To determine the adjusted GILTI inclusion with respect to Share A for taxable year 1, it must be determined to what extent US1's $47.8x GILTI inclusion amount is attributable to Share A. *See* paragraph (d)(4)(ii)(B) of this section. Here, $32x of the inclusion is attributable to Share A, calculated as $47.8x multiplied by a fraction, the numerator of which is $80x (US1's pro rata share of the tested income of FX attributable to Share A) and denominator of which is $119.5x (US1's pro rata share of the tested income of FX, its only CFC). *See* paragraph (d)(4)(ii)(C) of this section. Next, the associated foreign income taxes with respect to the $32x GILTI inclusion amount attributable to Share A must be determined. *See* paragraphs (d)(4)(ii)(B) and (D) of this section. Such associated foreign income taxes are $2.8x, calculated as $10.5x (the current year tax allocated and apportioned to the tested income groups of FX) multiplied by a fraction, the numerator of which is $80x (US1's pro rata share of the tested income of FX attributable to Share A) and the denominator of which is $119.5x (the tested income of FX), multiplied by 40% (US1's inclusion percentage). *See* paragraphs (d)(4)(ii)(D) and (F) of this section. Thus, pursuant to paragraph (d)(4)(ii)(B) of this section, the adjusted GILTI inclusion with respect to Share A is $6.7x, computed by—

(*1*) Adding $2.8x (the associated foreign income taxes with respect to the $32x GILTI inclusion attributable to Share A) to $32x, which is $34.8x;

(*2*) Multiplying $34.8x (the sum of the amounts in paragraph (g)(1)(v)(A)(*1*) of this section) by 50% (the difference of 100 percent and the percentage described in section 250(a)(1)(B)), which is $17.4x; and

(*3*) Subtracting $10.7x (calculated as $2.24x (80% of the $2.8x of associated foreign income taxes) divided by .21 (the percentage described in section 11(b)) from $17.4x (the product of the amounts in paragraph (g)(1)(v)(A)(*2*) of this section), which is $6.7x.

(B) Pursuant to computations similar to those discussed in paragraph (g)(1)(v)(A) of this section, the adjusted GILTI inclusion with respect to Share B is $3.3x. However, the hybrid deduction account with respect to Share B is not reduced by such $3.3x, because of the limitation in paragraph (d)(4)(i)(B)(*2*)(*ii*) of this section, which, with respect to Share B, limits the reduction pursuant to paragraph (d)(4)(i)(B)(*2*)(*i*) of this section to $0 (calculated as $0, the hybrid deductions allocated to the share for the taxable year, multiplied by 1, the fraction described in paragraph (d)(4)(i)(B)(*2*)(*ii*) of this section (computed as the $119.5x of tested income divided by the $119.5x of taxable income)). *See* paragraphs (d)(4)(i)(B)(*2*)(*i*) and (*ii*) of this section.

(C) US1's hybrid deduction account with respect to Share A is reduced by the entire $6.7x adjusted GILTI inclusion with respect to the share, as such $6.7x does not exceed the limit in paragraph (d)(4)(i)(B)(*2*)(*ii*) of this section ($80x, calculated as $80x, the hybrid deductions allocated to the share for the taxable year, multiplied by 1, the fraction described in paragraph (d)(4)(i)(B)(*2*)(*ii*) of this section). *See* paragraphs (d)(4)(i)(B)(*2*)(*i*) and (*ii*) of this section. In addition, the hybrid deduction account is reduced by another $3.3x, the amount of the adjusted GILTI inclusion with respect to Share B that is allocated to the hybrid deduction account with respect to Share A. *See* paragraph (d)(4)(i)(B)(*2*)(*iii*) of this section. As a result, pursuant to paragraph (d)(4)(i)(B)(*2*) of this section, US1's hybrid deduction account with respect to Share A is reduced by $10x ($6.7x plus $3.3x).

* * * * *

(h) * * *

(2) *Special rules.* Paragraphs (d)(4)(i)(B) and (d)(4)(ii) of this section (decrease of hybrid deduction accounts; rules regarding adjusted subpart F and GILTI inclusions) apply to taxable years ending on or after [date of publication of the final regulations in the **Federal Register**]. However, a taxpayer may apply those paragraphs to taxable years ending before that date, so long as the taxpayer consistently applies paragraphs (d)(4)(i)(B) and (d)(4)(ii) to those taxable years.

■ **Par. 3.** Section 1.881–3 is amended by:

■ 1. Adding a sentence at the end of paragraph (a)(1).

■ 2. Revising paragraph (a)(2)(i)(C).

