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Presidential Documents

Title 3—

The President

Proclamation 10057 of July 18, 2020

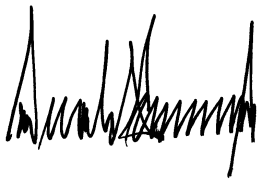
Death of John Lewis

By the President of the United States of America

A Proclamation

As a mark of respect for the memory and longstanding public service of Representative John Lewis, of Georgia, I hereby order, by the authority vested in me by the Constitution and the laws of the United States of America, that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions through July 18, 2020. I also direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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



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Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0577; Product Identifier 2020–NM–041–AD; Amendment 39–21159; AD 2020–14–05]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS 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 Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes. This AD was prompted by an analysis by the design approval holder (DAH) that identified structural areas that are susceptible to widespread fatigue damage (WFD). Following this analysis, the DAH determined that the SATCOM antenna doubler installation does not meet the extended service goal (ESG) requirements. This AD requires inspecting affected fastener holes of the SATCOM antenna doubler for cracking, and applicable corrective actions, 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 August 7, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 7, 2020.

The FAA must receive comments on this AD by September 8, 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 identified in this AD that is incorporated by reference (IBR), 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, Airworthiness Products Section, Operational Safety 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–2020–0577.

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–2020–0577; 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, 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: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Fatigue damage can occur locally, in small areas or structural design details, or globally, in widespread areas. Multiple-site damage is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as WFD. It is associated with general degradation of large areas of structure with similar structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

An FAA final rule (''Aging Airplane Program: Widespread Fatigue Damage;'' 75 FR 69746, November 15, 2010) became effective on January 14, 2011 and amended 14 CFR parts 25, 26, 121, and 129 (commonly known as the WFD rule). The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. Design approval holders (DAHs) of existing and future airplanes subject to the WFD rule are required to establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest

operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0052, dated March 10, 2020 (''EASA AD 2020–0052'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

This AD was prompted by an analysis by the DAH that identified structural areas that are susceptible to WFD. Following this analysis, the DAH determined that the SATCOM antenna doubler installation does not meet the ESG requirements. The FAA is issuing this AD to address this condition, which could lead to crack initiation and undetected propagation and consequent reduced structural integrity of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0052 describes procedures for a special detailed inspection (SDI) of the affected fastener holes of the SATCOM antenna doubler for cracking, and applicable corrective actions. Corrective actions include modifying fastener holes, installing a new SATCOM antenna doubler, and repairing cracking.

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 agency'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 EASA AD 2020–0052, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD,

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 2020–0052 is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA AD 2020–0052 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 2020–0052 that is required for compliance with EASA AD 2020–0052 is available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0577.

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 reasons 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–2020–0577; Product Identifier 2020–NM–041–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 the FAA receives, 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 FAA receives about this AD.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

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
10 work-hours × $85 per hour = $850	$0	$850

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 206 work-hours × $85 per hour = Up to $17,510*	$11,300	Up to $28,810.*

*Table does not include costs for the on-condition repair if cracking is found.

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

Authority for This Rulemaking

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

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

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, and

(2) Will not affect intrastate aviation in Alaska.

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):

2020–14–05 Airbus SAS: Amendment 39–21159; Docket No. FAA–2020–0577; Product Identifier 2020–NM–041–AD.

(a) Effective Date

This AD becomes effective August 7, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0052, dated March 10, 2020 (''EASA AD 2020–0052'').

(d) Subject

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

(e) Reason

This AD was prompted by an analysis by the design approval holder (DAH) that identified structural areas that are susceptible to widespread fatigue damage (WFD). Following this analysis, the DAH determined that the SATCOM antenna doubler installation does not meet the extended service goal (ESG) requirements. The FAA is issuing this AD to address this condition, which could lead to crack initiation and undetected propagation and consequent reduced 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 2020–0052.

(h) Exceptions to EASA AD 2020–0052

(1) Where EASA AD 2020–0052 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0052 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@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, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0052 that contains RC procedures and tests: Except as required by (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@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 2020–0052, dated March 10, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2020–0052, 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, Airworthiness Products Section, Operational Safety 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–2020–0577.

(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 July 1, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–15882 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0097; Product Identifier 2019–NM–208–AD; Amendment 39–21157; AD 2020–14–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–300, –400, and –500 series airplanes. This AD was prompted by a report that a crack indication consistent with fatigue cracking was found on the left nacelle support overwing fitting flange fastener hole during teardown of a Model 737–300 series airplane. This AD requires a general visual inspection of the strut to wing diagonal brace at a certain location for cracking. For certain airplanes, this AD also requires an ultrasonic inspection of the nacelle support overwing fitting at certain fastener locations for cracking. For certain other airplanes, this AD requires a magnetic check of the nacelle support overwing fitting at a certain location to determine the material composition. This AD requires applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 27, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 27, 2020.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0097.

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–2020–0097; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wayne Ha, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5238; fax: 562–627–5210; email: *wayne.ha@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 737–300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on February 18, 2020 (85 FR 8776). The NPRM was prompted by a report that a crack indication consistent with fatigue cracking was found on the left nacelle support overwing fitting flange fastener hole during teardown of a Model 737–300 series airplane. The NPRM proposed to require a general visual inspection of the strut to wing diagonal brace at a certain location for cracking. For certain airplanes, the NPRM also proposed to require an ultrasonic inspection of the nacelle support overwing fitting at certain fastener locations for cracking. For certain other airplanes, the NPRM proposed to require a magnetic check of the nacelle support overwing fitting at a certain location to determine the material composition. The NPRM also proposed to require applicable on-condition actions.

The FAA is issuing this AD to address the potential for undetected cracks in the nacelle support overwing fittings or strut to wing diagonal brace, which could result in the inability of the structure to carry limit load and could adversely affect the structural integrity of the airplane.

Comments

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

Support for the NPRM

Bridget Powell, Herbert Dickens, Terrance Tveit, and an anonymous commenter expressed support for the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing Supplemental Type Certificate (STC) ST01219SE does not affect the actions specified in the proposed AD.

The FAA concurs with the commenter. The FAA has redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request To Clarify the Focus of the Ultrasonic Inspection

Boeing requested that the FAA clarify the focus of the ultrasonic inspection in the **SUMMARY** of the NPRM. Whereas the NPRM described the ultrasonic inspection of ''certain fasteners of the nacelle support overwing fitting at a certain location for cracking,'' Boeing stated that the ultrasonic inspection is ''of the nacelle support overwing fitting at certain fastener locations for cracking.'' Boeing explained that the ultrasonic inspections require an inspection of the nacelle support overwing fitting at certain fastener holes rather than the fasteners themselves.

The FAA agrees with the commenter's request because the revision provides more clarification for the inspection of the nacelle support overwing fitting. The FAA has revised the **SUMMARY** and Discussion section of this final rule accordingly.

Requests To Clarify Inspection Opportunities

Boeing requested that the FAA modify the description of the opportunities for maintenance planning document (MPD) inspections to detect a failed nacelle support overwing fitting in the Discussion section of the NPRM. Boeing requested that the FAA change the following sentence in the Discussion section of the NPRM from ''Existing maintenance planning document (MPD) inspections do not provide opportunities to detect a failed nacelle support overwing fitting at wing buttock line (WBL) 191,'' to ''Existing maintenance planning document (MPD) inspections do not provide adequate opportunities to detect a failed nacelle support overwing fitting at wing buttock line (WBL) 191.'' Boeing explained that the MPD does provide some inspection opportunities, but Boeing determined they were not adequate to maintain safety.

The FAA agrees that the description provided by Boeing is more accurate. However, since that portion of the Discussion section does not reappear in the final rule, this final rule has not been changed regarding this issue.

Additionally, Melanie Sturgeon noted that the Discussion section of the proposed AD stated that existing MPD inspections ''do not provide opportunities to detect a failed nacelle support overwing fitting at wing buttock line (WBL) 191.'' Melanie Sturgeon supposed that Boeing would not have quickly issued Boeing Alert Requirements Bulletin 737–57A1345 RB, dated December 17, 2019, if the inspection findings were not important. Melanie Sturgeon went on to cite that, of the 158 airplanes affected by the proposed AD, many of them are at or near 30 years old. Melanie Sturgeon questioned why such a vital part of the airplane was not properly inspected throughout the course of its service life, presuming that the unsafe condition could have been easily detected. Further, Melanie Sturgeon questioned why the FAA continued to issue airworthiness certificates for this airplane model when, as she stated, inspection teams seemed to be unaware of the parts they are charged with approving.

The FAA agrees to clarify. The airplane model was in compliance with regulatory safety standards when it was designed. The design loads at the failed nacelle support overwing fitting at WBL 191 might have been considered low from testing and analysis and was not considered critical structure. While the airplane model operates in-service, the loading encountered by in-service conditions could be higher than designed. Therefore, once aware of the possibility of a failed part, Boeing reanalyzed the part and collaborated with the FAA to determine an inspection plan and corrective action to ensure that the failure is found and repaired before the residual strength capability of the part is lost. The FAA has not changed this AD in this regard.

Request for Clarification of Accountability

Melanie Sturgeon questioned if Boeing will be held accountable for not providing the FAA with an accurate MPD, and, by extension, will the FAA be held responsible for not ensuring that Boeing provided an accurate MPD.

The FAA agrees to clarify. The MPD provided by Boeing was based on accurate information available at the time of writing the MPD and was approved by the FAA under those circumstances. When new information that necessitated an update to the MPD became available, the MPD was updated to reflect that new information, which the FAA then reviewed and approved as appropriate. The FAA has not changed this AD in this regard.

Request To Clarify Inspection Requirements

Melanie Sturgeon, stated that the proposed AD fails to provide information about the compliance time that Boeing or operators would have to comply with the requirements of the proposed AD. Melanie Sturgeon also inquired if the proposed AD would require an inspection on only the left nacelle support overwing fitting flange fastener hole, or would the proposed AD require an inspection on the left and right sides.

The FAA agrees to clarify. Paragraph (g) of the proposed AD references Boeing Alert Requirements Bulletin 737–57A1345 RB, dated December 17, 2019, in which the inspections shown in Tables 1 through 8 in Section 3., Compliance, provide inspection requirements and compliance times for both left and right side nacelle support overwing fittings. The FAA has not changed this AD in this regard.

Request for More Frequent Inspections as an Airplane Ages

Melanie Sturgeon requested that the FAA put the airplanes within the applicability of this AD on a rotating, graduated safety inspection schedule, meaning that the plane would be inspected more often as it got closer to its limit of validity (LOV). Melanie Sturgeon argued that, if safety is the FAA's top priority, then the FAA should take control of its responsibilities and rely less on the manufacturer's ability to classify airplanes as safe.

The FAA does not agree with the request because the inquiry mixes technical criteria that are not compatible. The inspections required by this final rule were developed using principles of damage tolerance. Damage tolerance has been a regulatory requirement and the accepted method of ensuring structural integrity for the last 42 years. The FAA has a long track record of successfully managing similar structural service difficulties by mandating inspections based on damage tolerance principles. It is technically incorrect to associate repetitive inspections based on damage tolerance principles with the airplane LOV. The airplane LOV (which is measured in flight cycles, flight hours, or both) ensures that the airplane is retired before many cracks initiate concurrently which are not inspectable. The crack growth rate is tied more closely to airplane usage than to the age of the airplane, and thus changing the inspection interval as the airplane ages will not contribute to safety. The FAA has not changed this AD in this regard.

Request To Share Information With Another Governing Body

Melanie Sturgeon requested that the FAA share the information from the proposed rule with the governing bodies of other countries or the International Civil Aviation Organization (ICAO). Melanie Sturgeon pointed out that countries around the world use this airplane model, and in an effort to promote worldwide aviation safety, the

FAA should ensure that the information in the proposed AD is distributed to other countries that operate these airplanes.

The FAA agrees to clarify. The FAA does share the information from the proposed rule with the governing bodies of other countries as identified in ICAO Annex 8 (*https://www.icao.int/safety/airnavigation/Pages/nationality.aspx*). Furthermore, ICAO Annex 8, Airworthiness of Aircraft requires that civil aviation authorities of other countries take appropriate action in response to FAA ADs. Based on the FAA's determination of the unsafe condition addressed by this AD, we expect foreign authorities to adopt similar requirements. Typically, those agencies post FAA ADs with no changes and notify their operators. The operators will then comply with this AD per their CAA's requirements. The FAA has not changed this AD in this regard.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–57A1345 RB, dated December 17, 2019. This service information describes procedures for a magnetic check to determine material composition of the nacelle support overwing fitting at WBL 191; ultrasonic inspections of the nacelle support overwing fitting at WBL 191 for cracking; general visual inspections of the strut to wing diagonal brace at nacelle station (STA) 278 for cracking; and applicable on-condition actions. On-condition actions include repetitive ultrasonic inspections of the nacelle support overwing fitting at WBL 191 for cracking, repetitive general visual inspections of the strut to wing diagonal brace at nacelle STA 278 for cracking, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 158 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Magnetic Check	1 work-hour × $85 per hour = $85	$0	$85	$13,430
Ultrasonic Inspection	5 work-hours × $85 per hour = $425	0	425	67,150
General Visual Inspection	1 work-hour × $85 per hour = $85	0	85	13,430

The FAA estimates the following costs to do any necessary on-condition inspections that would be required. The FAA has no way of determining the number of aircraft that might need these on-condition inspections:

ESTIMATED COSTS OF ON-CONDITION INSPECTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Ultrasonic Inspections	5 work-hours × $85 per hour = $425 per inspection cycle.	$0	$425 per inspection cycle	$67,150 per inspection cycle.
General Visual Inspections	1 work-hour × $85 per hour = $85 per inspection cycle.	0	$85 per inspection cycle	$13,430 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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):

2020–14–03 The Boeing Company: Amendment 39–21157; Docket No. FAA–2020–0097; Product Identifier 2019–NM–208–AD.

(a) Effective Date

This AD is effective August 27, 2020.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–300, –400, and –500 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report that a crack indication consistent with fatigue cracking was found on the left nacelle support overwing fitting flange fastener hole during teardown of a Model 737–300 series airplane. The FAA is issuing this AD to address the potential for undetected cracks in the nacelle support overwing fittings or strut to wing diagonal brace, which could result in the inability of the structure to carry limit load and could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–57A1345 RB, dated December 17, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–57A1345 RB, dated December 17, 2019. Actions identified as terminating actions in Boeing Alert Requirements Bulletin 737–57A1345 RB, dated December 17, 2019, terminate the applicable required actions of this AD, provided the terminating action is done in accordance with the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–57A1345 RB, dated December 17, 2019.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–57A1345, dated December 17, 2019, which is referred to in Boeing Alert Requirements Bulletin 737–57A1345 RB, dated December 17, 2019.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Requirements Bulletin 737–57A1345 RB, dated December 17, 2019, uses the phrase ''the original issue date of Requirements Bulletin (RB) 737–57A1345 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 737–57A1345 RB, dated December 17, 2019, specifies contacting Boeing for repair instructions, this AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Wayne Ha, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5238; fax: 562–627–5210; email: *wayne.ha@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

(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 the AD specifies otherwise.

(i) Boeing Alert Requirements Bulletin 737–57A1345 RB, dated December 17, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on July 6, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–15818 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0204; Product Identifier 2018–SW–082–AD; Amendment 39–21179; AD 2020–15–16]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.A (Type Certificate Previously Held by Agusta S.p.A) Helicopters

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2018–07–08, which applied to certain Leonardo

S.p.A (type certificate previously held by Agusta S.p.A) Model A109E, A109K2, A109S, AW109SP, A119, and AW119 MKII helicopters. AD 2018–07–08 required reducing the life limit of the tail rotor blade retention bolt and an inspection of that bolt for cracking, and replacement of any cracked bolt. This AD continues to require reducing the life limit of the tail rotor blade retention bolt, inspecting that bolt for cracking, and replacing any cracked bolt. In addition, this AD requires repetitive inspections of the tail rotor blade retention bolt for cracking. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 27, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 26, 2018 (83 FR 15495, April 11, 2018).

ADDRESSES: For service information identified in this final rule, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39 0331 225074; fax +39 0331 229046; or at *https://www.leonardocompany.com/en/home.* 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. For information on the availability of this material at the FAA, call 817–222–5110. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0204.

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–2020–0204; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, AD Program Manager, Continued Operational Safety Branch, Airworthiness Products Section, General Aviation and Rotorcraft Unit, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5151; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2018–07–08, Amendment 39–19239 (83 FR 15495, April 11, 2018) (''AD 2018–07–08''). AD 2018–07–08 applied to certain Leonardo S.p.A Model A109E, A109K2, A109S, AW109SP, A119, and AW119 MKII helicopters. The NPRM published in the **Federal Register** on March 23, 2020 (85 FR 16281). The NPRM was prompted by the FAA's determination that repetitive inspections of the tail rotor blade retention bolt are needed to address the unsafe condition. The NPRM proposed to continue to require reducing the life limit of the tail rotor blade retention bolt, inspecting that bolt for cracking, and replacing any cracked bolt. The NPRM also proposed to require repetitive inspections of the tail rotor blade retention bolt for cracking. Since issuing AD 2018–07–08, the FAA has determined that repetitive inspections of the tail rotor blade retention bolt are needed to address the unsafe condition. The FAA is issuing this AD to address cracked bolts, which could result in failure of the tail rotor and loss of control of the helicopter.

The European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD, 2016–0173–E, dated August 24, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Leonardo S.p.A. Model A109E, A109K2, A109LUH, A109S, A119, AW109SP and AW119 MKII helicopters. 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–2020–0204.

See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

This AD requires the following service information, which the Director of the Federal Register approved for incorporation by reference as of April 26, 2018 (83 FR 15495, April 11, 2018).

- Leonardo Helicopters Mandatory Bollettino Tecnico No. 109EP–149, dated August 19, 2016.
- Leonardo Helicopters Mandatory Bollettino Tecnico No. 109K–72, dated August 19, 2016.
- Leonardo Helicopters Mandatory Bollettino Tecnico No. 109S–072, dated August 19, 2016.
- Leonardo Helicopters Mandatory Bollettino Tecnico No. 109SP–105, dated August 19, 2016.
- Leonardo Helicopters Mandatory Bollettino Tecnico No. 119–080, dated August 19, 2016.

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.

Differences Between This AD and the MCAI or Service Information

The MCAI does not specify life limits for a tail rotor blade retention bolt having part number (P/N) 709–0160–57–101 that has been interchanged between model helicopter installations, while this AD does.

The MCAI applies to Model A109LUH helicopters. Model A109LUH helicopters are not certified by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those helicopters in the applicability.

Interim Action

The FAA considers this AD to be an interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA might consider additional rulemaking.

Costs of Compliance

The FAA estimates that this AD affects 219 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2018–07–08	4 work-hours × $85 per hour = $340	$0	$340	$74,460
New actions	4 work-hours × $85 per hour = $340	0	340	74,460

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hour × $85 per hour = $170	$500	$670

According to the manufacturer, some or all of the costs of this 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

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:

■ a. Removing Airworthiness Directive (AD) 2018–07–08, Amendment 39–19239 (83 FR 15495, April 11, 2018); and

■ b. Adding the following new AD:

2020–15–16 Leonardo S.p.A. (type certificate previously held by Agusta S.p.A.): Amendment 39–21179; Docket No. FAA–2020–0204; Product Identifier 2018–SW–082–AD.

(a) Effective Date

This AD is effective August 27, 2020.

(b) Affected ADs

This AD replaces AD 2018–07–08, Amendment 39–19239 (83 FR 15495, April 11, 2018).

(c) Applicability

This AD applies to Leonardo S.p.A. (type certificate previously held by Agusta S.p.A.) Model A109E, A109K2, A109S, AW109SP, A119, and AW119 MKII helicopters, certificated in any category, with a tail rotor blade retention bolt (bolt) having part number (P/N) 709–0160–57–101 installed.

(d) Subject

Joint Aircraft Service Component (JASC) Code 6500, Tail Rotor Drive System.

(e) Reason

This AD was prompted by the discovery of a cracked bolt, and a determination that repetitive inspections of the bolt are needed to address the unsafe condition. The FAA is issuing this AD to address cracked bolts, which could result in failure of the tail rotor and loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Before further flight:

(i) For Model A109E and A109K2 helicopters, remove from service any bolt having P/N 709–0160–57–101 that has 800 or more hours time-in-service (TIS). If the hours TIS is unknown, remove the bolt from service. Thereafter, remove from service any bolt having P/N 709–0160–57–101 before accumulating 800 hours TIS.

(ii) For Model A109S, AW109SP, A119, and AW119 MKII helicopters, remove from service any bolt having P/N 709–0160–57–101 that has 3,200 or more landings. If the number of landings is unknown, remove the bolt from service. Thereafter, remove from service any bolt having P/N 709–0160–57–101 before accumulating 3,200 landings. For purposes of this AD, a landing is counted anytime a helicopter lifts off into the air and then lands again regardless of the duration of the landing and regardless of whether the engine is shutdown.

(iii) Remove from service any bolt having P/N 709–0160–57–101 that has 800 or more hours TIS, or 3,200 or more landings, that has been interchanged between different model helicopters listed in paragraphs (g)(1)(i) and (ii) of this AD. If the hours TIS or number of landings is unknown, remove the bolt from service. Thereafter, remove from service any bolt having P/N 709–0160–57–101 that has been interchanged between different model helicopters listed in paragraphs (g)(1)(i) and (ii) of this AD before accumulating 800 hours TIS or 3,200 landings, whichever occurs first.

(2) Within 25 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 200 hours TIS, remove each bolt having P/N 709–0160–57–101. Prior to cleaning, using a 10X or higher power magnifying glass, inspect each bolt having P/N 709–0160–57–101 for any crack in the area depicted in Figure 1 of Leonardo Helicopters Mandatory Bollettino Tecnico No. 109EP–

149, 109K–72, 109S–072, 109SP–105, or 119–080, all dated August 19, 2016, as applicable to your model helicopter.

(i) If there is any crack, replace the bolt with an airworthy bolt before further flight.

(ii) If there are no cracks, before further flight, clean and degrease the inspection area of the bolt with solvent, and using a 10X or higher power magnifying glass, inspect each bolt having P/N 709–0160–57–101 for any crack in the area depicted in Figure 1 of Leonardo Helicopters Mandatory Bollettino Tecnico No. 109EP–149, 109K–72, 109S–072, 109SP–105, or 119–080, all dated August 19, 2016, as applicable to your model helicopter. If there is any crack, replace the bolt with an airworthy bolt before further flight.

(3) As of the effective date of this AD, installation of a bolt having P/N 709–0160–57–101 is allowed, provided that the bolt has passed an inspection as required by paragraph (g)(2) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, AD Program Manager, Continued Operational Safety Branch, Airworthiness Products Section, General Aviation and Rotorcraft Unit, 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.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) Emergency AD 2016–0173–E, dated August 24, 2016. 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–2020–0204.

(2) For more information about this AD, contact Matt Fuller, AD Program Manager, Continued Operational Safety Branch, Airworthiness Products Section, General Aviation and Rotorcraft Unit, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5151; email *matthew.fuller@faa.gov.*

(j) 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.

(3) The following service information was approved for IBR on April 26, 2018 (83 FR 15495, April 11, 2018).

(i) Leonardo Helicopters Mandatory Bollettino Tecnico No. 109EP–149, dated August 19, 2016.

(ii) Leonardo Helicopters Mandatory Bollettino Tecnico No. 109K–72, dated August 19, 2016.

(iii) Leonardo Helicopters Mandatory Bollettino Tecnico No. 109S–072, dated August 19, 2016.

(iv) Leonardo Helicopters Mandatory Bollettino Tecnico No. 109SP–105, dated August 19, 2016.

(v) Leonardo Helicopters Mandatory Bollettino Tecnico No. 119–080, dated August 19, 2016.

(4) 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.*

(5) 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. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on July 16, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–15811 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0334; Product Identifier 2020–NM–014–AD; Amendment 39–21165; AD 2020–15–02]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Gulfstream Aerospace LP Model Gulfstream G280 airplanes. This AD was prompted by a report of inadequate clearance between the fuel probes and forward fuel tank structure. This AD requires measuring the clearance between certain fuel probes and the forward fuel tank structure, and reinstalling the probes if necessary, as specified in a Civil Aviation Authority of Israel (CAAI) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 27, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 27, 2020.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the CAAI, P.O. Box 1101, Golan Street, Airport City, 70100, Israel; telephone 972–3–9774665; fax 972–3–9774592; email *aip@mot.gov.il.* You may find this IBR material on the CAA website at *www.caa.gov.il.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety 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–2020–0334.

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–2020–0334; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation 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 CAAI, which is the aviation authority for Israel, has issued Israeli AD ISR–I–53–19–10–5, dated October 10, 2019 (''Israeli AD ISR–I–53–19–10–5'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Gulfstream Aerospace LP Model Gulfstream G280 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 by adding an AD that would apply to certain Gulfstream Aerospace LP Model Gulfstream G280 airplanes. The NPRM published in the **Federal Register** on April 27, 2020 (85 FR 23259). The NPRM was prompted by a report of inadequate clearance between the fuel probes and forward fuel tank structure. The NPRM proposed to require measuring the clearance between certain fuel probes and the forward fuel tank structure, and reinstalling the probes if necessary, as specified in a CAAI AD.

The FAA is issuing this AD to address inadequate clearance between the fuel probes and forward fuel tank structure, which could result in a potential source of ignition in a fuel tank, possible fire, and consequent reduced structural integrity of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

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

Related IBR Material Under 1 CFR Part 51

Israeli AD ISR–I–53–19–10–5 describes procedures for checking the clearance between forward fuel probe No. 1 and aft fuel probe No. 3 and the forward fuel tank structure, by measuring each fuel probe's distance to the adjacent skin, and adjusting the clearance, including reinstallation of the fuel probes at the correct distance if necessary. 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.

Costs of Compliance

The FAA estimates that this AD affects 80 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 20 work-hours × $85 per hour = Up to $1,700	$0	Up to $1,700	Up to $136,000.

According to the manufacturer, some or all of the costs of this 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

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):

2020–15–02 Gulfstream Aerospace LP: Amendment 39–21165; Docket No. FAA–2020–0334; Product Identifier 2020–NM–014–AD.

(a) Effective Date

This AD is effective August 27, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to certain Gulfstream Aerospace LP Model Gulfstream G280 airplanes, certificated in any category, as identified in Civil Aviation Authority of Israel (CAAI) AD ISR–I–53–19–10–5, dated October 10, 2019 (''Israeli AD ISR–I–53–19–10–5'').

(d) Subject

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

(e) Reason

This AD was prompted by a report of inadequate clearance between the fuel probes and forward fuel tank structure. The FAA is issuing this AD to address such inadequate clearance, which could result in a potential source of ignition in a fuel tank, possible fire, and consequent reduced 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, Israeli AD ISR–I–53–19–10–5.

(h) Exceptions and Clarifications to Israeli AD ISR–I–53–19–10–5

(1) Where Israeli AD ISR–I–53–19–10–5 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Israeli AD ISR–I–53–19–10–5 requires operators to ''check . . . clearance between fuel probes and forward fuel tank structure,'' this AD requires measuring the specified probes' distance to the adjacent skin.