■ 3. In paragraph (a)(2)(ii)(B)(*1*) introductory text, removing ''one of the following'' and adding ''one or more of the following'' in its place.

■ 4. In paragraph (a)(2)(ii)(B)(*1*)(*ii*), removing the word ''or'' at the end of the paragraph.

■ 5. In paragraph (a)(2)(ii)(B)(*1*)(*iii*), removing the period at the end and adding a semicolon in its place.

■ 6. Adding paragraphs (a)(2)(ii)(B)(*1*)(*iv*) and (*v*) and (d)(1)(iii).

■ 7. Adding a sentence at the end of paragraph (e) introductory text.

■ 8. In paragraph (e), designating Examples 1 through 26 as paragraphs (e)(1) through (26), respectively.

■ 9. In newly designated paragraph (e)(3), removing ''*Example 2*'' and ''§ 301.7701–3'' and adding ''paragraph (e)(2) of this section (the facts in *Example 2*)'' and ''§ 301.7701–3 of this chapter'' in their places, respectively.

■ 10. Redesignating newly designated paragraphs (e)(4) through (26) as paragraphs (e)(6) through (28), respectively.

■ 11. Adding new paragraphs (e)(4) and (5);

■ 12. In newly redesignated paragraph (e)(9)(ii), removing ''(a)(4)(i)'' and adding ''(a)(4)(i) of this section'' in its place.

■ 13. In newly redesignated paragraph (e)(23)(i), removing ''*Example 20*'' and adding ''paragraph (e)(22) of this section (the facts in *Example 22*)'' in its place.

■ 14. In newly redesignated paragraph (e)(23)(ii), removing ''*Example 19*'' and ''paragraph (i) of this *Example 21*'' and adding ''paragraph (e)(21) of this section (*Example 21*)'' and ''paragraph (e)(23)(i) of this section (this *Example 23*)'' in their places, respectively.

■ 15. In newly redesignated paragraph (e)(25)(i), removing ''Example 22'' and adding ''paragraph (e)(24) of this section (the facts in *Example 24*)'' in its place.

■ 16. In newly redesignated paragraph (e)(26)(i), removing ''*Example 22*'' and adding in its place ''paragraph (e)(24) of this section (the facts in *Example 24*)''.

■ 17. Adding paragraph (e)(29).

■ 18. In paragraph (f):

■ i. Revising the paragraph heading.

■ ii. Removing ''Paragraph (a)(2)(i)(C) and *Example 3* of paragraph (e) of this section'' and adding ''Paragraphs (a)(2)(i)(C) and (e)(3) of this section'' in its place.

■ iii. Adding a sentence at the end of the paragraph.

The additions and revision read as follows:

§ 1.881–3 Conduit financing arrangements.

(a) * * *

(1) * * * See § 1.1471–3(f)(5) for the application of a conduit transaction for purposes of sections 1471 and 1472. See also §§ 1.267A–1 and 1.267A–4 (disallowing a deduction for certain interest or royalty payments to the extent the income attributable to the payment is offset by a deduction with respect to equity).

(2) * * *

(i) * * *

(C) *Treatment of disregarded entities.* For purposes of this section, the term person includes a business entity that is disregarded as an entity separate from its single member owner under §§ 301.7701–1 through 301.7701–3 of this chapter and therefore such entity may be treated as a party to a financing transaction with its owner.

(ii) * * *

(B) * * *

(*1*) * * *

(*iv*) The issuer is allowed a deduction or another tax benefit (such as an exemption, exclusion, credit, or a notional deduction determined with respect to the stock or similar interest) for amounts paid, accrued, or distributed (deemed or otherwise) with respect to the stock or similar interest, either under the laws of the issuer's country of residence or a country in which the issuer has a taxable presence, such as a permanent establishment, to which a payment on a financing transaction is attributable; or

(*v*) A person related to the issuer is, under the tax laws of the issuer's country of residence, allowed a refund (including through a credit), or similar tax benefit for taxes paid by the issuer to its country of residence on amounts paid, accrued, or distributed (deemed or otherwise) with respect to the stock or similar interest, without regard to any related person's tax liability under the laws of the issuer's country of residence.

* * * * *

(d) * * *

(1) * * *

(iii) *Limitation for certain types of stock.* If a financing transaction linking one of the parties to the financing arrangement is stock (or a similar interest in a partnership, trust, or other person) described in paragraph (a)(2)(ii)(B)(*1*)(*iv*) of this section, and the issuer is allowed a notional interest deduction with respect to its stock or similar interest (under the laws of its country of residence or another country in which it has a place of business or permanent establishment), the portion of the payment made by the financed entity that is recharacterized under paragraph (d)(1)(i) of this section attributable to such financing transaction will not exceed the financing transaction's principal amount as determined under paragraph (d)(1)(ii) of this section multiplied by the rate used to compute the issuer's notional interest deduction for the taxable year in which the payment is made.