(3) Where Israeli AD ISR–I–53–19–10–5 requires operators to ''adjust clearance'' for the corrective action, this AD requires reinstallation of the probe at the correct distance.

(4) Israeli AD ISR–I–53–19–10–5 requires compliance ''at the next suitable planned maintenance inspection within the next 36 months.'' This AD requires compliance within 36 months after the effective date of this AD.

(5) The rework (reinstallation of the fuel probes at the correct distance) required for inadequate clearance must be done before further flight after the measurement.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation 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, Large Aircraft Section, International Validation Branch, FAA; or the CAAI; or CAAI's authorized Designee. If approved by the CAAI Designee, the approval must include the Designee's authorized signature.

(j) Related Information

For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation 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) The Civil Aviation Authority of Israel (CAAI) AD ISR–I–53–19–10–5, dated October 10, 2019.

(ii) [Reserved]

(3) For information about Israeli AD ISR–I–53–19–10–5, contact the CAAI, P.O. Box 1101, Golan Street, Airport City, 70100, Israel; telephone 972–3–9774665; fax 972–3–9774592; email *aip@mot.gov.il*. You may find this IBR material on the CAAI website at *www.caa.gov.il*.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety 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–2020–0334.

(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 July 7, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–15819 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0578; Project Identifier MCAI–2020–00889–T; Amendment 39–21162; AD 2020–14–08]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A318 series airplanes, Model A319 series airplanes, Model A320 series airplanes, and Model A321 series airplanes. This AD was prompted by reports of main landing gear (MLG) torque link apex pin rupture in service. This AD requires replacement of certain MLG torque link apex pins and, for certain other pins, a one-time magnetic particle inspection (MPI) for cracking, and replacement if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD 2020–0130, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective August 7, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 7, 2020.

The FAA must receive comments on this AD by September 8, 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 EASA 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, Airworthiness Products Section, Operational Safety 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–2020–0578.

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–2020–0578; 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, 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: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0130, dated June 8, 2020 (''EASA AD 2020–0130'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318–111, –112, –121, and –122 airplanes; A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes; A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N and –272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This AD was prompted by reports of MLG torque link apex pin rupture in service. The FAA is issuing this AD to address MLG torque link apex pin rupture, which could lead to disconnection of MLG torque links, possibly resulting in reduced braking efficiency and/or increased risk of tire burst during take-off or landing. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0130 describes procedures for replacement of certain MLG torque link apex pins with serviceable parts and, for certain other pins, a one-time MPI for cracking and, depending on the findings, replacement with a serviceable part. 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 our 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 EASA AD 2020–0130 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

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 2020–0130 is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA AD 2020–0130 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 2020–0130 that is required for compliance with EASA AD 2020–0130 is available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0578.

Clarification of Parts Installation Limitation

The intent of the ''Parts Installation Limitation'' specified in paragraph (j) of this AD is that operators replace parts with good parts rather than bad parts. Although the word ''install'' is generally considered to be broader than the word ''replace,'' for purposes of this AD it should be interpreted as meaning ''replace'' while remaining within the spirit and intent of the AD. Therefore, simply reinstalling the same part during maintenance activities is acceptable for compliance with the requirements specified in paragraph (j) of this AD for that reinstallation.

Justification For Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the MLG torque link apex pin rupture could lead to disconnection of MLG torque links, possibly resulting in reduced braking efficiency and/or increased risk of tire burst during take-off or landing. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Therefore this rule must be issued immediately, to ensure the safety of the flightcrews conducting such flights. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause.

Comments Invited

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–2020–0578; Project Identifier MCAI–2020–00889–T'' at the beginning of your comments. The most helpful comments reference a specific portion of

the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this AD based on those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments the FAA receives, 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 FAA receives about this AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 1,630 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
12 work-hours × $85 per hour = $1,020	$0	$1,020	Up to $1,662,600.

The FAA has received no definitive data that would enable us to provide cost estimates for the inspection and repair specified in paragraph (h)(5) of this AD.

Authority for This Rulemaking

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

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

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, and

(2) Will not affect intrastate aviation in Alaska.

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):

2020–14–08 Airbus SAS: Amendment 39–21162; Docket No. FAA–2020–0578; Project Identifier MCAI–2020–00889–T.

(a) Effective Date

This AD becomes effective August 7, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by reports of main landing gear (MLG) torque link apex pin rupture in service. The FAA is issuing this AD to address MLG torque link apex pin rupture, which could lead to disconnection of MLG torque links, possibly resulting in reduced braking efficiency and/or increased risk of tire burst during take-off or landing.

(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 2020–0130.

(h) Exceptions to EASA AD 2020–0130

(1) Where EASA AD 2020–0130 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0130 does not apply to this AD.

(3) Where paragraph (3) of EASA AD 2020–0130 specifies a parts installation limitation, for this AD, comply with paragraph (j) of this AD.

(4) Where EASA AD 2020–0130 specifies to comply with ''the instructions of the AOT,'' this AD requires compliance with the procedures marked as ''RC'' (required for compliance) in the Alert Operators Transmission (AOT).

(5) Where step 3.B.(3) of the service information specified in EASA AD 2020–0130 states to do an inspection of the component interfaces and the adjacent area, if any damage (not in the correct condition) is found by the inspection, this AD requires repair using a method approved in accordance with the procedures specified in paragraph (k)(2) of this AD.

(6) The table header on the first page of Appendix 4 of the service information specified in EASA AD 2020–0130 is not aligned with the proper columns. The left-hand column is the part number of the affected MLG torque link apex pin, the center column is the serial number, and the right-hand column is the airplane's manufacturer serial number.

(i) No Reporting or Returning Parts Requirements

Although the service information referenced in EASA AD 2020–0130 specifies to submit certain information and return affected parts to the manufacturer, this AD does not include those requirements.

(j) Parts Installation Limitation

As of the effective date of this AD, no person may install an affected part as defined in EASA AD 2020–0130 on any airplane unless that part meets the criteria of a serviceable part as specified in EASA AD 2020–0130.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (l) 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, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For service information that contains steps that are labeled as ''RC'' (required for compliance), the provisions of paragraphs (k)(3)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(l) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

(m) 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 2020–0130, dated June 8, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2020–0130, 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, Airworthiness Products Section, Operational Safety 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–2020–0578.

(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 July 2, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–15816 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0350; Airspace Docket No. 18–AAL–2]

RIN 2120–AA66

Amendment of Class E Airspace; Kotzebue, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace, designated as a surface area, at Ralph Wein Memorial Airport. This action also modifies the Class E airspace extending upward from 700 feet above the surface. Additionally, this action modifies the Class E airspace extending upward from 1,200 feet above the surface. Further, this action removes the Kotzebue VOR/DME from the airspace legal descriptions. Lastly, this action implements several administrative corrections to the airspace legal descriptions.

DATES: Effective 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov//air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center,

Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Ralph Wein Memorial Airport, Kotzebue, AK, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 27178; May 7, 2020) for Docket No. FAA–2020–0350 to amend Class E airspace at Ralph Wein Memorial Airport, Kotzebue, AK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received, the comment was not germane to the proposed airspace modification.

During the NPRM comment period, the FAA determined that a small portion of the Class E airspace extending upward from 700 feet above the surface extends beyond 12 miles from the coast. The Final Rule includes exclusionary language to keep the airspace within 12 miles of the coast.

Class E2 and E5 airspace designations are published in paragraphs 6002 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace, designated as a surface area, at Ralph Wein Memorial Airport, Kotzebue, AK. This area is described as follows: That airspace extending upward from the surface within a 4.3-mile radius of the Ralph Wien Memorial Airport.

This action also modifies Class E airspace, extending upward from 700 feet above the surface. This area is described as follows: That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the airport, and within 8 miles north and 4 miles south of the 088° bearing from the airport, extending from 1.4 miles east of the airport to 17.4 miles east of the airport, and within 4 miles north and 8 miles south of a 276° bearing from the airport, extending from the airport to 14.7 miles west of Ralph Wein Memorial Airport, excluding that airspace beyond 12 miles from the coast.

Additionally, this action modifies Class E airspace extending upward from 1,200 feet above the surface. The area is described as follows: That airspace extending upward from 1,200 feet above the surface within a 45-mile radius of the Ralph Wien Memorial Airport, excluding that airspace beyond 12 miles from the coast.

Further, this action removes the Kotzebue VOR/DME Navigational Aid from the airspace legal descriptions. The Navigational Aid is not required to define the airspace and by removing it from the legal description, the airspace can be described from a single reference point.

Lastly, this action implements several administrative corrections to the airspace legal descriptions. The airport name on the second line of the text header is updated to Ralph Wien Memorial Airport, AK. The airport's geographic coordinates are updated to lat. 66°53′05″ N, long. 162°35′53″ W. The following two sentences are removed from the Class E surface area description ''This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.''

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AAL AK E2 Kotzebue, AK [Amended]

Ralph Wien Memorial Airport, AK
(Lat. 66°53′05″ N, long. 162°35′53″ W)

That airspace extending upward from the surface within a 4.3-mile radius of the Ralph Wien Memorial Airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Kotzebue, AK [Amended]

Ralph Wien Memorial Airport, AK
(Lat. 66°53′05″ N, long. 162°35′53″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the airport, and within 8 miles north and 4 miles south of the 088° bearing from the airport, extending from 1.4 miles east of the airport to 17.4 miles east of the airport, and within 4 miles north and 8 miles south of a 276° bearing from the airport, extending from the airport to 14.7 miles west of the airport, excluding that airspace extending beyond 12 miles from the coast; and that airspace extending upward from 1,200 feet above the surface within a 45-mile radius of the Ralph Wien Memorial Airport, excluding that airspace extending beyond 12 miles from the coast.

Issued in Seattle, Washington, on July 17, 2020.

B.G. Chew,

Acting Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–15930 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0351; Airspace Docket No. 18–AAL–3]

RIN 2120–AA66

Amendment of Class E Airspace; McGrath, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace, designated as a surface area, at Mc Grath Airport. This action also modifies the Class E airspace extending upward from 700 feet above the surface. Additionally, this action modifies the Class E airspace extending upward from 1,200 feet above the surface. Lastly, this action implements several administrative amendments to the airspace legal descriptions.

DATES: Effective 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov//air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Mc Grath Airport, McGrath, AK, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 27186; May 7, 2020) for Docket No. FAA–2020–0351 to amend Class E airspace at Mc Grath Airport, McGrath, AK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

During the NPRM comment period closed, the FAA identified an error in the wording for the proposed Class E airspace extending upward from 700 feet above the surface. The proposal described the extension north of the airport as ''within 8 miles east and 4 miles east of the 001° bearing from the airport.'' The proposal incorrectly listed the cardinal direction on both sides of the 001° bearing as east. The description for the extension should read, ''and within 8 miles east and 4 miles west of the 001° bearing from the airport, extending from 8.1-mile radius to 15.7 miles north of the airport;'' The Final Rule includes the correct verbiage for this airspace area.

Class E2 and E5 airspace designations are published in paragraphs 6002 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies the Class E airspace, designated a surface area, at Mc Grath Airport, McGrath, AK. This area is described as follows: That airspace extending upward from the surface within a 5.6-mile radius of Mc Grath Airport.

This action also modifies the Class E airspace extending upward from 700 feet above the surface. This area is described as follows: That airspace extending upward from 700 feet above the surface within an 8.1-mile radius of the airport, and within 8 miles east and 4 miles west of the 001° bearing from the airport, extending from 8.1-mile radius to 15.7 miles north of Mc Grath Airport.

Additionally, this action modifies the Class E airspace extending upward from 1,200 feet above the surface. This area is described as follows: That airspace extending upward from 1,200 feet above

the surface within a 45-mile radius of Mc Grath Airport.

Lastly, this action implements several administrative amendments to the airspace legal descriptions. The airport name on the second line of the text header is updated to Mc Grath Airport, AK. The airport's geographic coordinates are updated to lat. 62°57′10″ N, long. 155°36′25″ W. The following two sentences are removed from the Class E surface area description ''This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.''

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AAL AK E2 McGrath, AK [Amended]

Mc Grath Airport, AK

(Lat. 62°57′10″ N, long. 155°36′25″ W)

That airspace extending upward from the surface within a 5.6-mile radius of Mc Grath Airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 McGrath, AK [Amended]

Mc Grath Airport, AK

(Lat. 62°57′10″ N, long. 155°36′25″ W)

That airspace extending upward from 700 feet above the surface within an 8.1-mile radius of the airport, and within 8 miles east and 4 miles west of the 001° bearing from the airport, extending from the 8.1-mile radius to 15.7 miles north of the airport; and that airspace extending upward from 1,200 feet above the surface within a 45-mile radius of Mc Grath Airport.

Issued in Seattle, Washington, on July 17, 2020.

B.G. Chew,

Acting Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–15929 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31322; Amdt. No. 3914]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 23, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 2020.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs.

The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on July 10, 2020.

Robert C. Carty,

Executive Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
13–Aug–20	NC	Elizabeth City	Elizabeth City CG Air Station/Rgnl.	0/1429	6/22/20	NDB RWY 10, Orig-G.
13–Aug–20	NC	Elizabeth City	Elizabeth City CG Air Station/Rgnl.	0/1430	6/22/20	VOR/DME RWY 10, Orig-E.
13–Aug–20	NC	Elizabeth City	Elizabeth City CG Air Station/Rgnl.	0/1431	6/22/20	VOR/DME RWY 19, Amdt 10G.
13–Aug–20	NC	Elizabeth City	Elizabeth City CG Air Station/Rgnl.	0/1432	6/22/20	VOR/DME RWY 28, Amdt 1C.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
13–Aug–20	OH	Mansfield	Mansfield Lahm Rgnl	0/3109	6/25/20	RNAV (GPS) RWY 14, Amdt 1A.
13–Aug–20	OH	Mansfield	Mansfield Lahm Rgnl	0/3111	6/25/20	RNAV (GPS) RWY 32, Orig-E.
13–Aug–20	IL	Springfield	Abraham Lincoln Capital	0/3118	6/25/20	RNAV (GPS) RWY 13, Amdt 1B.
13–Aug–20	NE	Aurora	Aurora Muni—Al Potter Field.	0/3124	6/25/20	RNAV (GPS) RWY 16, Amdt 1A.
13–Aug–20	NE	Aurora	Aurora Muni—Al Potter Field.	0/3125	6/25/20	RNAV (GPS) RWY 34, Orig.
13–Aug–20	IA	Hampton	Hampton Muni	0/3128	6/29/20	VOR/DME RWY 35, Amdt 1E.
13–Aug–20	WA	Ellensburg	Bowers Field	0/3352	6/26/20	VOR–B, Amdt 3C.
13–Aug–20	NJ	Andover	Aeroflex-Andover	0/3353	6/29/20	RNAV (GPS) RWY 3, Amdt 1B.
13–Aug–20	NJ	Andover	Aeroflex-Andover	0/3354	6/29/20	VOR–A, Amdt 8A.
13–Aug–20	IL	Chicago/Rockford	Chicago/Rockford Intl	0/3355	6/29/20	ILS OR LOC RWY 7, ILS RWY 7 (SA CAT I), ILS RWY 7 (CAT II & III), Amdt 1E.
13–Aug–20	IL	Chicago/Rockford	Chicago/Rockford Intl	0/3356	6/29/20	RNAV (GPS) RWY 1, Amdt 1C.
13–Aug–20	IL	Chicago/Rockford	Chicago/Rockford Intl	0/3357	6/29/20	RNAV (GPS) RWY 19, Amdt 2B.
13–Aug–20	IL	Chicago/Rockford	Chicago/Rockford Intl	0/3358	6/29/20	RNAV (GPS) RWY 25, Amdt 1B.
13–Aug–20	IL	Chicago/Rockford	Chicago/Rockford Intl	0/3361	6/29/20	RNAV (GPS) RWY 7, Amdt 1C.
13–Aug–20	NV	Fallon	Fallon Muni	0/3503	6/29/20	RNAV (GPS)-C, Orig-A.
13–Aug–20	NV	Fallon	Fallon Muni	0/3504	6/29/20	VOR–B, Amdt 4A.
13–Aug–20	WA	Seattle	Boeing Field/King County Intl.	0/3506	6/29/20	ILS OR LOC RWY 32L, Amdt 1C.
13–Aug–20	OK	Grove	Grove Muni	0/3526	6/29/20	RNAV (GPS) RWY 18, Amdt 1.
13–Aug–20	OK	Grove	Grove Muni	0/3527	6/29/20	RNAV (GPS) RWY 36, Orig.
13–Aug–20	OK	Grove	Grove Muni	0/3528	6/29/20	VOR/DME–A, Amdt 1.
13–Aug–20	IA	Clinton	Clinton Muni	0/3930	6/29/20	ILS OR LOC RWY 3, Amdt 5A.
13–Aug–20	IA	Clinton	Clinton Muni	0/3931	6/29/20	RNAV (GPS) RWY 3, Orig-A.
13–Aug–20	IA	Clinton	Clinton Muni	0/3932	6/29/20	RNAV (GPS) RWY 14, Amdt 1A.
13–Aug–20	IA	Clinton	Clinton Muni	0/3933	6/29/20	RNAV (GPS) RWY 21, Amdt 1A.
13–Aug–20	IA	Clinton	Clinton Muni	0/3934	6/29/20	VOR/DME RWY 21, Amdt 9B.

[FR Doc. 2020–15879 Filed 7–22–20; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31321 Amdt. No. 3913]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 23, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 23, 2020.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South

MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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*.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on July 10, 2020.

Robert C. Carty,

Executive Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 13 August 2020

Mobile, AL, Mobile Rgnl, NDB RWY 15, Amdt 3B, CANCELLED
Decatur, AR, Crystal Lake, VOR RWY 13, Amdt 9A, CANCELLED
North Little Rock, AR, North Little Rock Muni, VOR RWY 35, Amdt 1A, CANCELLED
Ozark, AR, Ozark-Franklin County, VOR/DME–A, Amdt 4A, CANCELLED
Pine Bluff, AR, Pine Bluff Rgnl Airport Grider Field, VOR RWY 36, Amdt 12B, CANCELLED
Chandler, AZ, Chandler Muni, NDB RWY 4R, Orig-C, CANCELLED
Scottsdale, AZ, Scottsdale, VOR–C, Amdt 2, CANCELLED
Tucson, AZ, Marana Regional, NDB RWY 12, Orig-A, CANCELLED
Arcata/Eureka, CA, California Redwood Coast-Humboldt County, VOR RWY 14, Amdt 1C, CANCELLED
Eureka, CA, Murray Field, VOR–A, Amdt 7B, CANCELLED
Firebaugh, CA, Firebaugh, VOR–A, Amdt 4, CANCELLED
Fortuna, CA, Rohnerville, VOR RWY 11, Amdt 3A, CANCELLED
Hayward, CA, Hayward Executive, VOR/DME–A, Amdt 3B, CANCELLED
Lodi, CA, Lodi, VOR–A, Amdt 4, CANCELLED

Los Banos, CA, Los Banos Muni, VOR RWY 32, Amdt 5A, CANCELLED
Marysville, CA, Yuba County, VOR RWY 32, Amdt 10H, CANCELLED
Merced, CA, Merced Rgnl/Macready Field, VOR RWY 30, Amdt 1, CANCELLED
Palo Alto, CA, Palo Alto, VOR RWY 31, Amdt 1, CANCELLED
Rio Vista, CA, Rio Vista Muni, VOR/DME–A, Amdt 2A, CANCELLED
Aspen, CO, Aspen-Pitkin Co/Sardy Field, VOR/DME–C, Amdt 5, CANCELLED
Craig, CO, Craig-Moffat, VOR RWY 7, Amdt 3, CANCELLED
Bridgeport, CT, Igor I Sikorsky Memorial, VOR RWY 24, Amdt 17A, CANCELLED
Chester, CT, Chester, VOR–A, Amdt 4A, CANCELLED
St Augustine, FL, Northeast Florida Rgnl, VOR RWY 13, Orig-E, CANCELLED
Coeur D'Alene, ID, Coeur D'Alene—Pappy Boyington Field, VOR/DME RWY 2, Amdt 2C, CANCELLED
Knox, IN, Starke County, VOR RWY 18, Amdt 2, CANCELLED
La Porte, IN, La Porte Muni, VOR–A, Amdt 7B, CANCELLED
Plymouth, IN, Plymouth Muni, VOR RWY 10, Amdt 12A, CANCELLED
De Quincy, LA, De Quincy Industrial Airpark, VOR/DME RWY 34, Amdt 3, CANCELLED
Jennings, LA, Jennings, VOR/DME RWY 8, Amdt 1A, CANCELLED
Boston, MA, General Edward Lawrence Logan Intl, ILS OR LOC RWY 22L, Amdt 8D
Montague, MA, Turners Falls, VOR–A, Amdt 4A, CANCELLED
Southbridge, MA, Southbridge Muni, VOR/DME–B, Amdt 9, CANCELLED
Auburn/Lewiston, ME, Auburn/Lewiston Muni, VOR/DME–A, Amdt 1A, CANCELLED
Caribou, ME, Caribou Muni, VOR–A, Amdt 11A, CANCELLED
Dowagiac, MI, Dowagiac Muni, VOR–A, Amdt 10, CANCELLED
Rochester, MN, Rochester Intl, VOR RWY 2, Amdt 17B, CANCELLED
Rochester, MN, Rochester Intl, VOR RWY 20, Amdt 14B, CANCELLED
Holly Springs, MS, Holly Springs-Marshall County, VOR RWY 18, Amdt 7, CANCELLED
Tunica, MS, Tunica Muni, VOR–A, Orig-A, CANCELLED
Billings, MT, Billings Logan Intl, VOR–A, Amdt 2A, CANCELLED
West Yellowstone, MT, Yellowstone, NDB RWY 1, Amdt 4A, CANCELLED
Asheboro, NC, Asheboro Muni, VOR–A, Amdt 3A, CANCELLED
Jacksonville, NC, Albert J Ellis, NDB RWY 5, Amdt 8D, CANCELLED
Lexington, NC, Davidson County, VOR/DME RWY 24, Orig-A, CANCELLED
Liberty, NC, Causey, VOR RWY 2, Amdt 5A, CANCELLED
Oxford, NC, Henderson-Oxford, NDB RWY 6, Amdt 3A, CANCELLED
Raleigh/Durham, NC, Raleigh-Durham Intl, VOR RWY 32, Amdt 3E, CANCELLED
Smithfield, NC, Johnston Regional, NDB RWY 3, Amdt 2, CANCELLED
Winston Salem, NC, Smith Reynolds, VOR RWY 15, Amdt 1D, CANCELLED
Grant, NE, Grant Muni, NDB RWY 15, Amdt 3B, CANCELLED
Potsdam, NY, Potsdam Muni/Damon Fld/, NDB RWY 24, Amdt 5B, CANCELLED
Corvallis, OR, Corvallis Muni, VOR RWY 35, Amdt 12, CANCELLED
Eugene, OR, Mahlon Sweet Field, VOR–A, Amdt 7B, CANCELLED
Eugene, OR, Mahlon Sweet Field, VOR OR TACAN RWY 16R, Amdt 5D, CANCELLED
Newport, OR, Newport Muni, VOR RWY 16, Amdt 9B, CANCELLED
Newport, OR, Newport Muni, VOR RWY 34, Amdt 2A, CANCELLED
North Bend, OR, Southwest Oregon Rgnl, VOR RWY 5, Amdt 11A, CANCELLED
North Bend, OR, Southwest Oregon Rgnl, VOR–A, Amdt 6A, CANCELLED
Redmond, OR, Roberts Field, VOR/DME RWY 23, Amdt 4, CANCELLED
Allentown, PA, Allentown Queen City Muni, VOR–B, Amdt 8C, CANCELLED
East Stroudsburg, PA, Stroudsburg-Pocono, VOR/DME–A, Amdt 6A, CANCELLED
Greenville, SC, Greenville Downtown, NDB RWY 1, Amdt 22D, CANCELLED
Union, SC, Union County, Troy Shelton Field, NDB RWY 5, Orig-C, CANCELLED
Rogersville, TN, Hawkins County, NDB RWY 7, Amdt 3, CANCELLED
Smyrna, TN, Smyrna, VOR/DME RWY 14, Amdt 7C, CANCELLED
Smyrna, TN, Smyrna, VOR/DME RWY 32, Amdt 13C, CANCELLED
Amarillo, TX, Rick Husband Amarillo Intl, NDB RWY 4, Amdt 17, CANCELLED
Amarillo, TX, Tradewind, NDB–A, Amdt 14B, CANCELLED
Cleveland, TX, Cleveland Muni, VOR–A, Amdt 4D, CANCELLED
Panhandle, TX, Panhandle-Carson County, VOR–A, Orig-B, CANCELLED
Pecos, TX, Pecos Muni, VOR RWY 14, Amdt 7C, CANCELLED
Van Horn, TX, Culberson County, NDB RWY 21, Amdt 2C, CANCELLED
Barre/Montpelier, VT, Edward F Knapp State, VOR RWY 35, Amdt 4A, CANCELLED
Watertown, WI, Watertown Muni, VOR RWY 29, Orig-C, CANCELLED
Buckhannon, WV, Upshur County Rgnl, VOR–A, Amdt 1B, CANCELLED
Fairmont, WV, Fairmont Muni-Frankman Field, VOR–A, Amdt 2, CANCELLED

Effective 10 September 2020

Monroeville, AL, Monroe County Aeroplex, VOR RWY 3, Amdt 10D, CANCELLED
Monroeville, AL, Monroe County Aeroplex, VOR RWY 21, Amdt 10C, CANCELLED
Camden, AR, Harrell Field, RNAV (GPS) RWY 19, Amdt 1B
Woodland, CA, Watts-Woodland, VOR/DME–A, Amdt 5, CANCELLED
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, Takeoff Minimums and Obstacle DP, Amdt 8
Toccoa, GA, Toccoa RG Letourneau Field, VOR RWY 21, Amdt 14, CANCELLED
Toccoa, GA, Toccoa RG Letourneau Field, VOR/DME RWY 3, Amdt 3, CANCELLED
Lihue, HI, Lihue, VOR–A, Amdt 4, CANCELLED
Kankakee, IL, Greater Kankakee, VOR RWY 4, Amdt 6C, CANCELLED
Kankakee, IL, Greater Kankakee, VOR RWY 22, Amdt 7C, CANCELLED
Harper, KS, Harper Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Rangeley, ME, Rangeley Lake, NDB–B, Amdt 1, CANCELLED
Rangeley, ME, Rangeley Lake, RNAV (GPS)-C, Amdt 1
Aurora, MO, Jerry Sumners Sr Aurora Muni, VOR/DME–A, Amdt 4A, CANCELLED
Superior, NE, Superior Muni, VOR/DME–A, Amdt 2, CANCELLED
Cortland, NY, Cortland County-Chase Field, VOR–A, Orig
Cortland, NY, Cortland County-Chase Field, VOR OR GPS–A, Orig-B, CANCELLED
Middletown, NY, Randall, VOR RWY 8, Amdt 7B, CANCELLED
New York, NY, John F Kennedy Intl, RNAV (GPS) X RWY 22L, Orig
Cadiz, OH, Harrison County, Takeoff Minimums and Obstacle DP, Amdt 4
Coshocton, OH, Richard Downing, RNAV (GPS) RWY 4, Orig
Coshocton, OH, Richard Downing, VOR–A, Amdt 10, CANCELLED
Middletown, OH, Middletown Regional/Hook Field, NDB RWY 23, Amdt 9C, CANCELLED
Middletown, OH, Middletown Regional/Hook Field, NDB–A, Amdt 3A, CANCELLED
Toledo, OH, Eugene F Kranz Toledo Express, ILS Z OR LOC Z RWY 7, Amdt 29A
Toledo, OH, Eugene F Kranz Toledo Express, RADAR–1, Amdt 19D
Wadsworth, OH, Wadsworth Muni, VOR–A, Amdt 2A, CANCELLED
Oklahoma City, OK, Will Rogers World, RNAV (GPS) Y RWY 17R, Amdt 6
Redmond, OR, Roberts Field, RNAV (RNP) Z RWY 5, Amdt 2A
Darlington, SC, Darlington County Jetport, NDB RWY 23, Amdt 1A, CANCELLED
Lebanon, TN, Lebanon Muni, VOR/DME–A, Amdt 10A, CANCELLED
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, RNAV (RNP) Z RWY 13R, Amdt 2
Hereford, TX, Hereford Muni, NDB RWY 20, Amdt 2B, CANCELLED
Jacksonville, TX, Cherokee County, VOR RWY 14, Amdt 4B
Mineola, TX, Mineola Wisener Field, RNAV (GPS)-A, Orig
Mineola, TX, Mineola Wisener Field, VOR–A, Amdt 6C, CANCELLED
Winnsboro, TX, Winnsboro Muni, RNAV (GPS)-A, Orig
Winnsboro, TX, Winnsboro Muni, VOR–A, Amdt 4A, CANCELLED
Price, UT, Carbon County Rgnl/Buck Davis Field, VOR RWY 1, Amdt 1A, CANCELLED
Danville, VA, Danville Rgnl, ILS OR LOC RWY 2, Amdt 5
Danville, VA, Danville Rgnl, RNAV (GPS) RWY 2, Amdt 1
Danville, VA, Danville Rgnl, RNAV (GPS) RWY 31, Amdt 1
Danville, VA, Danville Rgnl, VOR RWY 20, Amdt 2A, CANCELLED
Milton, WV, Ona Airpark, RNAV (GPS)-A, Orig-B
Wheeling, WV, Wheeling Ohio Co, RNAV (GPS) RWY 16, Amdt 1A

[FR Doc. 2020–15880 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–13–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2509

RIN 3045–AA74

Procedures for Issuing Guidance Documents

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (CNCS) is publishing its procedures for issuing Guidance Documents. This rule implements section 4 of Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents'' (October 9, 2019).

DATES: This rule is effective July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, Corporation for National and Community Service, 250 E Street SW, Washington, DC 20525, by email at *aborgstrom@cns.gov,* or by phone: 202–422–2781.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule implements section 4 of Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents'' (October 9, 2019). Under the Executive order, CNCS must set forth a process in regulation that includes:

(1) A requirement that each guidance document clearly state that it does not bind the public, except as authorized by law or as incorporated into a contract;

(2) procedures for the public to petition for withdrawal or modification of a particular guidance document, including a designation of the officials to whom petitions should be directed; and

(3) for a significant guidance document, as determined by the Administrator of the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (Administrator), unless the agency and the Administrator agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all requirements, provisions requiring:

(A) A period of public notice and comment of at least 30 days before issuance of a final guidance document, and a public response from the agency to major concerns raised in comments, except when the agency for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest;

(B) approval on a non-delegable basis by the agency head or by an agency component head appointed by the President, before issuance;

(C) review by the Office of Information and Regulatory Affairs (OIRA) under Executive Order 12866, before issuance; and

(D) compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in Executive Orders 12866, 13563 (Improving Regulation and Regulatory Review), 13609 (Promoting International Regulatory Cooperation), 13771 (Reducing Regulation and Controlling Regulatory Costs), and 13777 (Enforcing the Regulatory Reform Agenda).

II. Regulatory Procedures

Administrative Procedure Act

This final rule incorporates requirements of the Executive order and CNCS's existing internal policy and procedures into the CFR. Therefore, in accordance with 5 U.S.C. 553, there is good cause for this rule of Agency organization, procedure, or practice, to be enacted without notice and comment. See 5 U.S.C. 553(b)(A).

Executive Order 12866

This rule is an internal rule of agency procedure and is not a significant regulatory action under Executive Order 12866.

Executive Order 13771

This rule is not an E.O. 13771 regulatory action because this rule is related to agency organization, management, or personnel.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), CNCS certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, state, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

Paperwork Reduction Act

The rule does not contain any information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has federalism implications if the rule imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have any federalism implications, as described above.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 45 CFR Part 2509

Administrative practice and procedure.

■ For the reasons discussed in the preamble, under the authority of 42 U.S.C. 12651c(c), the Corporation for National and Community Service adds 45 CFR part 2509 to read as follows:

PART 2509—ADMINISTRATIVE PRACTICE AND PROCEDURES

Subpart A—Guidance Documents

Sec.

2509.10 What does this subpart cover?
2509.12 What should I do if a guidance document is covered by this subpart?
2509.14 What is the purpose of the review and clearance procedure?
2509.16 How will CNCS make guidance documents available to the public?
2509.18 What procedures apply to guidance documents identified as ''significant''?
2509.20 What is a ''significant'' guidance document?
2509.22 When will guidance be published for public notice-and-comment?
2509.24 How may the public submit a petition to CNCS for the withdrawal or modification of a guidance document?
2509.26 What is the effect of rescinded guidance documents?
2509.28 How will significant guidance be issued when there are exigent circumstances?
2509.30 No judicial review or enforceable rights.

Subpart B [Reserved]

Authority: 42 U.S.C. 12651c(c); E.O. 13891, 84 FR 55235.

Subpart A—Guidance Documents

§ 2509.10 What does this subpart cover?

(a) This subpart sets forth the Corporation for National and Community Service's (CNCS's) procedures for issuing guidance documents. It applies to all CNCS employees and contractors involved in issuing CNCS guidance documents on or after April 28, 2020.

(b) For the purposes of this subpart, ''guidance document'' means any statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statute, regulatory, or technical issue, or an interpretation of a statute or regulation, but does not include:

(1) Legislative rules promulgated under 5 U.S.C. 553 (or similar statutory provisions), or exempt from rulemaking requirements under 5 U.S.C. 553(a);

(2) Rules of agency organization, procedure, or practice;

(3) Decisions of agency adjudications under 5 U.S.C. 554 or similar statutory provisions;

(4) Internal executive branch legal advice or legal advisory opinions addressed to executive branch officials;

(5) Agency statements of specific applicability, including advisory or legal opinions directed to particular parties about circumstance-specific questions, notices regarding particular locations or facilities, and correspondence with individual persons or entities, except documents directed to a particular party and designed to guide the conduct of the broader regulated public;

(6) Legal briefs, other court filings, or positions taken in litigation or enforcement actions;

(7) Agency statements that do not set forth for the first time a new regulatory policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation, including speeches and individual presentations, editorials, media interviews, press materials, or congressional testimony;

(8) Grant solicitations and awards;

(9) Contract solicitations and awards; or

(10) Purely internal agency policies or guidance directed solely to CNCS employees or contractors or to other Federal agencies that are not intended to have substantial future effect on the behavior of regulated parties.

§ 2509.12 What should I do if a guidance document is covered by this subpart?

(a) All CNCS guidance documents require review and clearance in accordance with this subpart.

(b) Guidance proposed by CNCS must be reviewed by the Office of General Counsel (OGC) and cleared by the General Counsel or his/her designee.

(c) Additional reviews by other CNCS officials are also conducted as described in CNCS Policy 100—Preparing Policies and Procedures and Policy 103—Clearing Controlled Correspondence and Other Documents with the Board, Chief Executive Officer, and Chief of Staff, or subsequent updates or revisions to those policies.

§ 2509.14 What is the purpose of the review and clearance procedure?

CNCS's guidance issuance process shall ensure that each proposed guidance document satisfies the following requirements:

(a) The guidance document complies with all relevant statutes and regulations (including any statutory deadlines for Agency action);

(b) The guidance document identifies or includes:

(1) The term ''guidance'' or its functional equivalent;

(2) The issuing CNCS responsible office name;

(3) A unique identifier, including, at a minimum, the date of issuance and title of the document and its regulatory identification number (RIN), if applicable;

(4) The activity or entities to which the guidance applies;

(5) Citations to applicable statutes and regulations;

(6) A statement noting whether the guidance is intended to revise or replace any previously issued guidance and, if so, sufficient information to identify the previously issued guidance; and

(7) A short summary of the subject matter covered in the guidance document at the top of the document;

(c) The guidance document avoids using mandatory language, such as ''shall,'' ''must,'' ''required,'' or ''requirement,'' unless the language is describing an established statutory or regulatory requirement or is addressed to CNCS employees and will not foreclose CNCS's consideration of positions advanced by affected private parties;

(d) The guidance document is written in plain and understandable English; and

(e) All guidance documents should include the following disclaimer prominently in each guidance document: ''The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.'' When CNCS's guidance document is binding because binding guidance is authorized by law or because the guidance is incorporated into a contract, CNCS will modify the disclaimer above to reflect either of those facts.

§ 2509.16 How will CNCS make guidance documents available to the public?

CNCS shall:

(a) Ensure all effective guidance documents, identified by a unique identifier which includes, at a minimum, the document's title and date of issuance or revision and its RIN, if applicable, are on its website in a single, searchable, indexed database, and available to the public in accordance with § 2905.16;

(b) Note on its website that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract; and

(c) Publish on its website where the public can comment electronically on any guidance documents that are subject to the notice-and-comment procedures described in § 2509.22 and to submit requests electronically for issuance, reconsideration, modification, or rescission of guidance documents.

(d) Guidance documents that do not appear on the Agency's single, searchable, indexed database are rescinded.

§ 2509.18 What procedures apply to guidance documents identified as ''significant''?

(a) OGC review of proposed guidance documents will include a preliminary determination as to whether the proposed guidance document is significant within the meaning of § 2509.20. Unless exempt, each proposed guidance document determined to be significant must be approved by the Chief Executive Officer before issuance. In such instances, CNCS will:

(1) Obtain a RIN to report what CNCS is planning to issue;

(2) Coordinate the guidance document with the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) for the interagency review, final significance determination, and clearance; and

(3) Coordinate internal review and clearance of the guidance document before submitting it to the Chief Executive Officer for approval, consistent with CNCS Policy 103.

(b) If the guidance document is determined to be significant under § 2509.20, CNCS may proceed with publication in the **Federal Register**. For each significant guidance document, the originating CNCS office should include a statement in the clearance memorandum indicating that the guidance document has been reviewed and cleared in accordance with this section.

§ 2509.20 What is a "significant" guidance document?

(a) The term ''significant guidance document'' means a guidance document that will be disseminated to regulated entities or the general public and that may reasonably be anticipated:

(1) To lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the U.S. economy, a sector of the U.S. economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) To create serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency;

(3) To alter materially the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) To raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866, as further amended.

(b) The term ''significant guidance document'' does not include the categories of documents excluded by § 2509.12 or any other category of guidance documents exempted in writing by CNCS in consultation with OIRA.

(c) Significant and economically significant guidance documents must be reviewed by OIRA under E.O. 12866 before issuance and must demonstrate compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in E.O. 12866, E.O. 13563, E.O. 13609, E.O. 13771, and E.O. 13777.

§ 2509.22 When will guidance be published for public notice-and-comment?

(a) Except as provided in paragraph (b) of this section, all proposed CNCS guidance documents determined to be significant within the meaning of § 2509.20 are subject to public notice-and-comment. CNCS shall publish notification in the **Federal Register** of the proposed significant guidance document and invite public comments for a minimum of 30 days, then publish a response to major concerns raised in the comments when the final guidance document is published.

(b) The requirements of paragraph (a) of this section will not apply to any significant guidance document for which CNCS finds, in consultation with OIRA, good cause that notice-and-comment procedures are impracticable, unnecessary, or contrary to the public interest (and incorporates the finding of good cause and a brief statement of reasons in the guidance issued).

(c) CNCS and OIRA may establish an agreement on presumptively exempted categories of guidance; such documents will be presumptively exempt from the requirements of paragraph (a) of this section.

§ 2509.24 How may the public submit a petition to CNCS for the withdrawal or modification of a guidance document?

(a) Interested parties may submit petitions to CNCS requesting withdrawal or modification of any effective guidance document by sending an email to *Guidance@cns.gov* or by sending the request to Corporation for National and Community Service ATT: Associate Director of Policy, 250 E Street SW, Washington, DC 20525.

(b) Interested parties should include the guidance document's title and a summary justification describing why the document should be withdrawn, how it should be modified, or the nature of the concern with the guidance.

(c) The responsible CNCS department, in consultation with OGC, will review the petition, determine if withdrawal or modification is necessary or the best way to resolve the concern, and respond to the petitioner no later than 90 days after receipt of the request.

§ 2509.26 What is the effect of rescinded guidance documents?

CNCS may not cite, use, or rely on rescinded guidance documents, except to establish historical facts.

§ 2509.28 How will significant guidance be issued when there are exigent circumstances?

Under exigent circumstances, such as safety, health, or when statutory deadlines or court order or other compelling cause require CNCS to act more quickly than normal review procedures allow, CNCS will notify OIRA as soon as possible and, to the extent practicable, comply with the requirements of this subpart at the earliest opportunity.

§ 2509.30 No judicial review or enforceable rights.

This subpart is intended to improve the internal management of CNCS. As such, it is for the use of CNCS employees only and is not intended to, and does not create any right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its agencies or other entities, its officers or employees, or any other person.

Subpart B [Reserved]

Dated: June 24, 2020.

Helen Serassio,

Acting General Counsel.

[FR Doc. 2020–13940 Filed 7–22–20; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 191

[Docket No. PHMSA–2016–0016; Amdt. No. 191–28]

RIN 2137–AF22

Pipeline Safety: Safety of Underground Natural Gas Storage Facilities; Correction

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Correcting amendments.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule in the **Federal Register** on February 12, 2020, amending PHMSA's regulations establishing minimum safety standards for underground natural gas storage facilities. That document inadvertently removed certain reporting requirements for natural gas pipeline operators. This document corrects the final regulations.

DATES: Effective on July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Ashlin Bollacker, Technical Writer, Office of Pipeline Safety, at 202–366–4203.

SUPPLEMENTARY INFORMATION: On February 12, 2020, PHMSA published a final rule titled: ''Safety of Underground Natural Gas Storage Facilities.'' (85 FR 8104). The final rule contained an error that inadvertently removed two paragraphs from the current regulations. This document corrects the unintended deletion.

The final rule revised § 191.22 to add new reporting requirements for underground natural gas storage facilities (UNGSF). However, in adding those new reporting requirements for UNGSF facilities, a pair of reporting

requirements for natural gas pipeline operators at paragraphs (c)(1)(v) and (c)(1)(vi) was inadvertently removed from § 191.22.

This document amends § 191.22 to reinstate paragraphs (c)(1)(v) and (c)(1)(vi).

List of Subjects in 49 CFR Part 191

Underground natural gas storage facility reporting requirements.

In consideration of the foregoing, PHMSA is amending 49 CFR part 191 as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY-RELATED CONDITION REPORTS

■ 1. The authority citation for part 191 continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5121, 60101 *et seq.*, and 49 CFR 1.97.

■ 2. Amend § 191.22 by:

■ a. Revising paragraphs (c)(1)(iii) and (iv); and

■ b. Adding paragraphs (c)(1)(v) and (vi).

The revisions and additions read as follows:

§ 191.22 National Registry of Operators.

* * * * *

(c) * * *

(1) * * *

(iii) Construction of a new LNG plant, LNG facility, or UNGSF;

(iv) Maintenance of a UNGSF that involves the plugging or abandonment of a well, or that requires a workover rig and costs $200,000 or more for an individual well, including its wellhead. If 60-days' notice is not feasible due to an emergency, an operator must promptly respond to the emergency and notify PHMSA as soon as practicable;

(v) Reversal of product flow direction when the reversal is expected to last more than 30 days. This notification is not required for pipeline systems already designed for bi-directional flow; or

(vi) A pipeline converted for service under § 192.14 of this chapter, or a change in commodity as reported on the annual report as required by § 191.17.

* * * * *

Issued in Washington, DC, on July 8, 2020, under authority delegated in 49 CFR 1.97.

Howard R. Elliott,

Administrator.

[FR Doc. 2020–15122 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES11110900000 201]

Endangered and Threatened Wildlife and Plants; Four Species Not Warranted for Listing as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce findings that four species are not warranted for listing as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that it is not warranted at this time to list the Upper Missouri River DPS of Arctic grayling, Elk River crayfish, rattlesnake-master borer moth, and northern Virginia well amphipod. However, we ask the public to submit to us at any time any new information relevant to the status of any of the species mentioned above or their habitats.

DATES: The findings in this document were made on July 23, 2020.

ADDRESSES: Detailed descriptions of the bases for these findings are available on the internet at *http://www.regulations.gov* under the following docket numbers:

Species	Docket No.
Arctic grayling	FWS–R6–ES–2020–0024.
Elk River crayfish	FWS–R5–ES–2020–0025.
Northern Virginia well amphipod.	FWS–R5–ES–2020–0026.
Rattlesnake-master borer moth.	FWS–R3–ES–2020–0027.

Supporting information used to prepare this finding is available for public inspection, by appointment, during normal business hours by contacting the appropriate person as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning this finding to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
Arctic grayling	Jodi Bush, Project Leader, Montana Field Office, 406–449–5225 x205, *Jodi_Bush@fws.gov.*
Elk River crayfish and northern Virginia well amphipod.	Martin Miller, Threatened and Endangered Species Chief, North Atlantic-Appalachian Regional Office, 413–253–8615, *Martin_Miller@fws.gov.*
Rattlesnake-master borer moth	Kraig McPeek, Field Supervisor, Illinois-Iowa Field Office, 309–757–5800, *kraig_mcpeek@fws.gov.*

If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), we are required to make a finding whether or not a petitioned action is warranted within 12 months after receiving any petition for which we have determined contains substantial scientific or commercial information indicating that the petitioned action may be warranted (''12-month finding''). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted but precluded. We must publish a notice of these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists of Endangered and Threatened Wildlife and Plants (Lists). The Act defines ''species'' as any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future

throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself. However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

In considering whether a species may meet the definition of an endangered species or a threatened species because of any of the five factors, we must look beyond the mere exposure of the species to the stressor to determine whether the species responds to the stressor in a way that causes actual impacts to the species. If there is exposure to a stressor, but no response, or only a positive response, that stressor does not cause a species to meet the definition of an endangered species or a threatened species. If there is exposure and the species responds negatively, we determine whether that stressor drives or contributes to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species. The mere identification of stressors that could affect a species negatively is not sufficient to compel a finding that listing is or remains warranted. For a species to be listed or remain listed, we require evidence that these stressors are operative threats to the species and its habitat, either singly or in combination, to the point that the species meets the definition of an endangered or a threatened species under the Act.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the Upper Missouri River DPS of Arctic grayling (*Thymallus arcticus*), Elk River crayfish (*Cambarus elkensis*), rattlesnake-master borer moth (*Papaipema eryngii*), and northern Virginia well amphipod (*Stygobromus phreaticus*) meet the definition of ''endangered species'' or ''threatened species,'' we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. We reviewed the petitions, information available in our files, and other available published and unpublished information. Our evaluation may include information from recognized experts; Federal, State, and tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

The species assessment forms for the Upper Missouri River DPS of Arctic grayling, Elk River crayfish, rattlesnake-master borer moth, and northern Virginia well amphipod contain more detailed biological information, a thorough analysis of the listing factors, and an explanation of why we determined that these species do not meet the definition of an endangered species or a threatened species. This supporting information can be found on the internet at *HYPERLINK* ''*http://www.regulations.gov*'' *http://www.regulations.gov* under the appropriate docket number (see **ADDRESSES**, above). The following are informational summaries for the findings in this document.

Upper Missouri River DPS of Arctic Grayling

Previous Federal Actions

We have published a number of documents on Arctic grayling since 1982, and have been involved in litigation over previous findings. We describe the most recent previous federal actions that are relevant to this finding below.

On October 9, 1991, the Biodiversity Legal Foundation and George Wuerthner petitioned us to list the fluvial (riverine) populations of Arctic grayling in the Upper Missouri River basin as an endangered species throughout the historical range in the coterminous United States. We subsequently published several 90-day and 12-month findings on that petition (58 FR 4975, January 19, 1993; 59 FR 37738, July 25, 1994; 72 FR 20305, April 24, 2007; 75 FR 54708, September 8,

2010), some of which were challenged in court.

On August 20, 2014, we published a revised 12-month finding on the petition to list the Upper Missouri River DPS of Arctic grayling (79 FR 49384), fulfilling our commitments under the multi-district litigation (MDL) case (Endangered Species Act Section 4 Deadline Litig., Misc. Action No. 10–377 (EGS), MDL Docket No. 2165 (D. DC)). In the August 20, 2014, finding, we determined that listing the DPS was not warranted, and we removed the DPS from the candidate list. We concluded that habitat-related threats previously identified, including habitat fragmentation, dewatering, thermal stress, entrainment, riparian habitat loss, and effects from climate change, had been sufficiently ameliorated and that 19 of 20 populations of Arctic grayling were either stable or increasing.

On February 5, 2015, the Center for Biological Diversity (CBD), Western Watersheds Project, and two individuals filed a complaint against the Department of the Interior (DOI) and the Service challenging our August 20, 2014, revised 12-month finding that the Upper Missouri River DPS of Arctic grayling did not warrant listing as a threatened species or endangered species (*Center for Biological Diversity* v. *Jewell,* No. 2:15–cv–00004–SEH (D. Mont. 2016)). Plaintiffs also brought a facial challenge to the Service's Final Policy on Significant Portion of its Range (SPR Policy; 79 FR 37578, July 1, 2014), arguing that the SPR Policy was contrary to case law in defining a species' range to only include current range and not historical range. The district court found for the government on all claims, and the plaintiffs appealed.

On August 17, 2018, the Court of Appeals affirmed in part and reversed in part (*Center for Biological Diversity* v. *Zinke,* No. 16–35866, 900 F. 3d 1053 (9th Cir. 2018)). The court agreed with the district court that we permissibly defined ''range'' as current range in the SPR Policy. However, that court found that we erred in the listing finding in four ways: (1) We should not have concluded that the Big Hole River grayling population was increasing when available biological information showed that the population was declining; (2) we should not have relied on cold water refugia in the Big Hole River, because we did not adequately address information showing that river will experience low stream flows and high water temperatures; (3) we did not adequately explain why the uncertainty presented by climate change with regard to low stream flows and higher water temperatures did not weigh in favor of listing the grayling; and (4) we arbitrarily relied on the Ruby River grayling population to provide redundancy for the grayling outside of the Big Hole River. The court upheld the finding in all other respects, including our analysis of cold water refugia other than in the Big Hole River, and our conclusion that small population size did not pose a risk to genetic viability of the grayling.

The court vacated the finding and remanded it to us to reconsider in light of the court's opinion, and ordered that we make one of the findings set forth in 16 U.S.C. 1533(b)(3)(B)(i) through (iii) for the Upper Missouri River DPS. Further, the court required that we submit such finding to the Office of the Federal Register no later than July 1, 2020. This constitutes our revised finding.

Summary of Finding

The Arctic grayling is a fish belonging to the family Salmonidae (salmon, trout, charr, whitefishes), subfamily Thymallinae (graylings), and it is represented by a single genus, *Thymallus.* Arctic grayling are native to Arctic Ocean drainages of Alaska and northwestern Canada, as far east as Hudson's Bay, and westward across northern Eurasia to the Ural Mountains. This finding pertains to Arctic grayling in the Upper Missouri River basin in Montana and Wyoming, which we have determined are discrete (due to marked separation from other native populations) and significant (they occur in a unique ecological setting, are separated from other Arctic grayling populations by a large gap in their range, and differ markedly in their genetic characteristics relative to other Arctic grayling populations), and therefore qualify as a DPS under the Act; for a more detailed discussion of our DPS analysis, please refer to our August 20, 2014, 12-month finding (79 FR 49392–49396).

Arctic grayling occupy a variety of habitats including small streams, large rivers, lakes, and bogs (Northcote 1995, pp. 152–153; Scott and Crossman 1998, p. 303), and have defined thermal tolerances. Arctic grayling of all ages feed primarily on aquatic and terrestrial invertebrates captured on or near the water surface, but also will feed opportunistically on fish and fish eggs (Northcote 1995, pp. 153–154; Behnke 2002, p. 328). Arctic grayling in the Upper Missouri River basin exhibit a spectrum of life histories. Some Arctic grayling spend their entire lives in flowing water (often referred to as fluvial), some primarily reside in lakes and only use flowing water for spawning (often referred to as adfluvial), and others appear to use some combination of both strategies.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Upper Missouri River DPS of Arctic grayling, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. We evaluated stressors potentially affecting the DPS's biological status, including curtailment of range and distribution, dams on mainstem rivers, water management in the Upper Missouri River basin, habitat fragmentation/smaller seasonal barriers, degradation of riparian habitat, dewatering from irrigation and increased water temperatures, entrainment, sedimentation, overwinter conditions, climate change, recreational angling, scientific/population monitoring, disease, predation by and competition with nonnative trout, predation by birds and mammals, drought, stochastic threats, genetic diversity and small population size, and cumulative effects from climate change interacting with other factors.

Overall, we found that the potential threats we evaluated are having minimal impacts in most populations within the DPS. Fifteen out of the 19 populations occur in high-elevation lakes primarily on high-quality habitats on Federal land, are considered stable, and have minimal to no impacts from stressors. The other four populations have a fluvial component, and of these, the Big Hole River represents 60 percent of the total riverine miles within the DPS. Within the Big Hole River, many years of management, including 13 years of implementation of the Big Hole candidate conservation agreement with assurances (CCAA), have addressed many past threats, and resulted in both improvements in habitat conditions and increases in the number of effective breeders as concluded from recent monitoring. All demographic and genetic studies of Big Hole River Arctic grayling are consistent and clearly show a historical decline (1980s–2006) in Arctic grayling due to a multitude of habitat-related threats. Since 2006, those threats have been strategically and systematically addressed or minimized and as a result of improvements to habitat and other conservation actions (increased streamflows, increased riparian habitat health, decreased water temperatures, increased connectivity and access to thermal refugia), the number of effective breeders in the Big

Hole River has increased significantly by 111 percent, on average, and genetic diversity is high and stable.. Therefore, there is currently a high level of resilience in most populations within the DPS.