* * * * *

(e) *Examples.* * * * For purposes of these examples, unless otherwise indicated, it is assumed that no stock is of the types described in paragraph (a)(2)(ii)(B)(*1*)(*iv*) or (*v*) of this section.

* * * * *

(4) *Example 4. Hybrid instrument as financing arrangement.* The facts are the same as in paragraph (e)(2) of this section (the facts in *Example 2*), except that FP assigns the DS note to FS in exchange for stock issued by FS. The stock issued by FS is in form convertible debt with a 49-year term that is treated as debt under the tax laws of Country T. The FS stock is not subject to any of the redemption, acquisition, or payment rights or requirements specified in paragraphs (a)(2)(ii)(B)(*1*)(*i*) through (*iii*) of this section. Because the FS stock gives rise to a deduction under the tax laws of Country T, the FS stock is a financing transaction under paragraph (a)(2)(ii)(B)(*1*)(*iv*) of this section. Therefore, the DS note held by FS and the FS stock held by FP are financing transactions within the meaning of paragraphs (a)(2)(ii)(A)(*1*) and (*2*) of this section, respectively, and together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section. See also § 1.267A–4 for rules applicable to disqualified imported mismatch amounts.

(5) *Example 5. Refundable tax credit treated as financing transaction.* FS lends $1,000,000 to DS in exchange for a note issued by DS. Additionally, Country T has a regime whereby FP, as the sole shareholder of FS, is allowed a refund with respect to distributions of earnings by FS that is equal to 90% of the Country T taxes paid by FS associated with any such distributed earnings. FP is not itself subject to Country T tax on distributions from FS. The loan from FS to DS is a financing transaction within the meaning of paragraph (a)(2)(ii)(A)(*1*) of this section. FP's stock in FS constitutes a financing transaction within the meaning of paragraph (a)(2)(ii)(B)(*1*)(*v*) of this section because FP, a person related to FS, is allowed a refund of FS's Country T taxes even though FP is not subject to Country T tax on such payments. Together, the FS stock held by FP and the DS note held by FS constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section.

* * * * *

(29) *Example 29. Amount of payment subject to recharacterization.* (i) FP lends $10,000,000 to FS in exchange for a ten-year note with a stated interest rate of 6%. FP also contributes $5,000,000 to FS in exchange for FS stock. Pursuant to Country T tax law, FS is entitled to a notional interest deduction with respect to the stock equal to the prevailing Country T government bond rate multiplied by the taxpayer's net equity for the previous taxable year. FS, pursuant to a tax avoidance plan, lends $20,000,000 to DS in exchange for a note that pays 8% interest annually. DS makes its first $1,600,000 payment on this note in year X, when the prevailing Country T bond rate is 1%.

(ii) Both the note and the stock issued by FS to FP are financing transactions. The note is an advance of money under paragraph (a)(2)(i)(A) of this section. The stock is described in paragraph (a)(2)(ii)(A)(*2*) of this section, by reason of paragraph (a)(2)(ii)(B)(*1*)(*iv*) of this section, because Country T law entitles FS to a notional interest deduction with respect to its stock. The note issued by DS is also financing transaction by reason of paragraph (a)(2)(ii)(A)(*1*) of this section. Accordingly, FP is advancing money and DS receives money, effected through FS an intermediary entity, and the receipt and advance are effected through financing transactions (that is, the FS note, FS stock, and the DS note linking all three entities). As such, the arrangement may be treated as a financing arrangement. See paragraph (a)(2)(i)(A) of this section. FP is the financing entity, FS is the intermediate entity, and DS is the financed entity. The aggregate principal amount of financing transactions linking DS to the financing arrangement ($20,000,000) is greater than the aggregate principal amount of the financing transactions linking FP to the financing arrangement ($15,000,000). Therefore, under paragraph (d)(1)(i) of this section, the amount of DS's payment recharacterized as a payment directly between DS and FP would be $1,200,000 ($1,600,000 × $15,000,000/$20,000,000) prior to the application of paragraph (d)(1)(iii) of this section. However, of the $1,200,000 subject to re-characterization, $400,000 ($1,200,000 × $5,000,000/$15,000,000) is attributable to NID stock and thus subject to the limitation in paragraph (d)(1)(iii) of this section. Thus, only $50,000 ($5,000,000 × 1%) of the $400,000 may be recharacterized as a transaction between DS and FP. The remaining $800,000 is not subject to the limitation in paragraph (d)(1)(iii) of this section because it is not attributable to stock that entitles the issuer to a notional interest deduction. Accordingly, only $850,000 of DS's payment is recharacterized as going directly from DS to FP. See also

§ 1.267A–4 for rules applicable to disqualified imported mismatch amounts.