The fact that the species still occupies 7 out of 10 historical watersheds, and is spread across 19 populations, provides a high level of redundancy in the case of a catastrophic event. There is also a high level of within-system redundancy in the Big Hole River, which includes 199 river miles of both mainstem and tributary habitat for the Arctic grayling, such that no single catastrophic event would be expected to impact the entire Big Hole River population. Further, the other three primarily fluvial systems provide additional redundancy, including the Ruby River population which met the criteria for a viable population in the Montana Fluvial Arctic Grayling Restoration Plan and objectives in the Upper Ruby River Fluvial Arctic Grayling Reintroduction Plan. The presence of populations from the full spectrum of life histories, as well as the presence of moderate to high levels of genetic diversity within many populations, provides representation.

We also considered the viability of the DPS into the foreseeable future. Despite projected increases in temperature and frequency of drought, 15 out of 19 populations in the DPS are currently in lake habitats that will likely not be affected significantly by climate change due to their high elevation, intact riparian areas, and cool inputs of tributary water. Riparian restoration, particularly in the Big Hole River, has been empirically shown to minimize the effects of increasing water temperatures due to climate change. Since 2006, multiple projects have been implemented to decrease dewatering and thermal stress and have resulted in increased streamflows, increased access to cold-water refugia, and marked temperature reductions. These improvements mitigate warming water temperatures due to climate change, and the CCAA projects have led to shorter durations of stressful water temperatures. In the future, we do not expect habitat to decline in the Big Hole River because of the proven track record of CCAA projects. With respect to nonnative fish, we expect that impacts to Arctic grayling populations will be low, as nonnatives have co-existed with some lake populations for many decades. Given the lack of stressors that are projected to occur in the future, as well as the projected continued resilience of most populations within the DPS, we expect that levels of redundancy and representation will also be maintained into the future.

We also identified two potential portions of the range to see if they warranted further consideration as potential significant portions of the range; these are (1) the Madison River and (2) a group including the four populations with a fluvial component. However, as explained in our full revised 12-month finding (available on *http://www.regulations.gov* under Docket No. FWS–R6–ES–2020–0024), we found that neither of these portions is both significant and in danger of extinction or likely to become so in the foreseeable future, and therefore neither warrants further consideration as a significant portion of the range.

Therefore, we find that listing the Upper Missouri River DPS of Arctic grayling as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in our full revised 12-month finding (available on *http://www.regulations.gov* under Docket No. FWS–R6–ES–2020–0024).

Elk River Crayfish

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy to list 404 aquatic, riparian, and wetland species, including the Elk River crayfish, as endangered or threatened species under the Act. On September 27, 2011, we published a 90-day finding in the **Federal Register** (76 FR 59836), concluding that the petition presented substantial information indicating that listing the Elk River crayfish may be warranted. This notice constitutes the 12-month finding on the April 20, 2010, petition to list the Elk River crayfish under the Act.

Summary of Finding

The palm-sized Elk River crayfish is found in the upper and middle sections of West Virginia's Elk River main stem and/or tributaries, including these Hydrologic Unit Code (HUC) 10 watersheds: Upper Elk River, Holly River, Middle Elk River, Laurel Creek, Birch River, and Lower Elk River in Pocahontas, Randolph, Webster, Braxton, Nicholas, and Clay Counties. The best available data suggest that the species' range has not changed significantly.

The Elk River crayfish has four life stages: Egg; hatchling that is dependent upon the female; juvenile which undergoes a series of four to five molts allowing it to grow and its shell to harden; and adult that becomes reproductive in 2.5 to 3 years, has one reproductive event per year once mature, and may live up to 5 years. Molting is a vulnerable life stage for crayfish because, during molting, crayfish are soft and unable to move effectively, making them susceptible to predation, as well as being more sensitive to contaminants and water-quality degradation. The species is assumed to be an opportunistic omnivore feeding on a wide variety of items, including aquatic and terrestrial vegetation, plant detritus, insects, snails, and small aquatic vertebrates. Habitat elements that are important to the Elk River crayfish include moderately sized, stable stream channels with riffles, runs, or pools that have some current and low levels of sedimentation; unembedded stream substrates that have larger particle sizes and provide instream cover; and healthy riparian and instream characteristics (*e.g.,* adequate riparian cover to moderate temperature and sedimentation, appropriate prey resources, and sufficient water chemistry).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Elk River crayfish, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors affecting the Elk River crayfish's biological status include changes to: (1) The species' population demographics (*i.e.,* distribution and abundance, and connectivity); (2) the quality of instream breeding, feeding, and sheltering features (*i.e.,* level of sedimentation, which is affected by flooding and energy development activities); (3) water quality; and (4) riparian conditions. While some currently suitable habitat will become less suitable and two HUC 10 watersheds are projected to become extirpated within the foreseeable future, the species' distribution and abundance within remaining higher quality habitat that support its needs ensures that the Elk River crayfish will persist.

Our review of the best available scientific and commercial information indicates that the Elk River crayfish does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we find

that listing the Elk River crayfish is not warranted at this time. A detailed discussion of the basis for this finding can be found in the Elk River crayfish's species assessment and other supporting documents (see **ADDRESSES**, above).

Rattlesnake-Master Borer Moth

Previous Federal Actions

On June 25, 2007, we received a petition, dated June 18, 2007, from Forest Guardians (now WildEarth Guardians), requesting that the rattlesnake-master borer moth be listed as either endangered or threatened under the Act with critical habitat. On December 16, 2009, we published a 90-day finding in the **Federal Register** (74 FR 66866), concluding that the petition presented substantial scientific or commercial information indicating that listing may be warranted. On August 14, 2013, we published a 12-month finding in the **Federal Register** (78 FR 49422) in which we stated that listing the rattlesnake-master borer moth as endangered or threatened was warranted. However, listing was precluded at that time by higher priority actions, and the species was added to the candidate species list. The species was assigned a listing priority number of 8, because it faced moderate to low magnitude, imminent threats, and is a valid taxon at the species level. From 2014 through 2019, we addressed the status of the rattlesnake-master borer moth in our candidate notice of review, with the determination that listing was warranted but precluded (see 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015; 81 FR 87246, December 2, 2016; 84 FR 54732, October 10, 2019).

Summary of Finding

The rattlesnake-master borer moth is a small, purple-brown moth, measuring 3.5–4.8 centimeters (1.4–1.9 inches) with small, scattered yellow and white spots. The species is currently found in Arkansas, Illinois, Kansas, Kentucky, Missouri, and Oklahoma, and is considered extirpated from Iowa and North Carolina. At the time of the 12-month finding in 2013, 16 extant populations of the rattlesnake-master borer moth were known. Subsequently, the species has been documented in 55 sites or populations.

The rattlesnake-master borer moth inhabits primarily high-quality remnant prairies and also some grassland, savanna, barrens, glades, and open woodland habitats. The only host plant for the moth is the rattlesnake master (*Eryngium yuccifolium*), on which the moth larvae develop and eggs overwinter. The species' habitat requires periodic disturbance to prevent woody encroachment.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the rattlesnake-master borer moth, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors affecting the rattlesnake-master borer moth's biological status include management actions (*e.g.,* grazing, mowing, prescribed fire), the natural fire regime, and habitat loss and fragmentation. We also assessed impacts to the rattlesnake-master borer moth from the effects of climate change. Currently, the rattlesnake-master borer moth has multiple resilient populations across the breadth of its environmental variation. In the future, we anticipate a maximum of 12 small populations may be lost. However, the overall impact to the species would be low, as the 17 highly resilient populations, representing 89 percent of the acreage for the species, are expected to remain, and no loss of range is predicted to occur. We anticipate the rattlesnake-master borer moth to maintain adequate resiliency, redundancy, and representation to withstand catastrophic events and adapt to changing conditions.

Our review of the best available scientific and commercial information indicates that the rattlesnake-master borer moth does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we find that listing the rattlesnake-master borer moth is not warranted at this time. A detailed discussion of the basis for this finding can be found in the rattlesnake-master borer moth species assessment and other supporting documents (see **ADDRESSES**, above).

Northern Virginia Well Amphipod

Previous Federal Actions

We initiated a discretionary status review for the northern Virginia well amphipod in fiscal year 2018. The species had previously been petitioned in 2001, with two other invertebrates, but we found the petition to be not substantial in 2007 (72 FR 51766; September 11, 2007). Since 2001, the species has been covered under the Department of Defense U.S. Army's Fort Belvoir Installation's (Fort Belvoir) integrated natural resources management plan (INRMP).

Summary of Finding

The northern Virginia well amphipod is a small (7.0 millimeter (0.28 inch) or less) groundwater aquifer crustacean and is currently known from a single location on Fort Belvoir in Fairfax County, Virginia. It was historically known from two other locations in Fairfax County. This location consists of a seep/spring within a wooded ravine where groundwater discharges from the subterranean habitat after high precipitation events.

Detailed hydrogeological studies suggest that the amphipod may inhabit 'macropores' (cavities and channels within the ravine wall formed when sandy substrates erode while surrounding clay substrate persists) and/or a deep (*i.e.,* non-surficial) aquifer characterized by a unique chemical signature of high conductivity, high dissolved solids, and low organic content. The diet, water quality tolerances, and behavioral traits of the amphipod have not been documented. We infer, based on general principles of conservation biology, general information about other groundwater species, and local information from where the amphipods have been observed, that the amphipod requires sufficient ''space'' in which to find food and to reproduce, and that this ''space'' may equate to either the macropores of the seep/spring areas, the sediments of the deeper aquifer, or both. Although we do not know the specific needs of the northern Virginia well amphipod, we infer that a species generally requires a stable or positive population growth rate to remain healthy. We do not know the species' population size or trend, but instead rely on the best available habitat parameters as a surrogate for population and species health.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the northern Virginia well amphipod, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors affecting the northern Virginia well amphipod's biological status include changes to groundwater quality and quantity and the extent of impervious cover in likely recharge zones, which affects the quality and quantity of water entering aquifers. We also evaluated the implementation of conservation actions, primarily Fort Belvoir's INRMP, which includes the amphipod as a covered species. We conclude that the species' subsurface needs are currently being met by

suitable surface habitat conditions and lack of substantial impacts to water quality, and that those conditions will continue to persist within the foreseeable future.

Our review of the best available scientific and commercial information indicates that the northern Virginia well amphipod does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we find that listing the northern Virginia well amphipod is not warranted at this time. A detailed discussion of the basis for this finding can be found in the northern Virginia well amphipod's species assessment and other supporting documents (see **ADDRESSES**, above).

New Information

We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or stressors to the Upper Missouri River DPS of Arctic grayling, Elk River crayfish, rattlesnake-master borer moth, and northern Virginia well amphipod to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor these species and make appropriate decisions about their conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

References Cited

A list of the references cited in the petition finding are available on the internet at *http://www.regulations.gov* in the appropriate docket provided above in **ADDRESSES** and upon request from the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–14454 Filed 7–22–20; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 85, No. 142
Thursday, July 23, 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.

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2020–BT–STD–0006]

Energy Conservation Program: Energy Conservation Standards for External Power Supplies

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information; reopening of the public comment period.

SUMMARY: On May 20, 2020, the U.S. Department of Energy (''DOE'') published a request for information (''RFI'') pertaining to the energy conservation standards for external power supplies. The request provided an opportunity for submitting written comments, data, and information by July 6, 2020. Prior to the end of the comment period for the request of information, DOE received a request from a group of industry trade groups seeking additional time to consider the applicability and impact of an updated energy conservation standard for this equipment.

DATES: The comment period for the RFI, published on May 20, 2020 (85 FR 30636), which closed on July 6, 2020, is hereby reopened and extended. DOE will accept written comments, data, and information in response to the RFI no later than August 24, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–STD–0006, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: EPS2020STD006@ee.doe.gov.* Include the docket number EERE–2020–BT–STD–0006 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2020-BT-STD-0006.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.* Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

For further information on how to submit a comment, or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 586–6636 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE published a Request for Information (''RFI'') pertaining to the energy conservation standards for external power supplies on May 20, 2020. 85 FR 30636. The RFI initiated a data collection process to consider whether to amend DOE's energy conservation standards for external power supplies, and whether amending the standards for external power supplies would result in significant energy savings and be technologically feasible and economically justified. DOE requested submission of written comment, data, and information pertaining to these standards by July 6, 2020.

On June 24, 2020, the Association of Home Appliance Manufacturers (''AHAM''), Consumer Technology Association (''CTA''), and Information Technology Industry Council (''ITI''), interested parties in the matter, requested a 30-day extension of the public comment period for the RFI that DOE previously published in the **Federal Register** on May 20, 2020. (AHAM, CTA, and ITI, EERE–2020–BT–STD–0006, No. 2) The comment period for the RFI closed on July 6, 2020.[1]

After carefully considering this request, DOE has determined that a reopening of the comment period to allow additional time for interested parties to submit comments is appropriate. Therefore, DOE is reopening the comment period and will accept comments until August 24, 2020, to provide interested parties additional time to prepare and submit comments. Accordingly, DOE will consider any comments received by this date, to be timely submitted.

Signing Authority

This document of the Department of Energy was signed on July 8, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal

[1] Available at *https://www.regulations.gov/document?D=EERE-2020-BT-STD-0006-0002.*

Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 8, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–15079 Filed 7–22–20; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 423

Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Commission seeks comment on a proposal to repeal its trade regulation rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods as Amended (''Care Labeling Rule'' or ''Rule'').

DATES: Written comments must be received on or before September 21, 2020. Parties interested in an opportunity to present views orally should submit a request to do so as explained below, and such requests must be received on or before September 21, 2020.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write ''Care Labeling Rule, 16 CFR part 423, Project No. R511915'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Care Labeling Rule, 16 CFR part 423, Project No. R511915'' on your comment and on the envelope and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite 5610, Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex C), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION: The Commission finds that using streamlined procedures in this rulemaking will serve the public interest. Specifically, such procedures support the Commission's goals of clarifying, updating, or repealing existing regulations, while ensuring that the public has an opportunity to submit data, views, and arguments on whether the Commission should repeal the Rule. Because written comments should adequately present the views of all interested parties, the Commission is not scheduling a public hearing or roundtable. However, if any person would like to present views orally, he or she should follow the procedures set forth in the **DATES**, **ADDRESSES**, and **SUPPLEMENTARY INFORMATION** sections of this document. Pursuant to 16 CFR 1.20, the Commission will use the procedures set forth in this document, including: (1) Publishing this Supplemental Notice of Proposed Rulemaking (''SNPRM''); (2) soliciting written comments on the Commission's proposal to repeal or amend the Rule; (3) holding an informal hearing (such as a roundtable) if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a document published in the **Federal Register**. Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

I. Introduction

The Care Labeling Rule requires manufacturers and importers of textile wearing apparel and certain piece goods to attach labels to their products disclosing the care needed for the ordinary use of the product.[1] The Rule also requires manufacturers or importers to possess a reasonable basis for care instructions,[2] and allows the use of approved care symbols in lieu of words to disclose those instructions.[3]

The Commission has a long history of seeking comment and considering concerns about the Rule as well as the amendments proposed by the Commission. It promulgated the Rule in 1971 and has amended it three times since.[4] In 1983, the Commission clarified its requirements regarding the disclosure of washing and drycleaning information.[5] In 1997, the Commission adopted a conditional exemption to allow the use of symbols in lieu of words.[6] In 2000, the Commission clarified what constitutes a reasonable basis for care instructions and revised the Rule's definitions of ''cold,'' ''warm,'' and ''hot'' water.[7]

In 2000, the Commission also rejected two proposed amendments. First, it declined to require marketers to provide instructions for home washing on items that one can safely wash at home. The Commission determined that the evidence was not sufficiently compelling to require such instructions and that the benefits of the proposed change were highly uncertain.[8] Second, the Commission decided not to establish a definition for ''professional wetcleaning'' or permit manufacturers to label a garment with a ''Professionally Wetclean'' instruction.[9] The Commission concluded that it was premature to allow such an instruction before the development of a suitable definition and an appropriate test method.[10] However, the Commission stated that it would consider such an instruction if a more specific definition and/or test procedure were developed.[11]

As part of its ongoing regulatory review program, the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') in July 2011 seeking comment on the economic impact of, and the continuing need for, the Rule; the benefits of the Rule to consumers; and any burdens the Rule places on businesses.[12] The ANPR also sought comment on whether and how the Rule should address professional

[1] 16 CFR 423.5 and 423.6(a) and (b).

[2] 16 CFR 423.6(c).

[3] The Rule provides that the symbol system developed by ASTM International, formerly the American Society for Testing and Materials, and designated as ASTM Standard D5489–96c, ''Guide to Care Symbols for Care Instructions on Consumer Textile Products,'' may be used on care labels or care instructions in lieu of terms so long as the symbols fulfill the requirements of part 423. 16 CFR 423.8(g).

[4] 36 FR 23883 (Dec. 16, 1971).

[5] 48 FR 22733 (May 20, 1983).

[6] 62 FR 5724 (Feb. 6, 1997).

[7] 65 FR 47261 (Aug. 2, 2000).

[8] *Id.* at 47269.

[9] The Commission initially proposed a definition of professional wetcleaning, stating, in part, that it is a system of cleaning by means of equipment consisting of a computer-controlled washer and dryer, wetcleaning software, and biodegradable chemicals specifically formulated to safely wetclean wool, silk, rayon, and other natural and man-made fibers. *Id.* at 47271 n. 99.

[10] *Id.* at 47272. The Commission explained that the definition must either describe all important variables in the process, so that manufacturers can determine that the process would not damage the garment, or be coupled with a specific test procedure that manufacturers can use to establish a reasonable basis for the instruction. *Id.*

[11] *Id.* at 47273.

[12] 76 FR 41148 (July 13, 2011).

wetcleaning and updated industry standards regarding the use of care symbols, as well as whether the Rule should provide for non-English disclosures. The Commission received 120 comments in response.[13]

After reviewing these comments, in September of 2012 the Commission published a Notice of Proposed Rulemaking (''NPRM'') proposing four amendments.[14] Specifically, it proposed: (1) Permitting manufacturers and importers to provide a care instruction for professional wetcleaning on labels if the garment can be professionally wetcleaned; (2) permitting manufacturers and importers to use the symbol system set forth in either ASTM Standard D5489–07, ''Standard Guide for Care Symbols for Care Instructions on Textile Products,'' or ISO 3758:2005(E), ''Textiles—Care labelling code using symbols''; (3) clarifying what constitutes a reasonable basis for care instructions; and (4) updating the definition of ''dryclean'' to reflect then-current practices and technology.[15] The Commission received 87 comments in response,[16] including one requesting an opportunity to present views orally at a workshop or hearing and several suggesting that the Commission hold a hearing or workshop. Most of these comments also urged the Commission to amend the Rule to require a wetcleaning instruction rather than merely permit one. Accordingly, the Commission conducted a roundtable on March 28, 2014 to provide interested parties with an opportunity to present their views orally pursuant to the procedures set forth in the NPRM.[17] The Commission received 19 comments in connection with the roundtable.[18]

Upon consideration of the substantial record in this rulemaking, the Commission now seeks comment on a proposal to repeal the Rule altogether. As detailed in section III, the record suggests that the Rule may not be necessary to ensure manufacturers provide care instructions, may have failed to keep up with a dynamic marketplace, and may negatively affect the development of new technologies and disclosures.

This SNPRM summarizes the comments filed in response to the NPRM, as well as the roundtable and the roundtable comments, and explains the Commission's proposal. Additionally, it poses questions regarding the proposal and whether informal guidance would be helpful in the absence of the Rule. Finally, this SNPRM addresses procedural matters including communications to Commissioners and their advisors and the requirements under the Regulatory Flexibility Act and the Paperwork Reduction Act.

II. Summary of Comments and Roundtable

The Commission received 106 comments in response to the 2012 NPRM and 2014 roundtable.[19] Individuals, many of them professional cleaners, filed the majority of comments. The Commission also received comments from government agencies,[20] industry standard-setting and related organizations,[21] environmental advocacy organizations,[22] equipment manufacturers and solvent suppliers,[23] and trade associations representing industries affected by the Rule.[24] In addition, 17 individuals representing a variety of stakeholders participated in the three roundtable discussion groups, which included audience participation. The commenters and roundtable participants (''comments'' or ''commenters'') addressed four issues: (1) Professional wetcleaning; (2) use of care symbols; (3) reasonable basis provisions; and (4) the Rule definitions and appendix.

A. Professional Wetcleaning

Commenters addressed a variety of issues relating to wetcleaning, including: (1) The dryclean instructions on many labels, which some commenters claimed are unfair or deceptive; (2) the environmental and health benefits of wetcleaning; (3) the relative cost of wetcleaning and drycleaning; (4) the cost of substantiating wetcleaning instructions; (5) consumer access to, and preferences regarding, wetcleaning; (6) the content of wetcleaning instructions; and (7) whether the Rule should permit or require a wetcleaning instruction.

1. Consumer Understanding Regarding Professional Wetcleaning From Dry Cleaning Instructions

Several commenters maintained that the current dryclean instruction is deceptive and unfair because they argue that it implies that drycleaning is the only safe and effective cleaning method, when, in fact, wetcleaning may be an effective, alternative method of cleaning.[25] The Rule currently allows marketers to provide a dryclean instruction on a label if they have a reasonable basis to believe that drycleaning is a safe and effective cleaning method. Drycleaning need not be the only, or even the best, method of cleaning the item. Some commenters contended, however, that contrary to the Rule's intent empirical and anecdotal evidence indicates many consumers misunderstand the dryclean instruction to mean that drycleaning is either the

[13] The comments are posted at *http://www.ftc.gov/policy/public-comments/initiative-384.*

[14] 77 FR 58338 (Sept. 20, 2012).

[15] The Commission published the NPRM pursuant to Section 18 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 57, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

[16] The comments are posted at *http://www.ftc.gov/policy/public-comments/initiative-451.*

[17] The Commission originally scheduled this roundtable on October 1, 2013, *see* 78 FR 45901 (July 30, 2013); however, it was cancelled due to the government shutdown. The Commission announced the March 28 roundtable in February 2014. *See* 79 FR 9442 (Feb. 19, 2014). For more information about the roundtable, including the agenda, event materials, a transcript, and video recordings of the roundtable, *see http://www.ftc.gov/news-events/events-calendar/2014/03/care-labeling-rule-ftc-roundtable.*

[18] One comment is posted at *http://www.ftc.gov/policy/public-comments/initiative-489.* Eighteen comments are posted at *http://www.ftc.gov/policy/public-comments/initiative-548.*

[19] The Commission has assigned each comment a number appearing after the name of the commenter and the date of submission. This SNPRM cites comments using the last name of the individual submitter or the name of the organization, followed by the number assigned by the Commission.

[20] Two California agencies filed comments: The Air Resources Board (451–70), Department of Toxic Substances Control (451–96). The European Union also filed a comment (451–67).

[21] American Association of Textile Chemists & Colorists (AATCC) (548–15), ASTM International (451–77), and Ginetex (451–37), which is responsible for the care labeling system used in European countries.

[22] The Toxic Use Reduction Institute (''TURI'') (451–54 and 548–28), UCLA Sustainable Technology & Policy Program (451–87 and 548–27).

[23] *E.g.,* Miele (451–68, 72 and 76) and GreenEarth Cleaning (451–41 and 548–9 and 17).

[24] American Apparel & Footwear Association (451–88 and 548–26), Drycleaning & Laundry Institute (451–71), The Hosiery Association (541–69), International Drycleaners Congress (451–32), National Cleaners Association (451–98 and 548–22), Professional Leather Cleaners Association (451–84 and 548–14), Professional Wet Cleaners Association (451–59 and 548–18), United States Association of Importers of Textiles & Apparel (USA–ITA) (451–73).

[25] *See* roundtable presentation by Peter Sinsheimer from UCLA, available at *http://www.ftc.gov/system/files/documents/public_events/114528/march_28_sinsheimer_ftc_presentation.pdf;* Sinsheimer (548–27), Huie (548–12) (dryclean instruction deceptive because implies dryclean only), Roh (548–5) (dryclean instruction deceptive unless wetclean instruction mandated); Roundtable Transcript at 9 and 12–18.

only or the recommended cleaning method.

Peter Sinsheimer from UCLA submitted an online consumer study by Harris Interactive to support his contention that the Rule's dryclean instruction is deceptive and unfair.[26] The study, conducted in September 2013 using close-ended questions, involved 2,000 adults. According to Sinsheimer, about 89% of the study respondents interpreted ''dryclean'' to mean that drycleaning is the only, or the recommended, cleaning method.[27] Only about 7% understood ''dryclean'' to mean that drycleaning is just one reliable method for cleaning the item.

Several other commenters also asserted that consumers misinterpret the dryclean instruction. For example, one trade association stated that many, if not all, consumers interpret the dryclean label as ''do not wash.'' [28] In addition, two consumer surveys considered by the Commission during the last Rule review yielded results consistent with the Harris Interactive online survey. One 1998 survey showed that 73.2% of the consumers surveyed interpreted ''dryclean'' to mean that the item must be drycleaned, professionally cleaned, or otherwise specially taken care of. [29] A second survey of female heads of household who do laundry showed that 44% interpreted ''dryclean'' to mean that drycleaning is the only acceptable way to clean the item.[30]

Commenters generally agreed that a substantial number of garments labeled ''dryclean'' or ''dryclean only'' can be professionally wetcleaned, although they disagreed on the percentage. Sinsheimer cited studies showing that 99% of these items can be wetcleaned.[31] Professional wetcleaners also indicated that a very high percentage of these textiles can be wetcleaned, including those containing wool and cashmere.[32] Other commenters asserted that wetcleaning is not necessarily suitable for certain types of fibers (*e.g.,* pure wool) and stains (*e.g.,* water soluble stains can be wetcleaned while other types of stains such as grease may require drycleaning) and can lead to loss of color, bleeding, shrinkage, and undesired changes in an item's surface character.[33] None of the commenters disputed that wetcleaning is a viable method of cleaning and an effective alternative to drycleaning in at least some instances.

2. Environmental and Health Issues

Some commenters contended that wetcleaning is always better for the environment and human health than drycleaning. Others asserted that drycleaning is comparable or superior under some circumstances. Both roundtable presentations addressed this issue, as did a number of the commenters.

Government agencies, environmental advocacy organizations, and professional wetcleaners touted the environmental and health benefits of wetcleaning. Paul Matthai, a senior regulatory analyst for the Pollution Prevention Division/Office of Pollution Prevention and Toxics (PPD/OPPT) at the EPA opined that wetcleaning is ''inherently environmentally preferable'' to drycleaning.[34] Sinsheimer stated that the vast majority of drycleaners in the United States operate machines with perchloroethylene (''perc''), a chemical listed in the Clean Air Act as a hazardous air pollutant and a leading source of soil and drinking water contamination.[35] Two California government agencies [36] and a second environmental advocacy organization [37] also asserted that perc causes soil and groundwater contamination while professional wetcleaning uses less energy and water, and improves air quality and employee health.[38] In December 2007, the California Air Resources Board adopted a regulation eliminating the use of perc in drycleaning by 2023.[39] Joy Onasch of the Toxic Use Reduction Institute (''TURI'') asserted that hydrocarbons and other perc alternatives have significant environmental and health hazards such as increased emissions of volatile organic compounds, fire, groundwater contamination, and potential adverse human health effects.[40] A number of professional wetcleaners favored wetcleaning due to concerns about toxic or unhealthy drycleaning solvents.[41]

Other commenters disputed these claims. Charles Riggs of Texas Woman's University stated that modern drycleaning equipment filters and then reuses solvents until they can be disposed of. He also asserted that wetcleaning discharges water containing detergents as well as more aggressive spot cleaning solvents into the sewage system.[42] Mary Scalco of the Drycleaning and Laundry Institute (''DLI'') asserted that wetcleaning may be no more environmentally friendly than drycleaning, depending on the equipment and drycleaning solvent used.[43] Ann Hargrove of the National Cleaners Association (''NCA'') asserted that some wetcleaners are not allowed to use the septic system because they used dry solvents that ended up in the water.[44] Another commenter stated that wetcleaning consumes significantly more water than drycleaning and can lead to the discharge of solvents into the sewer.[45]

3. Wetcleaning and Drycleaning Service Costs

Some commenters contended that wetcleaning costs no more than drycleaning, while others explained that costs depend on many factors, including the type and age of equipment and solvents used. Sinsheimer, Onasch, and Juli Mo of the Professional Wetcleaners Association cited research and anecdotal evidence that wetcleaning is either less expensive or at least does not cost more than drycleaning.[46] For example, Onasch reported that several cleaners in Massachusetts did not raise their prices after switching from perc drycleaning to wetcleaning.[47] A June 2012 report submitted by TURI estimated that the average cost per pound for wetcleaning was $1.10; it also

[26] *See* Sinsheimer roundtable presentation, available at *http://www.ftc.gov/system/files/documents/public_events/114528/march_28_sinsheimer_ftc_presentation.pdf;* Sinsheimer (548–27); Roundtable Transcript at 9 and 17–18. The Commission has concerns about certain methodological limitations of the study that reduce its probative value, discussed in greater detail in section III.A.2.

[27] Specifically, 42% of the respondents interpreted ''dryclean'' to mean that drycleaning is the only method for cleaning the item (Q3010). Additionally, 47% of respondents interpreted ''dryclean'' to mean it is the recommended cleaning method.

[28] DLI (451–71).

[29] 65 FR at 47268. Despite this interpretation of the dryclean instruction, 49% said they had washed or laundered items labeled ''dryclean.'' Of these consumers, 63.4% were satisfied with the results, and 11.1% were sometimes satisfied. *Id.*

[30] *Id.*

[31] Roundtable Transcript at 17–18.

[32] *E.g.,* Chang (451–60), PWA (451–59) (99.9% can be wetcleaned); Roundtable Transcript at 47–49.

[33] *See* roundtable presentation by Professor Riggs of Texas Woman's University, available at *http://www.ftc.gov/system/files/documents/public_events/114528/charles_riggs_presentation_ftc.pptx;* and Roundtable Transcript at 27–31, 43, 58, and 65–66.

[34] Roundtable Transcript at 60.

[35] Sinsheimer (451–87).

[36] Air Resources Board (451–70) and Department of Toxic Substances Control (451–96).

[37] TURI (451–54 and 548–28).

[38] Roundtable Transcript at 45, 56, 60–64.

[39] Air Resources Board (451–70).

[40] TURI (451–54).

[41] *E.g.,* PWA (548–59 and 60), Mo (548–19).

[42] Riggs Roundtable PowerPoint presentation; Roundtable Transcript at 34–37.

[43] Roundtable Transcript at 54–55 and 59.

[44] *Id.* at 58.

[45] Sitz (548–6).

[46] Sinsheimer roundtable power point presentation; Roundtable Transcript at 19, 67, and 69–70.

[47] Roundtable Transcript at 70.

estimated the cost was $1.02 for perc and $0.88 for high-flash hydrocarbons, two types of drycleaning solvents.[48] Onasch of TURI asserted that data since 2012 shows that wetcleaning does not cost more than drycleaning.[49] Riggs stated that service prices vary not only by the technology used to clean, but also the price range of the garments cleaned and the age of the equipment.[50]

4. Substantiation Costs

Commenters disagreed about the cost of substantiating wetcleaning instructions and the potential burden associated with commenter proposals to require manufacturers to provide a wetcleaning instruction. Sinsheimer contended that his survey of professional wetcleaners shows that they can determine whether an item can be wetcleaned for an average cost of $50–$100 if testing is needed.[51] In contrast, Scalco contended that DLI provides comprehensive testing for washing, drycleaning, and wetcleaning instructions for about $1,400, and that wetcleaning testing costs about $467.[52] Other commenters, including Riggs, Marie D'Avignon of the American Apparel and Footwear Association, and Adam Mansell of the United Kingdom Fashion and Textile Association, disputed Sinsheimer's contention that requiring a wetcleaning instruction would not entail significant or burdensome costs for manufacturers.[53]

5. Consumer Access and Preferences

Commenters who addressed consumers' desire for wet cleaning asserted that at least some consumers would prefer wetcleaning but not all consumers have access to it. As noted earlier, some commenters presented evidence that many consumers would prefer wetcleaning if they knew of the option and the quality and cost were comparable.[54] Similarly, professional wetcleaners asserted that many cleaners and consumers prefer wetcleaning.[55] None of the commenters disputed this contention, however GreenEarth noted that recent Google search data suggests far less interest in wetcleaning than drycleaning.[56]

Commenters also agreed that not all consumers have access to wetcleaning, particularly in certain regions of the country. GreenEarth added that the limited number of cleaners in the Professional Wetcleaners Directory suggests that drycleaning services are much more accessible than wetcleaning services and that wetcleaners tend to be concentrated on the East and West Coasts. Sinsheimer described this as a ''chicken and egg'' problem, arguing that the absence of a wetcleaning instruction on labels is an enormous barrier to the diffusion of wetcleaning services.[57]

6. Content of Wetcleaning Instructions

Many commenters favored a ''professionally wetclean'' instruction because they asserted that consumers might misinterpret a ''wetclean'' instruction to mean home washing.[58] None preferred ''wetclean'' to ''professionally wetclean.'' Some also urged the Commission to require a ''do not wash'' warning—where warranted—to minimize the risk that consumers will misunderstand a care instruction and inadvertently damage a garment that is labeled for wetcleaning by laundering it.[59]

7. Whether To Permit or Require a Wetcleaning Instruction on Items That Can Be Wetcleaned

Commenters disagreed on whether the Commission should require or, as the Commission proposed, permit a wetcleaning instruction. Sinsheimer, Onasch, Mo, California government agencies, many members of the wetcleaning industry, and some consumers urged the Commission to require a wetcleaning instruction.[60] In contrast, Riggs, D'Avignon, Mansell, Scalco, and many members of the drycleaning industry favored permitting a wetcleaning instruction.[61]

B. Use of Care Symbols

Commenters addressed: (1) The use of ASTM and ISO symbols; (2) the differences between the 2005 and 2012 ISO symbols; (3) concerns about the Rule specifying the year of the permitted ASTM or ISO symbol system; (4) the timing of future symbol system changes; and (5) consumer understanding of symbols.

1. ASTM vs. ISO Symbols

Commenters addressing the issue urged the Commission to modify the Rule to allow for the use of updated ASTM symbols, and most supported amending the Rule to permit the use of ISO symbols, and either supported, or did not object to, retaining the option of using ASTM symbols.[62] These commenters explained that manufacturers commonly use ISO symbols in other countries; therefore, allowing their use in the United States would increase flexibility and reduce labeling costs. None of the commenters viewed the differences between the ISO and ASTM symbols as a problem, with the exception of natural drying symbols discussed further below.[63]

In addition, commenters opposed the Commission's proposal to require labels to identify the symbols as ISO-based.[64] None believed that identifying the ISO system on labels would help consumers, and many noted that requiring this disclosure would impose unnecessary costs on manufacturers.

2. Differences Between the 2005 and 2012 ISO Symbols

Nearly all relevant commenters favored the 2012 ISO symbols.[65] They noted that manufacturers use the current 2012 ISO symbols and use of the 2005 symbols would therefore impose unnecessary costs. In addition, three commenters explained that either the key differences between the 2012 and 2005 ISO standards are minor, or the

[48] TURI (451–54); Roundtable Transcript at 66.

[49] Roundtable Transcript at 67–68.

[50] *Id.* at 68 and 71–72.

[51] Sinsheimer roundtable PowerPoint presentation; Roundtable Transcript at 18.

[52] Roundtable Transcript at 78–79.

[53] *Id.* at 43–44, 75–77 and 81; AAFA (48–26).

[54] *See* Sinsheimer roundtable presentation, available at *http://www.ftc.gov/system/files/documents/public_events/114528/march_28_sinsheimer_ftc_presentation.pdf;* Sinsheimer (548–27); Roundtable Transcript at 14.

[55] *E.g.,* PWA (548–59 and 60), Mo (548–19).

[56] GreenEarth (548–9 at 3).

[57] Roundtable Transcript at 91.

[58] *E.g.,* Brown (451–11), Camerino (451–14), Chen (451–17), Culotta (451–56), Daniel (451–42), DLI (451–71), Ocampo (451–52), Feingold (548–7), GreenEarth (451–41 and 548–9 at 3), Park (451–95), Blacker (451–82), Knox (451–65), Yerby (451–55), Peterson (451–39), Kinzer (451–36), Veach (451–31), Shaffer (451–30), Woodruff (451–27), Wentworth (451–26), Laramee (451–13), Mishann (451–12), Staal (451–9), Johnson (451–6); Roundtable Transcript at 95–98.

[59] *E.g.,* Chen (451–17), GreenEarth (451–41 and 548–9 at 3), Shaffer (451–30), Woodruff (451–27), Laramee (451–13).

[60] *E.g.,* Sinsheimer Roundtable presentation, California Air Resources Board (451–70), California Department of Toxic Substances Control (451–96), Yim (451–83), Feingold (548–7), Huie (451–80 and 548–12), Mo (451–79), Miele (451–68 and 76), Onasch (451–54), Ornholmer (451–66), PWA (451–59), Roh (451–75 and 548–21), Sung (451–74); Roundtable Transcript 19–20 and 85.

[61] *E.g.,* AAFA (451–88), Behzadi (451–88), GreenEarth (451–41 and 548–9 at 3), International Drycleaners Congress (451–32), NCA (451–98 and 548–22); Roundtable Transcript at 42–44, 46–47, and 51.

[62] *E.g.,* AAFA (451–88 and 548–26), European Union (451–67), Ginetex (451–37), GreenEarth (451–41), International Drycleaners Congress (451–32), Kyllo (451–78), Knox (451–65), Lee (451–51), Poggi (451–4), and USA–ITA (451–73); and Roundtable Transcript at 122–23, 163–64, and 171.

[63] Roundtable Transcript at 120–21.

[64] *E.g.,* European Union (451–67), GreenEarth (548–9), Kyllo (451–78); Roundtable Transcript at 130–136, 168–170 and 175–176.

[65] *E.g.,* AAFA (451–88 and 548–26), Bide (451–48), Drøjdahl (451–53), European Union (451–67), Ginetex (451–37), GreenEarth (451–41), Kyllo (451–78), International Drycleaners Congress (451–32), and Poggi (451–4); Roundtable Transcript at 125–26 and 140.

2012 standard is an improvement.[66] Some noted that, unlike the 2005 symbols, the 2012 symbols include natural drying symbols that differ from the ASTM natural drying symbols. Two commenters supported allowing use of the 2012 ISO symbols in lieu of written terms, except for the natural drying symbols. They contended these drying symbols are confusing, seldom used in the United States, or differ from ASTM symbols.[67]

3. Recognizing ASTM and ISO Standards Without Identifying the Year

Some commenters advocated allowing the most recent ASTM and ISO symbol systems without specifying the year or version of the standards.[68] They asserted that it takes too long for the Commission to update the Rule once the ASTM or ISO symbol system changes, creating problems for marketers.[69]

4. Timeline for ASTM and ISO Updates

Both ASTM and ISO have updated their care labeling symbol systems since the Commission initiated its review of the Care Labeling Rule. ASTM most recently updated its care labeling system in 2018, while ISO updated its system in 2012. Several commenters expressed concern that the ASTM and ISO symbol systems have not adequately addressed drycleaning solvents other than perc and petroleum.[70]

In its comment on the ANPR, Ginetex urged the Commission to repeal the Rule in part due to the difficulty of keeping up with market developments and innovations. Specifically, it argued that the Rule should not be mandatory because a voluntary scheme could better adapt to technical and environmental developments.[71] Others noted that Canada and European nations do not require care labeling instructions.[72]

Finally, some commenters urged the Commission to review the Rule more frequently to help keep up with changes in the marketplace and ASTM and ISO standards.[73] One explained that, for many years, the industry and technology were relatively static,[74] but recently there has been a lot of change, with more expected. If the Commission plans to continue regulating care labels, another urged the Commission staff to attend ISO, ASTM, and American Association of Textile Chemists & Colorists (''AATCC'') meetings to keep abreast of industry changes.[75]

5. Consumer Understanding of Symbols

Several commenters opined that many consumers do not understand all of the care symbols currently in use.[76] As a result, they opposed allowing the use of any symbols.[77] Still others contended that using both ASTM and ISO symbols will likely cause consumer confusion.[78] Others expressed concern that consumers may not understand some symbols, but nonetheless favored allowing their use. They explained that consumers understand the most relevant symbols (*e.g.,* washing, ironing, and professional care symbols), and professional cleaners will know the rest.[79] Moreover, some consumers prefer written terms to symbols, possibly because they do not understand the symbols. For example, J.C. Penney reported that its customers complained when it tried to use only symbols with one brand.[80] However, none of the roundtable participants that expressed concern about consumer understanding of symbols opposed allowing the use of symbols to provide care instructions. In addition, several noted that the majority of labels in the United States already use symbols in addition to, or in lieu of, written instructions.[81]

C. Reasonable Basis Provisions

Commenters addressed a variety of issues relating to the Rule's reasonable basis provision, including the Commission's proposal, Green Earth's proposal, and whether, and to what extent, the Rule should require the testing of entire products to substantiate care instructions.

1. Commission Proposal

In 2012, the Commission proposed clarifying the Rule's reasonable basis requirement by incorporating examples of instances where testing an entire garment may be needed to determine care instructions, and where such testing is not needed.

Commenters generally favored the Commission's proposal. All of the commenters addressing the issue supported clarifying the reasonable basis provision, and either supported the proposal[82] or urged the Commission to provide more clarification and additional examples.[83] Commenters identified materials and components possibly warranting testing when combined with other materials or components, including elastic, spandex, vinyl, acetates, triacetates, polyurethane, silks, leather, metallic, and plasticizers, along with components not easily removed, including beads, buttons, sequins, and interfacings.[84] None opposed the Commission's proposal.

2. GreenEarth Proposal

GreenEarth agreed with the Commission's proposal but also suggested listing additional examples that may require testing, such as garments containing: (1) Sizings, elastics, vinyl, acetates, triacetates, polyurethanes, silks, natural skins, or other plasticizers known to be damaged in drycleaning; and (2) water soluble dyes, wool, natural fiber, or skins when wetcleaning is recommended. No commenters expressed support for, or opposition to, GreenEarth's proposal. However, as noted above, many commenters identified similar issues.

3. Testing of Entire Garments vs. Components

Commenters disagreed on the extent to which manufacturers need to test entire items. Some identified situations where such testing would be necessary, such as white and black spandex, where

[66] GreenEarth (548–9), Roundtable Transcript at 132–33.

[67] GreenEarth (548–9); Roundtable Transcript at 151.

[68] *E.g.,* AAFA (451–88 and 548–26), Kyllo (451–78), Keyes (451–64); Roundtable Transcript at 144–45.

[69] Roundtable Transcript at 130, 144–45, 162, and 173–75.

[70] *E.g.,* Brown (451–11), Camerino (451–14), Daniel (451–42), Douglas (451–33), GreenEarth (451–41 and 548–9), Slan (451–57). ASTM updated its symbol system in 2014 to provide that the letter ''F'' enclosed in the circle symbol represents drycleaning in hydrocarbon or silicone solvent but not perc solvent.

[71] Ginetex (384–39).

[72] Roundtable Transcript at 175.

[73] *Id.* at 225–26.

[74] *Id.* at 229–30.

[75] *Id.* at 226–28.

[76] *E.g.,* GreenEarth (548–9), Huie (548–12); Roundtable Transcript at 94–95, 123–27, 146, 157–58, and 166.

[77] *E.g.,* Daniel (451–42), The Hosiery Association (451–69), Slan (451–57), Patel (451–40), Kinzer (451–36), Reiner (451–25), Pflueger (451–5).

[78] *E.g.,* DLI (451–71) and Keyes (451–64); Roundtable Transcript at 119–120 and 122.

[79] Roundtable Transcript at 126–27 and 146–47.

[80] *Id.* at 170–71. Given the context of the Workshop remarks (''We did try one brand, specifically in our intimates, to just use the symbols and our customers complained so much about it, they had no idea''), it appears that JCPenney discontinued the symbol-only practice for the brand in question.

[81] *Id.* at 131.

[82] *E.g.,* AAFA (451–88 and 548–26), DLI (541–71), GreenEarth (451–41 and 548–9), Knox (451–65), and NCA (451–98); Roundtable Transcript at 179–185.

[83] *E.g.,* Brown (451–11), Chen (451–17), DLI (541–71), GreenEarth (451–41 and 548–9), Feingold (548–7), International Drycleaners Congress (451–32), Kinzer (451–36), Knox (451–65), Laramee (451–13), Patel (451–40), Shaffer (451–30), Sitz (548–6), Staal (451–9), Viezcas (451–10), and Yerby (451–55); Roundtable Transcript at 185–186.

[84] *Id.*

dye bleed is an issue.[85] NCA and others explained that the aggressiveness of the drycleaning solvent is not the only factor that may require testing because less aggressive solvents can be heated to enhance their aggressiveness, and longer cleaning and drying cycles result in more aggressive mechanical action.[86] Manufacturers, however, indicated that testing entire items is often unnecessary and would entail excessive costs.[87] For example, one said that it tests fabrics as necessary rather than finished garments and solicits information from suppliers about how their trim reacts to certain chemicals.[88]

D. Rule Definitions and Appendix

Commenters addressed a variety of issues relating to the Rule's definitions and Appendix, including the Commission's proposal to amend the definition of drycleaning, the Appendix's provision on leather care instructions, and the Rule's definitions of hot, warm, and cold water.

1. Drycleaning Definition Revisions

Commenters generally favored the Commission's proposal, although they disagreed on whether to list specific solvents in the drycleaning definition. All relevant commenters favored updating the definition by clarifying that it includes solvents other than water (non-aqueous solvents) and dropping the term ''organic'' and the reference to fluorocarbons (a solvent no longer in use).[89] They disagreed on whether to list examples of current drycleaning solvents. Some supported the proposal to update the list. Others expressed concern that any list would be misinterpreted as complete, rather than illustrative. Therefore, they stated that the list might discourage innovation and the use of new solvents.[90] Some expressed concerns about including solvents rarely used, such as aldehyde, or solvents that cleaners may stop using in the future.[91]

2. Leather Instruction

Commenters also disagreed on the need to amend the Rule's Appendix on leather care instructions. Dart Poach of the Professional Leather Cleaners Association (''PLCA'') urged the Commission to amend this provision so the instruction addresses professional refinishing.[92] Specifically, PLCA proposed the instruction ''Leather Clean and Refinish by Professional Leather Cleaner Only'' because many textile products with leather components need professional leather refinishing as well as professional leather cleaning. In addition, several commenters urged the Commission to amend the Rule's reasonable basis provision to address leather care.[93]

Other commenters questioned the need for the proposed amendment because they have not received consumer complaints or otherwise seen a problem.[94] For example, one stated that with the advent of more gentle alternatives to perc, many items with leather trim do not need refinishing.[95] No other commenters supported the amendment proposed by PLCA.

3. Water Temperature Issues

Commenters disagreed on whether the Commission should amend the Rule to incorporate the AATCC's most recent definitions of hot, warm, and cold water used in testing. AATCC explained that its new temperature ranges fall within those in the Rule, and therefore the Commission does not need to revise them.[96] Instead, AATCC proposed adding a new provision stating:

> The Standardization of Home Laundry Test Conditions Monograph (M6) developed by American Association of Textile Chemist & Colorists (AATCC) may be used as a supplement to refer [to] a range of washing temperatures available in today's consumer laundering machines. It should be noted that these temperatures fall within the tolerance range specified in section 423.2(d) of 16 CFR [sic]. This monograph may be obtained from the AATCC website: *http://www.aatcc.org/testing/supplies/docs/205-M06.pdf* or may be reviewed at the Federal Trade Commission, Room 130, 600 Pennsylvania Avenue NW, Washington DC.

Several commenters disagreed, arguing that the Rule's temperatures should match those specified for testing, even though consumers' laundry temperatures vary significantly based on location, season, and heater settings.[97]

III. Proposed Repeal

Section 18 of the FTC Act, 15 U.S.C. 57a, authorizes the Commission to promulgate, amend, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1). The Commission regularly reviews its rules to ensure they are up-to-date, effective, and not overly burdensome, and has repealed a number of trade regulation rules after finding they were no longer necessary to protect consumers.[98]

Comments in the record suggest that current conditions support repealing the Rule. Specifically, the record suggests that the existing Rule may no longer be necessary because manufacturers, in the absence of the Rule, are likely to provide accurate care information to consumers as a matter of course.[99] Additionally, the Rule may have failed to keep up with a dynamic marketplace. The record also raises concerns that the Rule may have a negative impact on innovation, particularly in the development and adoption of cleaning technologies and disclosures. Finally, repeal would provide manufacturers with additional flexibility in labeling and address concerns raised by some commenters that the Rule mandates care disclosures that may be confusing to some consumers. To the extent that confusion about currently mandated care disclosures may exist, labelers will be incentivized by competitive pressure, rather than compelled by the Rule, to respond to consumer demand for better disclosures. In light of these considerations, the Commission seeks comment on the costs and benefits of repealing the Rule. The Commission emphasizes that, even if it repeals the

[85] *E.g.,* Anderson (548–13), Feingold (548–7), GreenEarth (548–9 and 548–17), and Sitz (548–6); Roundtable Transcript at 185–186.

[86] *E.g.,* NCA (548–22); Roundtable Transcript at 142–4.

[87] *E.g.,* AAFA (548–26); Roundtable Transcript at 186–88.

[88] *E.g.,* Roundtable Transcript at 187–88.

[89] AAFA (451–88), DLI (451–71), GreenEarth (451–41 and 548–17), Knox (451–65), NCA (451–98); Roundtable Transcript at 209–11.

[90] Roundtable Transcript at 212–13.

[91] Blacker (451–82); Roundtable Transcript at 211–12.

[92] PLCA (451–84 and 548–14); Roundtable Transcript at 182, 200, 202–03, and 208–09.

[93] *E.g.,* Laramee (451–13), Staal (451–9), and Viezcas (451–10).

[94] Roundtable Transcript at 202 and 205–08.

[95] *Id.* at 205.

[96] AATCC (548–15); Roundtable Transcript at 192–94.

[97] Roundtable Transcript at 191–92 and 195–198.

[98] *See, e.g.,* 16 CFR part 410 (television screen sizes) (83 FR 50484 (Oct. 19, 2018)) (rule unnecessary; lack of deceptive claims); 16 CFR part 419 (games of chance) (61 FR 68143 (Dec. 27, 1996)) (Rule outdated; violations largely non-existent; and Rule has adverse business impact); 16 CFR part 406 (used lubricating oil) (61 FR 55095 (Oct. 24, 1996)) (Rule no longer necessary, and repeal will eliminate unnecessary duplication); 16 CFR part 405 (leather content of belts) (61 FR 25560 (May 22, 1996)) (Rule unnecessary and duplicative; Rule's objective can be addressed through guidance and case-by-case enforcement); and 16 CFR part 402 (binoculars) (60 FR 65529 (Dec. 20, 1995)) (technological improvements render Rule obsolete).

[99] Although commenters in this proceeding did not provide substantial information about the prevalence of deceptive practices in the current marketplace, no commenter indicated that the market is free of deception. In response to the ANPR, for instance, a few indicated that some non-compliant parties appear to be misinformed or to misunderstand the requirements. Textile Industry Affairs (384–112) and The Clorox Company (384–122).

Rule, Section 5 of the FTC Act (15 U.S.C. 45(a)) would continue to prohibit manufacturers from engaging in unfair or deceptive practices in labeling.

A. The Rule May Be Unnecessary

The record suggests that a legal mandate may not be necessary to ensure manufacturers provide clear, accurate care instructions on garments. Notably, most European Union nations and Canada have voluntary care instruction systems and, according to the record, manufacturers in those markets voluntarily provide cleaning instructions on a routine basis.[100] Moreover, the record also suggests that market demand for clear care labels in the U.S. is sufficient to motivate marketers to provide them. For example, a representative for JCPenney reported that consumer outcry was substantial when the company tried to sell one of its brands without word-based care instructions, apparently leading the company to discontinue the practice.[101]

This result is not surprising. Consumers need to clean their clothes and want to do so without ruining their investment, particularly when that investment is significant. Manufacturers who do not provide cleaning instructions will likely disappoint consumers and lose sales. The J.C. Penney example demonstrates this point.[102] Therefore, market forces appear to be sufficient to ensure that manufacturers provide cleaning instructions to their consumers without a regulatory requirement. Accordingly, the Rule's repeal appears unlikely to have any significant negative impact on care information currently available to consumers.

Moreover, mandatory care labeling instructions for all garments may impose unnecessary compliance costs on manufacturers. With mandatory instructions, manufacturers bear the cost of providing instructions on all garments. However, there is no indication that every type of garment needs instructions to ensure proper cleaning. For example, consumers may not need instructions for basic cotton t-shirts. Without mandatory instructions, manufacturers likely would provide care instructions for garments only if consumer demand warranted, thereby avoiding those costs when care instructions are not necessary for consumers.