(f) *Applicability date.* * * * Paragraphs (a)(2)(ii)(B)(*1*)(*iv*) and (*v*) and (d)(1)(iii) of this section apply to payments made on or after [date of publication of the final regulations in the **Federal Register**].

■ **Par. 4.** Section 1.951A–0, as proposed to be amended at 84 FR 29114 (June 21, 2019), is further amended by adding entries for § 1.951A–2(c)(6), (c)(6)(i) and (ii), (c)(6)(ii)(A) through (C), (c)(6)(iii), (c)(6)(iv), (c)(6)(iv)(A), (c)(6)(iv)(A)(*1*) and (*2*), (c)(6)(iv)(B), (c)(6)(iv)(B)(*1*) and (*2*), (c)(7), (c)(7)(i) and (ii), (c)(7)(ii)(A), (c)(7)(ii)(A)(*1*) and (*2*), (c)(7)(ii)(B), (c)(7)(iii) through (v), (c)(7)(v)(A) through (D), (c)(7)(v)(D)(*1*) and (*2*), (c)(7)(v)(D)(*2*)(*i*) and (*ii*), (c)(7)(v)(E), (c)(7)(v)(E)(*1*) and (*2*), (c)(7)(vi), (c)(7)(vi)(A), (c)(7)(vi)(A)(*1*) and (*2*), and (c)(7)(vi)(B) and § 1.951A–7(d) to read as follows:

§ 1.951A–0 Outline of section 951A regulations.

* * * * *

§ 1.951A–2 Tested income and tested loss.×

* * * * *

(c) * * *

(6) Allocation of deductions attributable to certain disqualified payments.

(i) In general.

(ii) Definitions related to disqualified payment.

(A) Disqualified payment.

(B) Disqualified period.

(C) Related recipient CFC.

(iii) Treatment of partnerships.

(iv) Examples.

(A) Example 1: Deduction related directly to disqualified payment to related recipient CFC.

(*1*) Facts.

(*2*) Analysis.

(B) Example 2: Deduction related indirectly to disqualified payment to partnership in which related recipient CFC is a partner.

(*1*) Facts.

(*2*) Analysis.

(7) Election for application of high tax exception of section 954(b)(4).

(i) In general.

(ii) Definitions.

(A) Tentative gross tested income item.

(*1*) In general.

(*2*) Income attributable to a QBU.

(B) Tentative net tested income item.

(iii) Effective rate at which taxes are imposed.

(iv) Taxes paid or accrued with respect to a tentative net tested income item.

(v) Rules regarding the election.

(A) Manner of making election.

(B) Scope of election.

(C) Duration of election.

(D) Revocation of election.

(*1*) In general.

(*2*) Limitations by reason of revocation.

(*i*) In general.

(*ii*) Exception for change of control.

(E) Rules applicable to controlling domestic shareholder groups.

(*1*) In general.

(*2*) Definition of controlling domestic shareholder group.

(vi) Example.

(A) Example: Effect of disregarded payments between QBUs.

(*1*) Facts.

(*2*) Analysis.

(B) [Reserved]

* * * * *

§ 1.951A–7 Applicability dates.

* * * * *

(d) Deduction for certain disqualified payments.

■ **Par. 5.** Section 1.951A–2, as proposed to be amended at 84 FR 29114 (June 21, 2019), is further amended by redesignating paragraph (c)(6) as paragraph (c)(7) and adding a new paragraph (c)(6) and a reserved paragraph (c)(7)(vi)(B) to read as follows:

§ 1.951A–2 Tested income and tested loss.

* * * * *

(c) * * *

(6) *Allocation of deductions attributable to certain disqualified payments*—(i) *In general.* A deduction related directly or indirectly to a disqualified payment is allocated or apportioned solely to residual CFC gross income, and any deduction related to a disqualified payment is not properly allocable to property produced or acquired for resale under section 263, section 263A, or section 471.

(ii) *Definitions related to disqualified payment.* The following definitions apply for purposes of this paragraph (c)(6).

(A) *Disqualified payment.* The term *disqualified payment* means a payment made by a person to a related recipient CFC during the disqualified period with respect to the related recipient CFC, to the extent the payment would constitute income described in section 951A(c)(2)(A)(i) and paragraph (c)(1) of this section without regard to whether section 951A applies.

(B) *Disqualified period.* The term *disqualified period* has the meaning provided in § 1.951A–3(h)(2)(ii)(C)(*1*), substituting ''related recipient CFC'' for ''transferor CFC.''

(C) *Related recipient CFC.* The term *related recipient CFC* means, with respect to a payment by a person, a recipient of the payment that is a controlled foreign corporation that bears a relationship to the payor described in section 267(b) or 707(b) immediately before or after the payment.

(iii) *Treatment of partnerships.* For purposes of determining whether a payment is made by a person to a related recipient CFC for purposes of paragraph (c)(6)(ii)(A) of this section, a payment by or to a partnership is treated as made proportionately by or to its partners, as applicable.

(iv) *Examples.* The following examples illustrate the application of this paragraph (c)(6).

(A) *Example 1: Deduction related directly to disqualified payment to related recipient CFC*—(*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 October 15, 2018, before the start of its first CFC inclusion year, CFC1 receives and accrues a payment from CFC2 of $100x of prepaid royalties with respect to a license. The $100x payment is excluded from subpart F income pursuant to section 954(c)(6) and would constitute income described in section 951A(c)(2)(A)(i) and paragraph (c)(1) of this section without regard to whether section 951A applies.

(*2*) *Analysis.* CFC1 is a related recipient CFC (within the meaning of paragraph (c)(6)(ii)(C) of this section) with respect to the royalty prepayment by CFC2 because it is related to CFC2 within the meaning of section 267(b). The royalty prepayment is received by CFC1 during its disqualified period (within the meaning of paragraph (c)(6)(ii)(B) of this section) because it is received during the period beginning January 1, 2018, and ending November 30, 2018. Because it would constitute income described in section 951A(c)(2)(A)(i) and paragraph (c)(1) of this section without regard to whether section 951A applies, the payment is a disqualified payment. Accordingly, CFC2's deductions related to such payment accrued during taxable years ending on or after April 7, 2020 are allocated or apportioned solely to residual CFC gross income under paragraph (c)(6)(i) of this section.

(B) *Example 2: Deduction related indirectly to disqualified payment to partnership in which related recipient CFC is a partner*—(*1*) *Facts.* The facts are the same as in paragraph (c)(6)(iv)(A)(*1*) of this section (the facts in *Example 1*), except that CFC1 and USP own 99% and 1%, respectively of FPS, a foreign partnership, which has a taxable year ending November 30. USP receives a prepayment of $110x from CFC2 for the performance of future services. USP subcontracts the performance of these future services to FPS for which FPS receives and accrues a $100x prepayment from USP. The services will be performed in the same country under the laws of which CFC1 and FPS are created or organized, and the $100x prepayment is not foreign base company services income under section 954(e) and § 1.954–4(a). The $100x prepayment would constitute income described in section 951A(c)(2)(A)(i) and paragraph (c)(1) of this section without regard to whether section 951A applies.

(*2*) *Analysis.* CFC1 is a related recipient CFC (within the meaning of paragraph (c)(6)(ii)(C) of this section) with respect to the services prepayment by USP because, under paragraph (c)(6)(iii) of this section, it is treated as receiving $99x (99% of $100x) of the services prepayment from USP, and it is related to USP within the meaning of section 267(b). The services prepayment is received by CFC1 during its disqualified period (within the meaning of paragraph (c)(6)(ii)(B) of this section) because it is received during the period beginning January 1, 2018, and ending November 30, 2018. Because it would constitute income described in section 951A(c)(2)(A)(i) and paragraph (c)(1) of this section without regard to whether section 951A applies, the prepayment is a disqualified payment. CFC2's deductions related to its prepayment to USP are indirectly related to the disqualified payment by USP. Accordingly, CFC2's deductions related to such payment accrued during taxable years ending on or after April 7, 2020 are allocated or apportioned solely to residual CFC gross income under paragraph (c)(6)(i) of this section.

* * * * *

■ **Par. 6.** Section 1.951A–7, as proposed to be amended at 84 FR 29114 (June 21, 2019), is further amended by adding paragraph (d) to read as follows:

§ 1.951A–7 Applicability dates.

* * * * *

(d) *Deduction for certain disqualified payments.* Section § 1.951A–2(c)(6) applies to taxable years of foreign corporations ending on or after April 7, 2020, and to taxable years of United States shareholders in which or with which such taxable years end.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

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