B. Keeping Up With Marketplace Changes

As some commenters discussed (section II.A. and B.), the Rule does not appear to have kept pace with advances in cleaning technology and care symbol revisions. Specifically, although the option of wetcleaning has been available in the marketplace for many years, the Rule still does not allow manufactures to present that option on labels. Moreover, the Rule currently incorporates a symbol system (ASTM D5489–96c) that has been superseded. Repeal would remove the confusion caused by outdated Rule provisions, as well as the need to update provisions constantly to address market changes.[103]

C. Potential Negative Impacts on Innovation

Repeal would also eliminate any possibility the Rule negatively affects market innovation. Over the course of the proceeding, some commenters suggested that the Rule might have had a negative impact on the adoption of new cleaning technologies. For example, commenters and workshop participants explained that the Rule's failure to address wetcleaning has placed professional wetcleaners at a competitive disadvantage and discouraged greater use of that technology. PWA explained, ''we cannot market our services as 'Professional Wet Cleaning' because the care label says Dry Cleaning.'' Comments from wetcleaning equipment makers also raised concerns about the Rule's impact. For example, a representative for wetcleaning system developer Kreussler suggested the Rule language might prohibit innovation.[104] Some non-industry commenters raised similar concerns. Sinsheimer stated that if ''the wet cleaning care label is not on the garment . . . that is an enormous barrier to the diffusion'' of wetcleaning services. In addition, the Toxics Use Reduction Institute asserted that the current Rule ''is limiting the spread of this safer technology [wetcleaning].'' [105] The commenters also suggested the Rule has limited the use of newer solvents in drycleaning.[106]

At the same time, countervailing market trends unrelated to labeling may have contributed to the lack of adoption of new cleaning technologies identified by these commenters. Specifically, an overall decline in the demand for professional cleaning may have affected the adoption of new technologies, driven by factors such as the increased wear of casual workplace clothing, reduced smoking, and the use of ''wrinkle free'' clothing that consumers can wash at home.[107] Nevertheless, repeal would eliminate any negative impacts the Rule may have on innovation in cleaning and disclosures.[108]

Finally, as noted above, several commenters provided empirical and anecdotal evidence suggesting that the Rule's prescribed ''dryclean'' instruction may create confusion among some

[100] Care labeling is voluntary in Canada and most of Europe; *see* Roundtable Transcript at 175 (indicating that care labeling is voluntary in Europe and Canada) and Ginetex (384–83) (urging the Commission to consider a voluntary approach). *See also* Feltham, T., Martin, L. (2006, June) ''Apparel Care Labels: Understanding Consumers' Use of Information,'' *https://www.researchgate.net/publication/228295594_Apparel_Care_Labels_Understanding_Consumers'_Use_of_Information* (''Even though the care labeling (in Canada) is voluntary, consumers see care labels on almost all garments purchased in Canada''); and ''European Commission DG Enterprise and Industry Study of the need and options for the harmonisation of the labelling of textile and clothing products,'' 24 January 2013, Final Report, Matrix Insight Ltd., at 43–44, available at *ec. europa.eu/DocsRoom/documents/10480/attachments/1/translations/en/renditions/native.*

[101] Roundtable Transcript at 170–171.

[102] Moreover, if a manufacturer provides no cleaning information, failing to warn that a method a consumer could reasonably assume would be a safe method would in fact harm the garment, the manufacturer could be in violation of Section 5 and subject to a Commission law enforcement action. *See, e.g., Int'l Harvester,* 104 F.T.C. 949, 1058 (1984) (''It can also be deceptive for a seller to simply remain silent, if he does so under circumstances that constitute an implied but false representation.'').

[103] In its comments (384–83), Ginetex argued that a voluntary scheme could better adapt to technical and environmental developments.

[104] Roundtable Transcript at 156 (Fitzpatrick).

[105] Roundtable Transcript at 91 (Sinsheimer); and Toxics Use Reduction Institute (394–86). *See also,* PWA (451–59), Miele (384–108), and San Francisco Department of the Environment (384–89). PWA also argued that labeling garments ''Dry Clean'' or ''Dry Clean Only'' even though they can be successfully wetcleaned is unfair to professional wetcleaners. If a consumer prefers to dryclean such garments, the wetcleaner faces the prospect of losing the business or deceiving the consumer by wetcleaning instead of drycleaning such garments. The dilemma of either lying to the customer or potentially losing business makes professional wetcleaning unappealing to many drycleaners. PWA (384–102).

[106] Earlier in the proceeding, several commenters argued the Rule's restrictive ''dryclean'' definition discourages the use of solvents not recognized by the Rule and, therefore, risks curtailing technological advancement. *See* 77 FR at 58342–3 and 58347 (citing to comments Bromagen (384–91); Hagearty (384–61); Preece (384–54); and Yazdani (384–78)). More recent comments and statements at the Roundtable echoed these concerns. GreenEarth Cleaning (548–17) and Roundtable Transcript at 209 (Sopcich).

[107] See, *e.g., Drycleaning's Decline Is Permanent,* American Drycleaner (Dec. 20, 2010), at *https://americandrycleaner.com/articles/drycleanings-decline-permanent.*

[108] Another possibility is that rescinding the Rule may afford manufacturers and sellers the freedom to label new cleaning methods as they enter the market, to develop innovative and informative new disclosures, and to use widely recognized care symbol systems without waiting for updates to the Rule.

consumers.[109] To the extent that current mandated labels may be imperfect or limited, a benefit of the Rule's repeal would be to afford manufacturers and sellers the freedom to improve existing labels, to label new cleaning methods as they enter the market, and to use widely recognized care symbol systems without waiting for updates to the Rule.

IV. Request for Comments

In light of the record evidence suggesting that the Rule may be unnecessary and out of date, the Commission is seeking comments whether to repeal the Rule in its entirety. In deciding whether to repeal the Rule, the Commission considers whether: (1) The Rule's costs are offset by countervailing benefits to consumers or the market; (2) consumer demand is already sufficient to require labeling of at least the garments consumers care about; and (3) Section 5 of the FTC Act could adequately protect consumers in labeling those garments absent the Rule. In considering this third issue, the Commission is interested in views as to what type of agency guidance, if any, would assist manufacturers in complying with Section 5 of the FTC Act absent the Rule. The Commission, therefore, asks for comment on these questions and any others issues commenters think are important for the Commission to consider in deciding whether to repeal the Rule.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 21, 2020. Write ''Care Labeling Rule, 16 CFR part 423, Project No. R511915'' on your comment. Because of the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comment online through the *https://www.regulations.gov* website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form provided by *regulations.gov.* Your comment, including your name and your state, will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Care Labeling Rule, 16 CFR part 423, Project No. R511915'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex C), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website, *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential''—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted at *www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 21, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed repeal of the Care Labeling Rule. The Commission requests that comments provide factual data upon which they are based. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

The Commission seeks comment on the costs, benefits, and market effects of repealing the Rule as proposed, and particularly the cost on small businesses. Comments opposing the proposed repeal should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Please identify any data and empirical evidence that supports your answer.

1. What are the costs and benefits to manufacturers, retailers, professional cleaners, and consumers of the existing Rule?

2. What are the potential costs and benefits to manufacturers, retailers, professional cleaners, and consumers associated with the proposed repeal? Please specify whether the costs and benefits of an option are measured relative to the existing Rule.

3. What potentially unfair or deceptive practices concerning care labeling are occurring in the market?

4. What effect, if any, would repeal have on the care instruction information manufacturers provide to consumers, including whether and how care instructions, or the manner in which they are conveyed (*e.g.,* symbols versus text), change under each option?

5. Are care label instructions helpful in all instances, or only for certain types of garments? Please identify any data and empirical evidence that support your answer.

6. If the Commission were to repeal the Rule, what new or different costs

[109] See section II.A.1. for a discussion of these comments.

would manufacturers incur to ensure they provide truthful and substantiated care information?

7. What incentives do manufacturers have to provide care labels in the absence of a regulatory mandate?

8. Do manufacturers or other sellers have refund policies for their garments? If so, what evidence must consumers provide to obtain refunds? How do companies inform consumers about refunds? What is the consumer burden associated with such refund programs? What are the costs associated for refund programs?

9. What, effect, if any, would repeal have on consumers' decisions regarding cleaning methods?

10. What effect would repeal have on consumers' use of alternative cleaning methods that are not specifically listed on the labels but that consumers may currently be using?

11. What effect would repeal likely have on the ability of industry participants to develop or adopt new technology?

12. What symbol systems would marketers use if the Commission were to repeal the Rule? Do commenters anticipate voluntary adoption of ASTM or ISO?

13. If the Commission repeals the Rule, should it issue guidance clarifying that a manufacturer need not list every possible cleaning method for a garment, and does not violate Section 5 as long as it possesses a reasonable basis for the care method(s) listed on its label?

14. Would repeal of the Rule create uncertainty among manufacturers with regard to ''dry clean'' instructions in light of the commenter concerns about potential confusion associated with the existing label? Would manufacturers need additional guidance on this issue from the FTC? If so, what should that guidance be?

15. What new or additional topics relating to care labeling or the Rule would it be useful for the Commission to address in guidance documents? Should such business guidance identify the use of ASTM or ISO symbols as safe harbors?

V. Communications to Commissioners and Commissioner Advisors by Outside Parties

Pursuant to Commission Rule 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period on the staff report. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of ''Sunshine'' Meetings.[110]

VI. Regulatory Flexibility Act and Regulatory Analysis

Under Section 22 of the FTC Act, 15 U.S.C. 57b–3, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it: (1) Estimates that the amendment will have an annual effect on the national economy of $100 million or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the rescission will not have such effects on the national economy; on the cost of labeling apparel and piece goods; or on covered parties or consumers. Accordingly, the proposed repeal of the Rule is exempt from Section 22's preliminary regulatory analysis requirements. To ensure the accuracy of this certification, however, the Commission requests comment on the economic effects of the proposed rescission.

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed Rule and a Final Regulatory Flexibility Analysis (''FRFA''), with the Final Rule, if any, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605. In the Commission's view, the repeal should not have a significant or disproportionate impact on the costs of small entities that manufacture or import apparel or piece goods. Therefore, based on available information, the Commission certifies that repealing the Rule as proposed will not have a significant economic impact on a substantial number of small entities.

Although the Commission certifies under the RFA that the repeal would not have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that is appropriate to publish an Initial Regulatory Flexibility Analysis to inquire into the impact of the proposed repeal on small entities. Therefore, the Commission has prepared and seeks comment on the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

In response to public comments, the Commission proposes to repeal the Rule to respond to changes in technology, changed commercial practices, and updated industry standards.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Amendments

The Commission issued the Rule pursuant to Section 18 of the FTC Act, 15 U.S.C. 57a. The proposed repeal would alleviate burden on manufacturers and importers subject to the Rule. As described above, the record suggests that the existing Rule may no longer be necessary, has failed keep pace with a dynamic marketplace, and may have undermined the adoption of new technologies, and the proposed repeal would allow manufacturers additional flexibility in labeling garments for sale to consumers.

C. Small Entities to Which the Proposed Amendments Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, textile apparel and some fabric manufacturers qualify as small businesses if they have 500 or fewer employees. Clothing and piece good wholesalers qualify as small businesses if they have 100 or fewer employees. Commission staff has estimated that approximately 10,744 manufacturers or importers of textile apparel are covered by the Rule's disclosure requirements.[111] A substantial number of these entities likely qualify as small businesses. The proposed repeal would not impose any new requirements on small businesses, and it would eliminate the information collection burdens associated with the Rule.

[110] *See* 15 U.S.C. 57a(i)(2)(A); 16 CFR 1.18(c).

[111] *Federal Trade Commission: Agency Information Collection Activities; Proposed Collection; Comment Request,* 83 FR 2156 (Jan. 16, 2018).

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed to Comply

The proposed amendments would repeal the Rule and would therefore not impose any recordkeeping, reporting, or compliance requirements on any entities. Instead, the proposed repeal would eliminate the Rule's disclosure and other compliance obligations for all small entities subject to the Rule.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any federal statutes, rules, or policies that duplicate, overlap, or conflict with proposed repeal of the Rule.

F. Significant Alternatives to the Proposed Amendments

The Commission is not aware of any significant alternatives that would further minimize the impact on small entities of the proposed repeal, but solicits comments on this approach.

VII. Paperwork Reduction Act

The existing Rule contains various ''collection of information'' (*e.g.,* disclosure) requirements for which the Commission has obtained OMB clearance under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.* OMB has approved the Rule's existing information collection requirements through May 31, 2021 (OMB Control No. 3084–013).[112] The proposed rule contains no collections of information under the PRA. *See* 44 U.S.C. 3502(3). Accordingly, there is no paperwork burden associated with the proposed rule. As discussed above, the Commission seeks comment on repealing the Rule and it is the Commission's intention to rescind the associated information collection in connection with the proposed repeal. Accordingly, repeal of the Rule would eliminate the burdens imposed by the Rule's disclosure requirements on manufacturers or importers of textile apparel.

Proposed Regulatory Language

List of Subjects in 16 CFR Part 423

Clothing, Labeling, Textiles, Trade practices.

PART 423—[REMOVED]

■ For the reasons stated in the preamble, and under the authority of 15 U.S.C. 57a, the Commission proposes to remove 16 CFR part 423.

[112] *See* 83 FR 15144 (Apr. 9, 2018).

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2020–13919 Filed 7–22–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2020–0137]

RIN 1625–AA09

Drawbridge Operation Regulation; Middle River, Near Discovery Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the Woodward Island Bridge across Middle River, mile 11.8, near Discovery Bay, CA. The proposed operating schedule change will require the removable span to open for vessels engaged in emergency levee repairs. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before October 21, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0137 using Federal e-Rulemaking 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 about this proposed rulemaking, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *Carl.T.Hausner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

On September 20, 2017 the U.S. Coast Guard issued San Joaquin County a permit to construct the new removable span Woodward Island Bridge across Middle River, mile 11.8, near Discovery Bay, CA. Construction was completed on January 23, 2020. The new bridge provides 30 feet of vertical clearance in the closed-to-navigation position, unlimited vertical clearance when the span is removed, and 83 feet of horizontal clearance, dolphin to dolphin, measured normal to the centerline of the channel. The opening requirement for the newly constructed Woodward Island Bridge over Middle River is currently governed by 33 CFR 117.5, which requires prompt and full opening for the passage of vessels when a request or signal to open is given.

A three-year navigational analysis of that portion of Middle River was conducted between 2000 and 2003. The results of the analysis indicated the newly constructed bridge would meet the reasonable needs of recreational vessels that normally use the waterway. Vessels which cannot transit the bridge in the closed position have an alternate route to reach the opposite side of the bridge.

The Woodward Island Bridge was designed with a removable span to allow emergency vessels engaged in levee repair to request an opening when necessary. Since most recreational vessels can transit the new Woodward Island Bridge and there is an alternate route around the bridge, there is no need for an ''open on demand'' regulation as prescribed in 33 CFR 117.5.

III. Discussion of Proposed Rule

The Coast Guard proposes to change the operating schedule that governs the Woodward Island Bridge across Middle River, mile 11.8, near Discovery Bay, CA. This proposed rule change would implement regulations for the bridge to only open for vessels engaged in emergency levee repairs. 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 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 the ability of vessels to still transit underneath the bridge while the removable span is in place.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 bridge may be small entities, for the reasons stated in section IV.A., above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy 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). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *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 *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 this 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 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 0170.1.

■ 2. Amend § 117.171 by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 117.171 Middle River.

* * * * *

(c) The removable span of the Woodward Island Bridge, mile 11.8 near Discovery Bay, shall be removed as soon as possible upon notification by the District Commander that an emergency exists which requires its removal.

(d) The California Route 4 Bridge, mile 15.1, between Victoria Island and Drexler Tract need not open for the passage of vessels.

Dated: July 9, 2020.

Joseph R. Buzzella,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 2020–15385 Filed 7–22–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0127; FRL–10012–23–Region 9]

Air Plan Approval; California; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Sacramento Metropolitan Air Quality Management District (SMAQMD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from the surface coating operations of plastic parts and products. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the ''Act'') and we are proposing to approve a negative declaration for a subcategory of a control techniques guidelines (CTG) source in the SMAQMD.

We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by August 24, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0127 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, (415) 972–3024, *lazarus.arnold@epa.gov.*

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

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I. The State's Submittal

A. What rule and negative declaration did the State submit?

Table 1 lists the rule and the negative declaration addressed by this proposal with the dates that they were adopted by the local air agency and submitted to the EPA by the California Air Resources Board.

TABLE 1—SUBMITTED RULE AND NEGATIVE DECLARATION

Local agency	Rule No.	Rule title	Adopted	Submitted
SMAQMD	468	Surface Coating of Plastic Parts and Products	03/22/2018	05/23/2018
SMAQMD	.....	Negative Declaration for ''Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings,'' EPA–453/R–08–003, September 2008 (Pleasure Craft Coating Portion Only) (''Pleasure Craft Coating Neg Dec'').	03/22/2018	6/11/2018

On August 23, 2018, the EPA determined that the submittal for SMAQMD Rule 468 and the Pleasure Craft Coating Neg Dec met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.[1]

[1] Letter from Elizabeth Adams, Director, Air Division, Environmental Protection Agency to Richard Corey, Executive Officer, California Air Resources Board, stating fulfillment of completeness criteria of 40 CFR part 51, Appendix V, dated August 23, 2018.

B. Are there other versions of this rule and negative declaration?

There are no previous versions of Rule 468 in the SIP. There are no previous versions of the Pleasure Craft Neg Dec in the SMAQMD portion of the California SIP for the 1997, 2008 and 2015 8-hour ozone national ambient air quality standards (NAAQS).

C. What is the purpose of the submitted rule?

VOCs contribute to the production of ground-level ozone or ''smog,'' and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Rule 468 controls VOC emissions from plastic parts and products; and automotive/transportation and business machines plastic parts coating operations. The EPA's technical support document (TSD) has more information about this rule and EPA's evaluation.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule and the negative declaration?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require reasonably available control technology (RACT) for each category of sources covered by a CTG document and for each non-CTG major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The SMAQMD regulates an ozone nonattainment area classified as Severe nonattainment for the 1997 and 2008 8-hour NAAQS (40 CFR 81.305), and Moderate nonattainment for the 2015 ozone NAAQS. Therefore, this rule must implement RACT.

States should submit for SIP approval negative declarations for those source categories for which they have not adopted CTG-based regulations (because they have no sources above the CTG-recommended applicability threshold), regardless of whether such negative declarations were made for an earlier SIP.[2] To do so, the submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist in the ozone nonattainment area.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 5, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings,'' EPA–453/R–08–003, September 2008.

B. Do the submissions meet the evaluation criteria?

This rule is consistent with CAA requirements and relevant guidance regarding enforceability, RACT and SIP revisions. The TSDs for the rule and negative declaration have more information on our evaluation. Moreover, the negative declaration satisfies the certification requirement, and the EPA's independent research yielded no indication of sources in the SMAQMD portion of the nonattainment area that would be subject to the CTG subcategory.

C. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule and the negative declaration because they fulfill all relevant requirements. We will accept comments from the public on this proposal until August 24, 2020. If we take final action to approve the submitted rule and negative declaration, our final action will incorporate the rule and the negative declaration into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SMAQMD rule and the negative declaration described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, 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, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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

[2] 57 FR 13498, 13512 (April 16, 1992).

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 14, 2020.

John Busterud,

Regional Administrator, Region IX.

[FR Doc. 2020–15602 Filed 7–22–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 85, No. 142

Thursday, July 23, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Missoula Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Missoula Resource Advisory Committee (RAC) will hold a virtual meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/detail/lolo/workingtogether/advisorycommittees/?cid=fsm9_021467.*

DATES: The meeting will be held on September 3, 2020, starting at 3 p.m. (MST).

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held with virtual attendance only. For virtual meeting information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Lolo National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Quinn Carver, Designated Federal Officer (DFO), by phone at 406–677–3905 or email at *quinn.carver@usda.gov;* or Kate Jerman at 406–552–7944 or email at *katelyn.jerman@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear proposal presentations;
2. Approve meeting minutes;
3. Discuss, recommend, and approve new Title II projects; and
4. Discuss and make recommendations on recreation fee proposals for sites located within Missoula County on the Lolo National Forest.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 3, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Kate Jerman, RAC Coordinator, Lolo National Forest Supervisor's Office, 24 Fort Missoula Road, Missoula, Montana 59804; or by email to *katelyn.jerman@usda.gov.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: July 17, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–15938 Filed 7–22–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewal of the Civil Nuclear Trade Advisory Committee and Solicitation of Nominations for Membership

AGENCY: Civil Nuclear Trade Advisory Committee, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Renewal of the Civil Nuclear Trade Advisory Committee and solicitation of nominations for membership.

SUMMARY: Pursuant to provisions of the Federal Advisory Committee Act, 5 U.S.C. App., the Department of Commerce (the Department) announces the renewal of the Civil Nuclear Trade Advisory Committee (CINTAC or ''Committee'') and requests nominations for membership. The purpose of the CINTAC is to provide advice to the Secretary of Commerce regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, which will be used by the Department in its role as a member of the Civil Nuclear Trade Working Group of the Trade Promotion Coordinating Committee and of the TeamUSA interagency group to promote U.S. civil nuclear trade.

DATES: Nominations for members must be received on or before 4:00 p.m. Eastern Daylight Time (EDT) on August 10, 2020. The International Trade Administration (ITA) will continue to accept nominations under this notice for two years from the deadline to fill any vacancies.

ADDRESSES: Nominations may be emailed to Jonathan Chesebro, Senior Nuclear Trade Specialist at the U.S. Department of Commerce's Office of Energy & Environmental Industries at *Jonathan.Chesebro@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan Chesebro, Senior Nuclear Trade Specialist at the U.S. Department of Commerce's Office of Energy & Environmental Industries at *Jonathan.Chesebro@trade.gov* or 202–482–1297.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The CINTAC was established on September 17, 2008, pursuant to the Department of Commerce authority under 15 U.S.C. 1512 and the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. The CINTAC functions solely as an advisory committee in accordance with the provisions of FACA. As noted in the **SUMMARY**, CINTAC provides advice to the Secretary of Commerce regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services which will be used by the Department in its role as a member of the Civil Nuclear Trade Working Group of the Trade Promotion Coordinating Committee and as a member of the Atoms for Prosperity interagency group to promote U.S. civil nuclear trade. In particular, the Committee advises on matters including, but not limited to:

(1) Matters concerning trade policy development and negotiations relating to U.S. civil nuclear exports;

(2) The effect of U.S. Government policies, regulations, programs, and foreign government policies and practices on the export of U.S. civil nuclear goods and services;

(3) The competitiveness of U.S. industry and its ability to compete for civil nuclear products and services opportunities in international markets, including specific problems in exporting, and provide specific recommendations regarding U.S. Government and public/private actions to assist civil nuclear companies in expanding their exports;

(4) The identification of priority civil nuclear products and services markets with the potential for high immediate returns for U.S. exports, as well as emerging markets with a longer-term potential for U.S. exports;

(5) Strategies to increase private sector awareness and effective use of U.S. Government export promotion programs, and recommendations on how U.S. Government programs may be more efficiently designed and coordinated;

(6) The development of complementary industry and trade association export promotion programs, including ways for greater and more effective coordination of U.S. Government efforts with private sector organizations' civil nuclear industry export promotion efforts; and

(7) The development of U.S. Government programs to encourage producers of civil nuclear products and services to enter new foreign markets, in connection with which CINTAC may advise on how to gather, disseminate, and promote awareness of information on civil nuclear exports and related trade issues.

II. Membership

CINTAC shall consist of approximately 40 members appointed by the Secretary, in accordance with applicable Department of Commerce guidance and based on their ability to carry out the objectives of the Committee. Members shall represent U.S. entities involved in the export of civil nuclear products and services and reflect the diversity of this sector, including in terms of entities' size and geographic location. The Committee shall also represent the diversity of company or organizational roles in the development of civil nuclear energy projects, including, for example, U.S. civil nuclear manufacturing and services companies, U.S. utilities, U.S. trade associations, and other U.S. organizations in the U.S. civil nuclear sector. The Secretary shall appoint to the Committee at least one individual representing each of the following:

a. Civil nuclear manufacturing and services companies;

b. small businesses;

c. utilities;

d. trade associations in the civil nuclear sector;

e. research institutions and universities; and

f. private sector organizations involved in strengthening the export competitiveness of U.S. civil nuclear products and services.

Members shall serve in a representative capacity, expressing the views and interests of a U.S. entity, as well as its particular subsector; they are, therefore, not Special Government Employees. Each member of the Committee must be a U.S. citizen and must not be registered as a foreign agent under the Foreign Agents Registration Act. No member may represent a U.S. entity that is majority owned or controlled by a foreign government entity (or foreign government entities). The Secretary of Commerce invites applications for the CINTAC, consistent with the above membership requirements. To be considered for membership, submit the following information (2 pages maximum) by 5:00 p.m. EDT on August 10, 2020 to the email listed in the **ADRRESSES** section. If you are interested in nominating someone to become a member of the CINTAC, please provide the following information (2 pages maximum):

(1) Name;

(2) Title;

(3) Work phone, fax, and, email address;

(4) Name of entity to be represented and address including website address;

(5) Short biography of nominee including credentials;

(6) Brief description of the entity and its business activities, size (number of employees and annual sales), and export markets served; and,

(7) An affirmative statement that the applicant and entity to be represented meet all eligibility criteria, specifically addressing that the applicant:

(a) Is a U.S. citizen; and

(b) Is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Please do not send organization brochures or any other information.

All applications should be submitted in pdf or MS Word format via email to Jonathan Chesebro, Senior Nuclear Trade Specialist at the U.S. Department of Commerce's Office of Energy & Environmental Industries at *Jonathan.Chesebro@trade.gov.*

Nominees selected for appointment to the Committee will be notified by email.

Dated: July 17, 2020.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2020–15886 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–840]

Forged Steel Fluid End Blocks From Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that forged steel fluid end blocks (fluid end blocks) from Italy are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2018 through September 30, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Hermes Pinilla, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration,

U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0665 or (202) 482–3477, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 15, 2020.[1] On March 26, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now July 16, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are fluid end blocks from Italy, whether in finished or unfinished form, and which are typically used in the manufacture or service of hydraulic pumps. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed therein, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice* to exclude fluid end block assemblies. *See* the revised scope in Appendix I to this notice.

The scope case briefs were originally due on June 25, 2020, 30 days after the publication of *Fluid End Blocks CVD Determinations,* and scope rebuttal briefs were originally due seven days thereafter on July 2, 2020.[7] However, Commerce extended the deadline to submit scope case and rebuttal briefs to July 23, 2020, and July 30, 2020, respectively.[8] There will be no further opportunity for comments on scope-related issues.[9]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences for IMER International S.p.A., Galperti Group, Mimest S.p.A., and P. Technologies S.r.l. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any margins that are zero, *de minimis,* or determined entirely under section 776 of the Act.

Commerce has preliminarily determined that the estimated weighted-average dumping margin for Metalcam S.p.A., is zero. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available, is the rate calculated for Lucchini Mamé Forge S.p.A. Consequently, the rate calculated for Lucchini Mamé Forge S.p.A., is assigned as the rate for all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Metalcam S.p.A	[10] 0.00
Lucchini Mamé Forge S.p.A	[11] 4.84
IMER International S.p.A	** 50.93
Galperti Group	** 50.93
Mimest S.p.A	** 50.93
P. Technologies S.r.l	** 50.93
All Others	4.84

** Adverse Facts Available (AFA).

[1] *See Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, and Italy: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 2394 (January 15, 2020) (*Initiation Notice*).

[2] *See Forged Steel Fluid End Blocks from the Federal Republic of Germany, India and Italy: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 17042 (March 26, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Forged Steel Fluid End Blocks from Italy,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 85 FR at 2395; *see also* Commerce's letter to all interested parties, dated January 27, 2020.

[6] *See* Memorandum, ''Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated May 18, 2020 (Preliminary Scope Decision Memorandum).

[7] The scope case and rebuttal briefs were due 30 and 37 days, respectively, after the publication of *Forged Steel Fluid End Blocks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 31457 (May 26, 2020); *Forged Steel Fluid End Blocks from Germany: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 31454 (May 26, 2020); *Forged Steel Fluid End Blocks from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 31452 (May 26, 2020); *Forged Steel Fluid End Blocks from Italy: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 31460 (May 26, 2020) (collectively, *Fluid End Blocks CVD Determinations*). *See* the Preliminary Scope Decision Memorandum at 4. Accordingly, the deadline for the scope case briefs was Thursday, June 25, 2020; and the deadline for the scope rebuttal briefs was Thursday, July 2, 2020.

[8] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations on Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People's Republic of China: Revision of Schedule for Scope Case Briefs,'' dated June 25, 2020.

[9] Parties were already permitted the opportunity to file scope case and rebuttal briefs. Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum at 4. *See also* ''Public Comment'' section of this notice.

Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates. Accordingly, Commerce preliminarily determines that Metalcam S.p.A, an individually examined respondent with a zero rate, has not made sales of subject merchandise at LTFV.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** except for those entries of subject merchandise produced and exported by Metalcam S.p.A. Because the estimated weighted-average dumping margin for Metalcam S.p.A is zero, we are not directing CBP to suspend liquidation of entries of the subject merchandise it produced and exported.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Because the estimated weighted-average dumping margin for Metalcam S.p.A. is zero, entries of shipments of subject merchandise from this company will not be subject to suspension of liquidation or cash deposit requirements. In such situations, Commerce applies the exclusion to the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, Commerce is directing CBP not to suspend liquidation of entries of subject merchandise produced and exported by Metalcam S.p.A. Entries of shipments of subject merchandise from this company in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, are subject to the provisional measures at the all-others rate.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for the producer/exporter combination identified above, entries of shipments of subject merchandise from this producer/exporter combination will be excluded from the potential antidumping duty order. Such an exclusion is not applicable to merchandise exported to the United States by this respondent in any other producer/exporter combinations or by third parties that sourced subject merchandise from the excluded producer/exporter combination.

While Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect, we have preliminarily not adjusted the cash deposit rates listed above because Commerce found no countervailable export subsidies in the preliminary determination of the companion CVD investigation.[12]

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.[13] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[14] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

[10] *See* Memorandum, ''Forged Steel Fluid End Blocks from Italy—Preliminary Determination Analysis Memorandum for Metalcam S.p.A.,'' dated concurrently with this notice.

[11] *See* Memorandum, ''Forged Steel Fluid End Blocks from Italy—Preliminary Determination Analysis Memorandum for Lucchini Mamé Forge S.p.A.,'' dated concurrently with this notice.

[12] *See Forged Steel Fluid End Blocks from the Federal Republic of Italy: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 85 FR 31460 (May 26, 2020), and accompanying Preliminary Decision Memorandum.

[13] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[14] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

On June 12 and 16, 2020, pursuant to 19 CFR 351.210(e), Metalcam S.p.A and Lucchini Mamé Forge S.p.A. requested, respectively, that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[15] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of fluid end blocks from Italy are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: July 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are forged steel fluid end blocks (fluid end blocks), whether in finished or unfinished form, and which are typically used in the manufacture or service of hydraulic pumps.

The term ''forged'' is an industry term used to describe the grain texture of steel resulting from the application of localized compressive force. Illustrative forging standards include, but are not limited to, American Society for Testing and Materials (ASTM) specifications A668 and A788.

For purposes of this investigation, the term ''steel'' denotes metal containing the following chemical elements, by weight: (i) Iron greater than or equal to 60 percent; (ii) nickel less than or equal to 8.5 percent; (iii) copper less than or equal to 6 percent; (iv) chromium greater than or equal to 0.4 percent, but less than or equal to 20 percent; and (v) molybdenum greater than or equal to 0.15 percent, but less than or equal to 3 percent. Illustrative steel standards include, but are not limited to, American Iron and Steel Institute (AISI) or Society of Automotive Engineers (SAE) grades 4130, 4135, 4140, 4320, 4330, 4340, 8630, 15–5, 17–4, F6NM, F22, F60, and XM25, as well as modified varieties of these grades.

The products covered by this investigation are: (1) Cut-to-length fluid end blocks with an actual height (measured from its highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) of 11 inches (279.4 mm) to 75 inches (1,905.0 mm); and (2) strings of fluid end blocks with an actual height (measured from its highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) up to 360 inches (9,144.0 mm).

The products included in the scope of this investigation have a tensile strength of at least 70 KSI (measured in accordance with ASTM A370) and a hardness of at least 140 HBW (measured in accordance with ASTM E10).

A fluid end block may be imported in finished condition (*i.e.,* ready for incorporation into a pump fluid end assembly without further finishing operations) or unfinished condition (*i.e.,* forged but still requiring one or more finishing operations before it is ready for incorporation into a pump fluid end assembly). Such finishing operations may include: (1) Heat treating; (2) milling one or more flat surfaces; (3) contour machining to custom shapes or dimensions; (4) drilling or boring holes; (5) threading holes; and/or (6) painting, varnishing, or coating.

Excluded from the scope of this investigation are fluid end block assemblies which (1) include (a) plungers and related housings, adapters, gaskets, seals, and packing nuts, (b) valves and related seats, springs, seals, and cover nuts, and (c) a discharge flange and related seals, and (2) are otherwise ready to be mated with the ''power end'' of a hydraulic pump without the need for installation of any plunger, valve, or discharge flange components, or any other further manufacturing operations.

The products included in the scope of this investigation may enter under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7218.91.0030, 7218.99.0030, 7224.90.0015, 7224.90.0045, 7326.19.0010, 7326.90.8688, or 8413.91.9055. While these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Application of Facts Available and Use of Adverse Inference
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2020–15915 Filed 7–22–20; 8:45 am]

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[15] *See* Metalcam S.p.A.'s Letter, ''Antidumping Duty Investigation of Forged Steel Fluid End Blocks from Italy: Request to Postpone Final Determination,'' dated June 12, 2020; and Lucchini Mamé Forge S.p.A.'s Letter, ''Antidumping Duty Investigation of Forged Steel Fluid End Blocks from Italy: Lucchini Mamé Forge S.p.A. Request to Postpone the Final Determination,'' dated June 16, 2020.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–863]

Forged Steel Fittings From Taiwan: Preliminary Intent To Rescind the Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Both-Well Steel Fittings, Co., Ltd. (Bothwell), the sole company under review, did not have any reviewable entries during the period of review (POR) May 17, 2018 through August 31, 2019. Thus, Commerce is preliminarily rescinding this review. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 23, 2020.

FOR FURTHER INFORMATION CONTACT: George Ayache or Samuel Glickstein, 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 or (202) 482–5307, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the notice of initiation of this review on November 12, 2019.[1] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these preliminary results until July 21, 2020.[2] For a

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 61011 (November 12, 2019).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty

Continued

complete discussion of the background of this review, *see* the Preliminary Decision Memorandum.[3]

Scope of the Order

The products covered by the scope of this order are carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions, and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections. The subject merchandise is currently classifiable under item numbers 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.[4]

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Preliminary Intent To Rescind

It is Commerce's practice to rescind an administrative review pursuant to 19 CFR 351.213(d)(3) when there are no reviewable entries of subject merchandise during the POR subject to the antidumping duty order and for which liquidation is suspended.[5] At the end of the administrative review, the suspended entries are liquidated at the assessment rate computed for the review period.[6] Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate. As discussed in the Preliminary Decision Memorandum, we preliminarily find that, because all of entries associated with Bothwell's reported sales of subject merchandise during the POR were liquidated by U.S. Customs and Border Protection (CBP), Bothwell had no reviewable entries during this POR. Accordingly, we preliminarily intend to rescind this review pursuant to 19 CFR 351.213(d)(3).

Public Comment

Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[8] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

All submissions to Commerce must be filed electronically using Enforcement and Compliance's electronic records system, ACCESS,[10] and must also be served on interested parties.[11] An electronically filed document must be received successfully in its entirety on ACCESS, by 5:00 p.m. Eastern Time on the date that the document is due.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using ACCESS within 30 days of publication of this notice.[12] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time and location of the hearing two days before the scheduled date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.

Assessment Rates

If Commerce proceeds to a final rescission of this administrative review, the assessment rate for Bothwell's shipments will not be affected by this review. If Commerce does not proceed to a final rescission of this administrative review, pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer-specific) assessment rates based on the final results of this review.

Cash Deposit Requirements

If Commerce proceeds to a final rescission of this administrative review, Bothwell's cash deposit rate will continue to 116.17 percent, its final rate from the investigation. If Commerce does not proceed to a final rescission of this administrative review, but calculates a dumping margin for Bothwell, we will instruct CBP to collect a cash deposit, effective upon the date of publication of the final results, at the dumping rate calculated for Bothwell.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[3] *See* Decision Memorandum for the Preliminary Intent to Rescind the Antidumping Duty Administrative Review of Forged Steel Fittings from Taiwan; 2018–2019 (Preliminary Decision Memorandum), dated concurrently with, and hereby adopted by, this notice.

[4] For a complete description of the scope of the order, *see* Preliminary Decision Memorandum.

[5] *See, e.g., Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Notice of Rescission of Antidumping Duty Administrative Review,* 77 FR 65532 (October 29, 2012).

[6] *See* 19 CFR 351.212(b)(l).

[7] *See* 19 CFR 351.309(c)(1)(ii).

[8] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[9] *See Temporary Rule.*

[10] *See* 19 CFR 351.303.

[11] *See* 19 CFR 351.303(f).

[12] *See* 19 CFR 351.310(c).

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of 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.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(l) and 777(i)(l) of the Act, and 19 CFR 351.221(b)(4).

Dated: July 17, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Status of Bothwell's Sales
V. Recommendation

[FR Doc. 2020–15986 Filed 7–22–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–714–001, C–821–825]

Phosphate Fertilizers From the Kingdom of Morocco and the Russian Federation: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable July 16, 2020.

FOR FURTHER INFORMATION CONTACT: Robert Palmer (Morocco) or George Ayache (Russia), 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) 482–9068 or (202) 482–2623, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On June 26, 2020, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of phosphate fertilizers from the Kingdom of Morocco (Morocco) and the Russian Federation (Russia), filed in proper form on behalf of The Mosaic Company (the petitioner), a domestic producer of phosphate fertilizers.[1]

Between June 30 and July 1, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions.[2] The petitioner filed responses to these requests between July 2 and 6, 2020.[3]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of Morocco (GOM) and the Government of Russia (GOR) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of phosphate fertilizers in Morocco and Russia, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing phosphate fertilizers in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigations.[4]

Period of Investigation

Because the Petitions were filed on June 26, 2020, the period of investigation (POI) is January 1, 2019 through December 31, 2019.[5]

Scope of the Investigations

The merchandise covered by these investigations are phosphate fertilizers from Morocco and Russia. For a full description of the scope of these investigations, *see* the Appendix to this notice.

Comments on Scope of the Investigations

On July 1, 2020, Commerce requested further information from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[6] On July 6, 2020, the petitioner revised the scope.[7] The description of the merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on August 5, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on August 17, 2020, which is the next business day[10] after 10

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[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Countervailing Duties: Phosphate Fertilizers from Morocco and Russia,'' dated June 26, 2020 (the Petitions).

[2] *See* Commerce's Letter, ''Petitions for the Imposition of Countervailing Duties on Phosphate Fertilizers from Morocco and Russia: Supplemental Questions,'' dated July 1, 2020 (General Issues Questionnaire); Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Phosphate Fertilizers from Morocco: Supplemental Questions,'' dated June 30, 2020; and Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Phosphate Fertilizers from Russia: Supplemental Questions,'' dated June 30, 2020.

[3] *See* Petitioner's Letter, ''Phosphate Fertilizers from Morocco: Response to the Department's Supplemental Questions Concerning the Petition for the Imposition of Countervailing Duties on Imports of Phosphate Fertilizers from Morocco,'' dated July 2, 2020 (Morocco Supplement); Petitioner's Letter, ''Phosphate Fertilizers from Russia: Response to the Department's Supplemental Questions Concerning the Petition for the Imposition of Countervailing Duties on Imports of Phosphate Fertilizers from Russia,'' dated July 2, 2020 (Russia Supplement); and Petitioner's Letter, ''Phosphate Fertilizers from Morocco and Russia: Response to the Department's Supplemental Questions on General Issues Concerning the Petitions for the Imposition of Countervailing Duties on Imports of Phosphate Fertilizers from Morocco and Russia,'' dated July 6, 2020 (General Issues Supplement).

[4] *See* ''Determination of Industry Support for the Petitions'' section, *infra.*

[5] *See* 19 CFR 351.204(b)(2).

[6] *See* General Issues Questionnaire.

[7] *See* General Issues Supplement at 11–13.

[8] *See Countervailing Duties,* 62 FR 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] In this case, 10 days after the initial comment deadline falls on August 15, 2020, a Saturday. Where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification:*

Continued

calendar days from the initial comment deadline.[11]

Commerce requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must be filed on the record of the concurrent CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[12] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOM and the GOR of the receipt of the Petitions and provided it the opportunity for consultations with respect to the Petitions.[13] Commerce held consultations with the GOR and the GOM on July 10 and 13, 2020, respectively.[14]

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[15] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[16]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[17] Based on our analysis of the information submitted on the record, we have determined that phosphate fertilizers, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[18]

In determining whether the petitioner had standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided its 2019 production of the domestic like product and compared it to the total 2019 production of the domestic like product, which includes its production data and estimates for that of the other domestic producers.[19] The petitioner estimated the 2019 production of the domestic like product for all other producers based on production capacity data reported by the International Fertilizer Association (IFA) and production data reported by The Fertilizer Institute (TFI), supplemented with its own production estimates for certain products not included in the IFA or TFI data.[20] We relied on data provided by the petitioner for purposes of measuring industry support.[21]

On July 10, 2020, we received comments on industry support from Koch Fertilizer, LLC (Koch Fertilizer), a wholesaler of phosphate fertilizers.[22] On July 13, 2020, we received comments on industry support from International Raw Materials Ltd. (IRM), a U.S. importer of phosphate fertilizers.[23] On July 14, 2020, we received comments on industry support from OCP S.A. (OCP), a producer/

Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

[11] *See* 19 CFR 351.303(b).

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[13] *See* Commerce's Letter, ''Countervailing Duty Petition on Phosphate Fertilizers from Morocco: Invitation for Consultations,'' dated June 26, 2020; and Commerce's Letter, ''Countervailing Duty Petition on Phosphate Fertilizers from Russia: Invitation for Consultations,'' dated June 26, 2020.

[14] *See* Memoranda, ''Countervailing Duty Petition on Phosphate Fertilizers from the Russian Federation (Russia): Consultations with Officials from the Government of Russia,'' dated July 13, 2020; and ''Countervailing Duty Petition on Phosphate Fertilizers from Morocco: Consultations with Officials from the Government of Morocco,'' dated July 15, 2020.

[15] *See* section 771(10) of the Act.

[16] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Fed. Cir. 1989)).

[17] *See* Volume I of the Petitions at I–19–22.

[18] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* the country-specific CVD Initiation Checklists at Attachment II, Analysis of Industry Support for the Countervailing Duty Petitions Covering Phosphate Fertilizers from Morocco and Russia (Attachment II).

[19] *See* Volume I of the Petitions at I–5–6 and Exhibits I–5–8; *see also* General Issues Supplement at 16–18 and Exhibits GEN–SUPP–QR–10–11.

[20] *Id.*.

[21] *Id.* For further discussion, *see* Attachment II of the country-specific CVD Initiation Checklists.

[22] *See* Koch Fertilizer's Letters, ''Phosphate Fertilizers from Morocco and Russia: Entry of Appearance,'' dated July 10, 2020, and ''Phosphate Fertilizer from Morocco and Russia: {Comments on the} to Countervailing Duty Petition,'' dated July 10, 2020.

[23] *See* IRM's Letter, ''Phosphate Fertilizers from Morocco—Request on Behalf of International Raw Materials Ltd. to Poll the Domestic Industry,'' dated July 13, 2020.

exporter of phosphate fertilizers in Morocco.[24] The GOM commented on industry support in its July 14, 2020, consultations paper.[25] On July 15, 2020, we received comments on industry support from American Plant Food, a wholesaler of phosphate fertilizers.[26] The petitioner responded to the industry support comments on July 15, 2020.[27]

Our review of the data provided in the Petitions, the General Issues Supplement, the Petitioner's Rebuttal, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[28] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[29] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[30] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[31] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[32]

Injury Test

Because Morocco and Russia are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from Morocco and/or Russia materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24) of the Act.[33] The petitioner demonstrates that subject imports from Russia exceed the negligibility threshold of three percent under section 771(24)(A) of the Act.[34] In CVD petitions, section 771(24)(B) of the Act provides that imports of subject merchandise from developing and least-developed countries must exceed the negligibility threshold of four percent. The petitioner also demonstrates that subject imports from Morocco, which has been designated as a developing country under section 771(36)(A) of the Act,[35] exceed the negligibility threshold of four percent.[36]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression and suppression; lost sales and revenues; underutilized capacity and declines in the domestic industry's production and shipments due to idling and closures of production facilities; decline in profitability; declines in employment and wages; and adverse impact on investments in production operations.[37] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as cumulation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[38]

Initiation of CVD Investigations

Based upon the examination of the Petitions on phosphate fertilizers from Morocco and Russia, we find that the Petitions meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of phosphate fertilizers from Morocco and Russia benefit from countervailable subsidies conferred by the GOM and the GOR, respectively. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Morocco

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on all eight alleged programs and a creditworthiness allegation with regard to OCP Group. For a full discussion of the basis for our decision to initiate on each program, *see* Morocco Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Russia

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on all eight alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* Russia Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

The petitioner named one company in Morocco and four companies in Russia as producers/exporters of phosphate fertilizers.[39] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations.

With respect to Russia, in the event Commerce determines that the number of companies is large and it cannot individually examine each company

[24] *See* OCP's Letter, ''Phosphate Fertilizers from Morocco and Russia: Pre-Initiation Comments on Industry Support,'' dated July 14, 2020.

[25] *See* GOM's Letter, ''Phosphate Fertilizers from Morocco: Submission of Consultations Paper,'' dated July 14, 2020.

[26] *See* American Plant Food's Letter, ''Phosphate Fertilizer from Morocco and Russia—Opposition to the Countervailing Duty Petition,'' dated July 15, 2020.

[27] *See* Petitioner's Letter, '': Phosphate Fertilizers from Morocco: Response to Submissions Concerning Industry Support,'' dated July 15, 2020 (Petitioner's Rebuttal).

[28] *See* Attachment II of the country-specific CVD Initiation Checklists.

[29] *Id.; see also* section 702(c)(4)(D) of the Act.

[30] *See* Attachment II of the country-specific CVD Initiation Checklists.

[31] *Id.*

[32] *Id.*

[33] *See* Volume I of the Petitions at I–25 and Exhibit I–25.

[34] *Id.*

[35] *See Designations of Developing and Least-Developed Countries under the Countervailing Duty Law,* 85 FR 7613, 7615–7616 (February 10, 2020).

[36] *See* Volume I of the Petitions at I–25 and Exhibit I–25.

[37] *Id.* at I–1 through I–3, I–18, I–19, I–24 through I–56 and Exhibits I–1, I–2, I–3, I–21 and I–26 through I–69.

[38] *See* country-specific CVD Initiation Checklists, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Countervailing Duty Petitions Covering Phosphate Fertilizers from Morocco and Russia (Attachment III).

[39] *See* Volume I of the Petitions at Exhibit I–19; *see also* Russia Supplement at 1–2.

based upon Commerce's resources, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of phosphate fertilizers from Russia during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the appendix.

On July 2, 2020, Commerce released CBP data for U.S. imports of phosphate fertilizers from Russia under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation.[40] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's website at *http://enforcement.trade.gov/apo.*

With respect to Morocco, although Commerce normally relies on import data from CBP to determine whether to select a limited number of producers/exporters for individual examination in CVD investigations, the petitioner identified only one company as a producer/exporter of phosphate fertilizers in Morocco, OCP Group, and provided information from independent sources as support.[41] Furthermore, we currently know of no additional producers/exporters of phosphate fertilizers from Morocco. Accordingly, Commerce intends to examine the only known producer/exporter in the Morocco investigation (*i.e.,* OCP Group). Interested parties wishing to comment on respondent selection for the Morocco investigation must do so within three business days of the publication date of this notice of initiation.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. on the date noted above, unless an exception applies. Commerce intends to finalize its decision regarding respondent selection within 20 days of the publication of this notice.

[40] *See* Memorandum, ''Countervailing Duty Petition on Phosphate Fertilizers from Russia: Release of Customs Data from U.S. Customs and Border Protection,'' dated July 2, 2020.

[41] *See* Volume II of the Petitions at II–1.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petitions has been provided to the GOM and GOR via ACCESS.

Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of phosphate fertilizers from Morocco and Russia are materially injuring or threatening material injury to a U.S. industry.[42] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[43] Otherwise, the investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (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). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [44] 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.[45] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties wishing to submit factual information in these investigations are asked to review the regulations prior to submitting factual information in these investigations.

[42] *See* section 703(a) of the Act.

[43] *Id.*

[44] *See* 19 CFR 351.301(b).

[45] *See* 19 CFR 351.301(b)(2).

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. 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 a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances Commerce will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting extension requests or factual information in these investigations.

Certification Requirements

Any party submitting factual information in an antidumping duty or CVD proceeding must certify to the accuracy and completeness of that information.[46] Parties must use the certification formats provided in 19 CFR 351.303(g).[47] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Commerce website at *http://enforcement.trade.gov/apo.*

[46] *See* section 782(b) of the Act.

[47] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing a letter of appearance). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[48]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: July 16, 2020.

Joseph A. Laroski Jr.,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

Scope of the Investigations

The merchandise covered by these investigations is phosphate fertilizers in all physical forms (*i.e.,* solid or liquid form), with or without coating or additives such as anti-caking agents. Phosphate fertilizers in solid form are covered whether granular, prilled (*i.e.,* pelletized), or in other solid form (*e.g.,* powdered).

The covered merchandise includes phosphate fertilizers in the following forms: Ammonium dihydrogenorthophosphate or monoammonium phosphate (MAP), chemical formula NH4H2PO4; diammonium hydrogenorthophosphate or diammonium phosphate (DAP), chemical formula (NH4)2HPO4; normal superphosphate (NSP), also known as ordinary superphosphate or single superphosphate, chemical formula Ca(H2PO4)2–CaSO4; concentrated superphosphate, also known as double, treble, or triple superphosphate (TSP), chemical formula Ca(H2PO4)2–H2O; and proprietary formulations of MAP, DAP, NSP, and TSP.

The covered merchandise also includes other fertilizer formulations incorporating phosphorous and non-phosphorous plant nutrient components, whether chemically-bonded, granulated (*e.g.,* when multiple components are incorporated into granules through, *e.g.,* a slurry process), or compounded (*e.g.,* when multiple components are compacted together under high pressure), including nitrogen, phosphate, sulfur (NPS) fertilizers, nitrogen, phosphorous, potassium (NPK) fertilizers, nitric phosphate (also known as nitrophosphate) fertilizers, ammoniated superphosphate fertilizers, and proprietary formulations thereof that may or may not include other nonphosphorous plant nutrient components. For phosphate fertilizers that contain non-phosphorous plant nutrient components, such as nitrogen, potassium, sulfur, zinc, or other non-phosphorous components, the entire article is covered, including the non-phosphorous content, provided that the phosphorous content (measured by available diphosphorous pentaoxide, chemical formula P2O5) is at least 5% by actual weight.

Phosphate fertilizers that are otherwise subject to these investigations are included when commingled (*i.e.,* mixed or blended) with phosphate fertilizers from sources not subject to these investigations. Phosphate fertilizers that are otherwise subject to these investigations are included when commingled with substances other than phosphate fertilizers subject to these investigations (*e.g.,* granules containing only non-phosphate fertilizers such as potash or urea). Only the subject component of such commingled products is covered by the scope of these investigations. The following products are specifically excluded from the scope of these investigations:

(1) ABC dry chemical powder preparations for fire extinguishers containing MAP or DAP in powdered form;

(2) industrial or technical grade MAP in white crystalline form with available P2O5 content of at least 60% by actual weight;

(3) industrial or technical grade diammonium phosphate in white crystalline form with available P2O5 content of at least 50% by actual weight;

(4) liquid ammonium polyphosphate fertilizers;

(5) dicalcium phosphate, chemical formula CaHPO4;

(6) monocalcium phosphate, chemical formula CaH4P2O8;

(7) trisodium phosphate, chemical formula Na3PO4;

(8) sodium tripolyphosphate, chemical formula Na5P3O10;

(9) prepared baking powders containing sodium bicarbonate and any form of phosphate;

(10) animal or vegetable fertilizers not containing phosphate fertilizers otherwise covered by the scope of these investigations;

(11) phosphoric acid, chemical formula H3PO4.

The Chemical Abstracts Service (CAS) numbers for covered phosphate fertilizers include, but are not limited to: 7722–76–1 (MAP); 7783–28–0 (DAP); and 65996–95–4 (TSP). The covered products may also be identified by Nitrogen-Phosphate-Potash composition, including but not limited to: NP 11–52–0 (MAP); NP 18–46–0 (DAP); and NP 0–46–0 (TSP).

The covered merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3103.11.0000; 3103.19.0000; 3105.20.0000; 3105.30.0000; 3105.40.0010; 3105.40.0050; 3105.51.0000; and 3105.59.0000. Phosphate fertilizers subject to these investigations may also enter under subheadings 3103.90.0010, 3105.10.0000, 3105.60.0000, 3105.90.0010, and 3105.90.0050. Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2020–15956 Filed 7–22–20; 8:45 am]

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[48] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Circular Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value. Interested parties are invited to comment on these preliminary results.

DATES: Applicable July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Robert Bolling, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4162 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on welded carbon steel standard pipe and tube products (welded pipe and tube) from Turkey. The period of review (POR) is May 1, 2018 through April 30, 2019. Commerce published the notice of initiation of this administrative review on July 15, 2019.[1] The preliminary results are listed below in the section titled ''Preliminary Results of Review.''

This review covers the following companies: Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan Mannesmann) and Borusan Istikbal Ticaret T.A.S. (Borusan Istikbal) (collectively, Borusan);[2] Toscelik Profil

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[2] In prior segments of this proceeding, we treated Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. as a single entity. *See, e.g., Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014,* 80 FR 76674, 76674 n.2 (December 10, 2015). We preliminarily determine that there is no evidence on the record for altering our treatment of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S., as a single entity.

Continued

ve Sac Endustrisi A.S. (Toscelik Endustrisi), Tosyali Dis Ticaret A.S. (Tosyali Ticaret), and Toscelik Metal Ticaret A.S. (Toscelik Metal) (collectively, Toscelik);[3] Borusan Birlesik Boru Fabrikalari San ve Tic (Borusan Birlesik); Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik); Borusan Holding (BMBYH), Borusan Ihracat Ithalat ve Dagitim A.S. (Borusan Ihracat); Borusan Ithicat ve Dagitim A.S. (Borusan Ithicat); Borusan Mannesmann Yatirim Holding (BMYH), Tubeco Pipe and Steel Corporation (Tubeco); Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan); Kale Baglanti Teknolojileri San. ve Tic. A.S. (Kale Baglanti), Noksel Selik Boru Sanayi A.S. (Noksel Selik), Yucel Boru ve Profil Endustrisi A.S. (Yucel), Yucelboru Ihracat Ithalat ve Pazarlama A.S. (Yucelboru), Cayirova Boru Sanayi ve Ticaret A.S. (Cayirova), Kale Baglann Teknolojileri San. Ve Tic. A.S. (Kale Baglann), Borusan Istikbal Ticaret (Istikbal Ticaret) and Cinar Boru Profil San. ve Tic. As (Cinar Boru). The sole mandatory respondent in this administrative review is Borusan.[4] On January 16, 2020, we extended the deadline for the preliminary results by 117 days to May 27, 2020.[5] Moreover, on April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 16, 2020.[6]

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[7]

Scope of the Order

The merchandise subject to the order is welded pipe and tube. The welded pipe and tube subject to the order is currently classifiable under subheading 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included in the Appendix to this notice.

The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination of No Shipments

On June 26, 2019, and July 22, 2019, Cinar Boru and Noksel Selik, respectively, submitted letters to Commerce certifying that they had no sales, shipments, or entries of the subject merchandise to the United States during the POR.[8] Similarly, on July 30, 2019, Cayirova, Yucel, and Yucelboru submitted a letter to Commerce certifying that they each individually had no sales, shipments, or entries of the subject merchandise to the United States during the POR.[9] Moreover, on July 31, 2019, Toscelik submitted a letter to Commerce certifying that it had no sales, shipments, or entries of the subject merchandise to the United States during the POR.[10] On July 18, 2019, Commerce obtained U.S. Customs and Border Protection (CBP) data for U.S. imports of Circular Welded Carbon Steel Standard Pipe and Tube Products From Turkey entering under case number A–489–501 during the period May 1, 2018 through April 30, 2019, for all parties for which it initiated this administrative review.[11] We received no information from CBP regarding the existence of entries of subject merchandise from these companies during the POR. Based on their certifications and our analysis of CBP information, we preliminarily determine that Cinar Boru, Noksel Selik, Cayirova, Yucel, Yucelboru, Toscelik Endustrisi A.S., Tosyali Ticaret, and Toscelik Metal each had no reviewable transactions during the POR. Consistent with our practice, we are not preliminarily rescinding the review with respect to these eight companies, but, rather, we will complete the review for these companies and issue appropriate instructions to CBP based on the final results of this review.[12] Further, while we received no information from CBP regarding the existence of entries of subject merchandise from Borusan Istikbal during the POR, we continue to find Borusan Istikbal to be part of the single entity, Borusan, and we find no record

The record does not support treating the following companies as part of the Borusan Mannesmann Boru Sanayi ve Ticaret A.S./Borusan Istikbal Ticaret T.A.S. entity: (1) Borusan Birlesik; (2) Borusan Gemlik; (3) Borusan Ihracat; (4) Borusan Ithicat; and (5) Tubeco. Accordingly, as discussed *infra,* each of these five companies will be assigned the rate applicable to companies not selected for individual examination in this review.

[3] In prior segments of this proceeding, we treated Toscelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., and Toscelik Metal as a single company. *See, e.g.,* Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014, 80 FR 76674, 76674 n.2 (December 10, 2015). We preliminarily determine that there is no evidence on the record for altering our treatment of Toscelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., and Toscelik Metal as a single company.

[4] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Respondent Selection,'' dated August 28, 2019 (Respondent Selection Memorandum).

[5] *See* Memorandum, ''2018–2019 Antidumping Duty Administrative Review of Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated January 16, 2020.

[6] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[7] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] *See* Cinar Boru's Letter, ''Circular Welded Carbon Steel Pipes and Tubes from Turkey (A–489–501),'' dated June 26. 2019; *see also* Noksel's Letter, ''Circular Welded Carbon Steel Pipes and Tubes (A–489–501) Anti-Dumping Duty Administrative Review (5/1/18—4/30/19),'' dated July 22, 2019.

[9] *See* Cayirova, Yucel, and Yucelboru's Letter, ''Circular Welded Carbon Steel Pipes and Tubes from Turkey; Notification of No Shipments,'' dated July 30, 2019.

[10] *See* Toscelik's Letter, ''Circular Pipe from Turkey; Toscelik No Shipment Letter,'' dated July 31, 2019.

[11] *See* Memorandum, ''Circular Welded Carbon Steel Standard Pipe and Tube from Turkey: Release of Customs and Border Protection Data,'' dated July 25, 2019.

[12] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) and the ''Assessment Rates'' section, below; *see also Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306, 51307 (August 28, 2014).

evidence that warrants altering this treatment. Therefore, because we find that Borusan had shipments during this POR, we have not made a preliminary determination of no-shipments with respect to Borusan Istikbal. Furthermore, eleven companies, Borusan Birlesik; Borusan Gemlik; BMBYH; Borusan Ihracat; Borusan Ithicat; BMYH; Tubeco; Erbosan; Kale Baglanti; Kale Baglann; and Istikbal Ticaret remain subject to this administrative review because none of these eleven companies: (1) Was selected as a mandatory respondent;[13] (2) was the subject of a withdrawal of request for review; (3) requested to participate as a voluntary respondent; or (4) submitted a claim of no shipments. As such, these three companies remain as unexamined respondents.

Preliminary Results of Review

As a result of this review, we calculated a weighted-average dumping margin of 12.03 percent for Borusan for the period May 1, 2018 through April 30, 2019. We assigned 12.03 percent, the weighted-average dumping margin of the mandatory respondent Borusan to the eleven non-selected companies in these preliminary results, as referenced below.

Producer or exporter	Weighted-average dumping margin (percent)
Borusan Mannesmann Boru Sanayi ve Ticaret A.S./ Borusan Istikbal Ticaret T.A.S	12.03
Borusan Birlesik Boru Fabrikalari San ve Tic	12.03
Borusan Gemlik Boru Tesisleri A.S	12.03
Borusan Holding	12.03
Borusan Ihracat Ithalat ve Dagitim A.S	12.03
Borusan Ithicat ve Dagitim A.S	12.03
Borusan Mannesmann Yatirim Holding	12.03
Tubeco Pipe and Steel Corporation	12.03
Erbosan Erciyas Boru Sanayi ve Ticaret A.S	12.03
Kale Baglanti Teknolojileri San. ve Tic. A.S	12.03
Kale Baglann Teknolojileri San. Ve Tic. A.S	12.03
Istikbal Ticaret	12.03

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

If Borusan's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). Where Borusan's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

With respect to Cinar Boru, Noksel Selik, Cayirova, Yucel, Yucelboru, Toscelik Endustrisi A.S., Tosyali Ticaret, and Toscelik Metal, if we continue to find that these companies had no shipments of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries of merchandise produced by these companies, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[14] In this review, we have preliminarily calculated weighted-average dumping margin of 12.03 percent for Borusan. When only one weighted-average dumping margin for the individually investigated respondents is not zero, *de minimis,* or based entirely on facts available, the rate for companies that we did not individually examine will be equal to that single weighted-average dumping margin. Accordingly, we have preliminarily assigned to Borusan Birlesik; Borusan Gemlik; BMBYH; Borusan Ihracat; Borusan Ithicat; BMYH; Tubeco; Erbosan; Kale Baglanti; Kale Baglann; and Istikbal Ticaret, companies not individually examined in this review a margin of 12.03 percent, which is the calculated weighted average dumping margin of Borusan.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of standard pipe and tubes from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 14.74 percent *ad valorem,* the all-others rate established in the less-than-fair-value investigation.[15] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose the calculations used in our analysis to interested parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results of this review. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[16] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each brief: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[17] Executive summaries should be limited to five pages total, including footnotes.[18] Case and rebuttal briefs should be filed using ACCESS.[19]

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing

[13] *See* Respondent Selection Memorandum.

[14] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[15] *See Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products from Turkey,* 51 FR 17784 (May 15, 1986).

[16] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[17] *See* 19 CFR 351.309(c)(2) and (d)(2).

[18] *Id.*

[19] *See* 19 CFR 351.303.

within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, Commerce will notify interested parties of the hearing schedule. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended.[20]

An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[21]

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

[20] *See* section 751(a)(3)(A) of the Act.

[21] *See Temporary Rule.*

Dated: July 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Rates for Respondents Not Selected for Individual Examination
5. Preliminary Results of No Shipments
6. Discussion of Methodology
   - Comparisons to Normal Value
     - A. Determination of Comparison Method
     - B. Results of the Differential Pricing Analysis
   - Product Comparisons
   - Date of Sale
   - Treatment of Duties Under Section 232 of the Trade Expansion Act of 1962
   - Export Price
   - Constructed Export Price
   - Duty Drawback
   - Normal Value
     - A. Home Market Viability as Comparison Market
     - B. Level of Trade
     - C. Affiliated Party Transactions and the Arm's Length Test
     - D. Cost of Production Analysis
       - a. Cost Averaging Methodology
       - b. Calculation of COP
       - c. Test of Comparison Market Sales Prices
       - d. Results of the COP Test
       - e. Calculation of Normal Value Based on Comparison Market Prices
       - f. Calculation of Normal Value Based on Constructed Value
7. Currency Conversion
8. Recommendation

[FR Doc. 2020–15957 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee: Meeting

AGENCY: Civil Nuclear Trade Advisory Committee, International Trade Administration, U.S. Department of Commerce

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Thursday, August 6, 2020 from 10:00 a.m. to 12:00 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EDT on Friday, July 31, 2020.

ADDRESSES: The meeting will be held via conference call. The call-in number and passcode will be provided by email to registrants. Requests to register to participate (including to speak or for auxiliary aids) and any written comments should be emailed to Jonathan Chesebro, Senior Nuclear Trade Specialist at the U.S. Department of Commerce's Office of Energy & Environmental Industries at *Jonathan.Chesebro@trade.gov.jonathan.chesebro@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Senior Nuclear Trade Specialist at the U.S. Department of Commerce's Office of Energy & Environmental Industries at *Jonathan.Chesebro@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the CINTAC under discretionary authority and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

The Department of Commerce renewed the CINTAC charter on August 10, 2018. This meeting is being convened under the sixth charter of the CINTAC.

Topics to be considered: The agenda for the Thursday, August 6, 2020 CINTAC meeting is as follows:

10:00 a.m.—11:45 a.m. Discussion of potential recommendations prior to the August 10, 2020 expiration of the Committee's current two-year charter term.

11:45 a.m.—12:00 p.m.—Public Comment Period.

Members of the public wishing to attend the meeting must notify Mr. Jonathan Chesebro at the contact information above by 5:00 p.m. EDT on Friday, July 31, 2020 in order to pre-register to participate. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may not be possible to fill. A limited

amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 15 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EDT on Friday, July 31, 2020. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be emailed to Jonathan Chesebro, Senior Nuclear Trade Specialist at the U.S. Department of Commerce's Office of Energy & Environmental Industries at *Jonathan.Chesebro@trade.gov.* For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EDT on Friday, July 31, 2020. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: July 17, 2020.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2020–15885 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–847]

Forged Steel Fluid End Blocks From the Federal Republic of Germany: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that forged steel fluid end blocks (fluid end blocks) from the Federal Republic of Germany (Germany) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2018 through September 30, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Alexis Cherry, 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) 482–4929 or (202) 482–0607, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 15, 2020.[1] On March 26, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now July 16, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are fluid end blocks from Germany, whether in finished or unfinished form, and which are typically used in the manufacture or service of hydraulic pumps. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed herein, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

The scope case briefs were originally due on June 25, 2020, 30 days after the publication of *Fluid End Blocks CVD Determinations,* and scope rebuttal briefs were originally due seven days thereafter on July 2, 2020.[7] However, Commerce extended the deadline to submit scope case and rebuttal briefs to July 23, 2020, and July 30, 2020, respectively.[8] There will be no further

[1] *See Forged Steel Fluid End Blocks from the Federal Republic of Germany, India and Italy: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 2394 (January 15, 2020) (*Initiation Notice*).

[2] *See Forged Steel Fluid End Blocks from the Federal Republic of Germany, India and Italy: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 17042 (March 26, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Forged Steel Fluid End Blocks from the Federal Republic of Germany,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated May 18, 2020 (Preliminary Scope Decision Memorandum).

[7] The scope case and rebuttal briefs were due 30 and 37 days, respectively, after the publication of *Forged Steel Fluid End Blocks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 31457 (May 26, 2020); *Forged Steel Fluid End Blocks from Germany: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 31454 (May 26, 2020); *Forged Steel Fluid End Blocks from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 31452 (May 26, 2020); *Forged Steel Fluid End Blocks from Italy: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 31460 (May 26, 2020) (collectively, Fluid End Blocks CVD Determinations). *See* the Preliminary Scope Decision Memorandum at 4. Accordingly, the deadline for the scope case briefs was Thursday, June 25, 2020; and the deadline for the scope rebuttal briefs was Thursday, July 2, 2020.

[8] *See* Memorandum ''Antidumping and Countervailing Duty Investigations on Forged Steel

Continued

opportunity for comments on scope-related issues.[9]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied on facts otherwise available, with adverse inferences, for Schmiedewerke Groditz GmbH (SWG) and voestalpine Bohler Group. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all-other producers or exporters.

Commerce has preliminarily determined that the estimated weighted-average dumping margin for BGH Edelstahl Siegen GmbH (BGH Siegen) is zero. Additionally, Commerce preliminarily assigned a rate based entirely on facts available, under section 776 of the Act, to SWG. Therefore, pursuant to section 735(c)(5)(B) of the Act, we determine that it is reasonable to calculate the all-others rate based on a simple average of BGH Siegen's zero percent margin and SWG's adverse facts available (AFA) margin.[10] For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
BGH Edelstahl Siegen GmbH	[11] 0.00
Schmiedewerke Groditz GmbH	** 15.47
voestalpine Bohler Group	** 15.47
All-Others	7.74

** Adverse Facts Available (AFA).

Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates. Accordingly, Commerce preliminarily determines that BGH Siegen, an individually examined respondent with a zero rate, has not made sales of subject merchandise at LTFV.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, except for those entries of subject merchandise produced and exported by BGH Siegen. Because the estimated weighted-average dumping margin for BGH Siegen is zero, we are not directing CBP to suspend liquidation of entries of the subject merchandise it produced and exported.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Because the estimated weighted-average dumping margin for BGH Siegen is zero, entries of shipments of subject merchandise from this company will not be subject to suspension of liquidation or cash deposit requirements. In such situations, Commerce applies the exclusion to the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, Commerce is directing CBP not to suspend liquidation of entries of subject merchandise produced and exported by BGH Siegen. Entries of shipments of subject merchandise from this company in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, are subject to the provisional measures at the all-others rate.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for the producer/exporter combination identified above, entries of shipments of subject merchandise from this producer/exporter combination will be excluded from the potential antidumping duty order. Such exclusions are not applicable to merchandise exported to the United States by this respondent in any other producer/exporter combinations or by third parties that sourced subject merchandise from the excluded producer/exporter combination.

While Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect, we have preliminarily not adjusted the cash deposit rates listed above because Commerce found no countervailable export subsidies in the preliminary determination of the companion CVD investigation.[12]

Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People's Republic of China: Revision of Schedule for Scope Case Briefs,'' dated June 25, 2020.

[9] Parties were already permitted the opportunity to file scope case and rebuttal briefs. Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum at 4; *see also* ''Public Comment'' section of this notice.

[10] *See, e.g., Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 81 FR 47355 (July 21, 2016).

[11] *See* Memorandum, ''Antidumping Duty Investigation of Forged Steel Fluid End Blocks from the Republic of Germany: Preliminary Determination Margin Calculation for BGH Edelstahl Siegen GmbH,'' dated concurrently with, and hereby adopted by, this notice.

[12] *See Forged Steel Fluid End Blocks from the Federal Republic of Germany: Preliminary*

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.[13] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[14] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On June 16, and 17, 2020, pursuant to 19 CFR 351.210(e), BGH Siegen and SWG requested, respectively, that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[15] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of fluid end blocks from Germany are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: July 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are forged steel fluid end blocks (fluid end blocks), whether in finished or unfinished form, and which are typically used in the manufacture or service of hydraulic pumps.

The term ''forged'' is an industry term used to describe the grain texture of steel resulting from the application of localized compressive force. Illustrative forging standards include, but are not limited to, American Society for Testing and Materials (ASTM) specifications A668 and A788.

For purposes of this investigation, the term ''steel'' denotes metal containing the following chemical elements, by weight: (i) Iron greater than or equal to 60 percent; (ii) nickel less than or equal to 8.5 percent; (iii) copper less than or equal to 6 percent; (iv) chromium greater than or equal to 0.4 percent, but less than or equal to 20 percent; and (v) molybdenum greater than or equal to 0.15 percent, but less than or equal to 3 percent. Illustrative steel standards include, but are not limited to, American Iron and Steel Institute (AISI) or Society of Automotive Engineers (SAE) grades 4130, 4135, 4140, 4320, 4330, 4340, 8630, 15–5, 17–4, F6NM, F22, F60, and XM25, as well as modified varieties of these grades.

The products covered by this investigation are: (1) Cut-to-length fluid end blocks with an actual height (measured from its highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) of 11 inches (279.4 mm) to 75 inches (1,905.0 mm); and (2) strings of fluid end blocks with an actual height (measured from its highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) up to 360 inches (9,144.0 mm).

The products included in the scope of this investigation have a tensile strength of at least 70 KSI (measured in accordance with ASTM A370) and a hardness of at least 140 HBW (measured in accordance with ASTM E10).

A fluid end block may be imported in finished condition (*i.e.,* ready for incorporation into a pump fluid end assembly without further finishing operations) or unfinished condition (*i.e.,* forged but still requiring one or more finishing operations before it is ready for

Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination, 85 FR 31454 (May 26, 2020), and accompanying Preliminary Decision Memorandum.

[13] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[14] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[15] *See* BGH Siegen's Letter, ''Forged Steel Fluid End Blocks from the Federal Republic of Germany: Request to Extend Final Determination and Provisional Measures,'' dated June 16, 2020; *see also* SWG's Letter, ''Forged Steel Fluid End Blocks from Germany: Request for Extension of Final Determination,'' dated June 17, 2020.

incorporation into a pump fluid end assembly). Such finishing operations may include: (1) Heat treating; (2) milling one or more flat surfaces; (3) contour machining to custom shapes or dimensions; (4) drilling or boring holes; (5) threading holes; and/or (6) painting, varnishing, or coating.

Excluded from the scope of this investigation are fluid end block assemblies which (1) include (a) plungers and related housings, adapters, gaskets, seals, and packing nuts, (b) valves and related seats, springs, seals, and cover nuts, and (c) a discharge flange and related seals, and (2) are otherwise ready to be mated with the ''power end'' of a hydraulic pump without the need for installation of any plunger, valve, or discharge flange components, or any other further manufacturing operations.

The products included in the scope of this investigation may enter under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7218.91.0030, 7218.99.0030, 7224.90.0015, 7224.90.0045, 7326.19.0010, 7326.90.8688, or 8413.91.9055. While these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Application of Facts Available and Use of Adverse Inference
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2020–15912 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 84–31A12]

Export Trade Certificate of Review

ACTION: Notice of Application for an Amended Export Trade Certificate of Review by Northwest Fruit Exporters, Application No. 84–31A12.

SUMMARY: The Office of Trade and Economic Analysis (''OTEA'') of the International Trade Administration, Department of Commerce, has received an application for an amended Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the **Federal Register**, identifying the applicant and each member and summarizing the proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230; and to email at *etca@trade.gov.*

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 84–31A12.''

A summary of the application follows.

Summary of the Application

Applicant: Northwest Fruit Exporters, 105 South 18th Street, Suite 105, Yakima, WA 98901.

Contact: Fred Scarlett, Manager, (509) 453–3193.

Application No.: 84–31A12.

Date Deemed Submitted: July 8, 2020.

Proposed Amendment: Northwest Fruit Exporters seeks to amend its Certificate as follows:

1. Add the following company as a new Member of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)) for the following Export Product: Fresh sweet cherries:

- Griggs Farms Packing, LLC, Orondo, WA

2. Delete the following companies as Members of the Certificate:

- Peshastin Hi-Up Growers, Peshastin, WA
- Strand Apples, Inc., Cowiche, WA

3. Change the Export Product coverage for one Member:

- Stemilt Growers, LLC changes Export Product coverage from fresh sweet cherries, fresh apples, and fresh pears to fresh sweet cherries and fresh apples (dropping fresh pears)

Northwest Fruit Exporter's Proposed Amendment of its Certificate Would Result in the Following Membership List

1. Allan Bros., Naches, WA
2. AltaFresh L.L.C. dba Chelan Fresh Marketing, Chelan, WA
3. Apple House Warehouse & Storage, Inc., Brewster, WA
4. Apple King, L.L.C., Yakima, WA
5. Auvil Fruit Co., Inc., Orondo, WA
6. Baker Produce, Inc., Kennewick, WA
7. Blue Bird, Inc., Peshastin, WA
8. Blue Star Growers, Inc., Cashmere, WA
9. Borton & Sons, Inc., Yakima, WA
10. Brewster Heights Packing & Orchards, LP, Brewster, WA
11. Chelan Fruit Cooperative, Chelan, WA
12. Chiawana, Inc. dba Columbia Reach Pack, Yakima, WA
13. CMI Orchards LLC, Wenatchee, WA
14. Columbia Fruit Packers, Inc., Wenatchee, WA
15. Columbia Valley Fruit, L.L.C., Yakima, WA
16. Congdon Packing Co. L.L.C., Yakima, WA
17. Conrad & Adams Fruit L.L.C., Grandview, WA
18. Cowiche Growers, Inc., Cowiche, WA
19. CPC International Apple Company, Tieton, WA
20. Crane & Crane, Inc., Brewster, WA
21. Custom Apple Packers, Inc., Quincy, and Wenatchee, WA
22. Diamond Fruit Growers, Inc., Odell, OR
23. Domex Superfresh Growers LLC, Yakima, WA
24. Douglas Fruit Company, Inc., Pasco, WA
25. Dovex Export Company, Wenatchee, WA
26. Duckwall Fruit, Odell, OR
27. E. Brown & Sons, Inc., Milton-Freewater, OR
28. Evans Fruit Co., Inc., Yakima, WA
29. E.W. Brandt & Sons, Inc., Parker, WA
30. FirstFruits Farms, LLC, Prescott, WA
31. Frosty Packing Co., LLC, Yakima, WA
32. G&G Orchards, Inc., Yakima, WA

33. Gilbert Orchards, Inc., Yakima, WA
34. Griggs Farms Packing, LLC, Orondo, WA
35. Hansen Fruit & Cold Storage Co., Inc., Yakima, WA
36. Henggeler Packing Co., Inc., Fruitland, ID
37. Highland Fruit Growers, Inc., Yakima, WA
38. HoneyBear Growers LLC, Brewster, WA
39. Honey Bear Tree Fruit Co LLC, Wenatchee, WA
40. Hood River Cherry Company, Hood River, OR
41. JackAss Mt. Ranch, Pasco, WA
42. Jenks Bros Cold Storage & Packing, Royal City, WA
43. Kershaw Fruit & Cold Storage, Co., Yakima, WA
44. L & M Companies, Union Gap, WA
45. Legacy Fruit Packers LLC, Wapato, WA
46. Manson Growers Cooperative, Manson, WA
47. Matson Fruit Company, Selah, WA
48. McDougall & Sons, Inc., Wenatchee, WA
49. Monson Fruit Co., Selah, WA
50. Morgan's of Washington dba Double Diamond Fruit, Quincy, WA
51. Naumes, Inc., Medford, OR
52. Northern Fruit Company, Inc., Wenatchee, WA
53. Olympic Fruit Co., Moxee, WA
54. Oneonta Trading Corp., Wenatchee, WA
55. Orchard View Farms, Inc., The Dalles, OR
56. Pacific Coast Cherry Packers, LLC, Yakima, WA
57. Piepel Premium Fruit Packing LLC, East Wenatchee, WA
58. Pine Canyon Growers LLC, Orondo, WA
59. Polehn Farms, Inc., The Dalles, OR
60. Price Cold Storage & Packing Co., Inc., Yakima, WA
61. Pride Packing Company LLC, Wapato, WA
62. Quincy Fresh Fruit Co., Quincy, WA
63. Rainier Fruit Company, Selah, WA
64. Roche Fruit, Ltd., Yakima, WA
65. Sage Fruit Company, L.L.C., Yakima, WA
66. Smith & Nelson, Inc., Tonasket, WA
67. Stadelman Fruit, L.L.C., Milton-Freewater, OR, and Zillah, WA
68. Stemilt Growers, LLC, Wenatchee, WA
69. Symms Fruit Ranch, Inc., Caldwell, ID
70. The Dalles Fruit Company, LLC, Dallesport, WA
71. Underwood Fruit & Warehouse Co., Bingen, WA
72. Valicoff Fruit Company Inc., Wapato, WA
73. Washington Cherry Growers, Peshastin, WA
74. Washington Fruit & Produce Co., Yakima, WA
75. Western Sweet Cherry Group, LLC, Yakima, WA
76. Whitby Farms, Inc. dba: Farm Boy Fruit Snacks LLC, Mesa, WA
77. WP Packing LLC, Wapato, WA
78. Yakima Fresh, Yakima, WA
79. Yakima Fruit & Cold Storage Co., Yakima, WA
80. Zirkle Fruit Company, Selah, WA

Dated: July 20, 2020.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2020–15987 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–893]

Forged Steel Fluid End Blocks From India: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that forged steel fluid end blocks (fluid end blocks) from India are not being, or are not likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2018 through September 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Romani or Jacob Keller, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0198 or (202) 482–4849, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 15, 2020.[1] On March 26, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now July 16, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are fluid end blocks from India, whether in finished or unfinished form, and which are typically used in the manufacture or service of hydraulic pumps. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed therein, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice* to exclude fluid end block assemblies. *See* the revised scope in Appendix I to this notice.

The scope case briefs were originally due on June 25, 2020, 30 days after the publication of *Fluid End Blocks CVD Determinations,* and scope rebuttal briefs were originally due seven days thereafter on July 2, 2020.[7] However,

[1] *See Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, and Italy: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 2394 (January 15, 2020) (*Initiation Notice*).

[2] *See Forged Steel Fluid End Blocks From the Federal Republic of Germany, India and Italy: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 17042 (March 26, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Forged Steel Fluid End Blocks from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated May 18, 2020 (Preliminary Scope Decision Memorandum).

[7] The scope case and rebuttal briefs were due 30 and 37 days, respectively, after the publication of *Forged Steel Fluid End Blocks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 31457 (May 26, 2020); *Forged Steel Fluid End Blocks from Germany:*

Continued

Commerce extended the deadline to submit scope case and rebuttal briefs to July 23, 2020, and July 30, 2020, respectively.[8] There will be no further opportunity for comments on scope-related issues.[9]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Bharat Forge Limited	[10] 0.00

Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates. Accordingly, Commerce preliminarily determines that Bharat Forge Limited (Bharat), the only individually examined respondent with a zero rate, has not made sales of subject merchandise at LTFV.

Further, Commerce preliminarily determines that Ultra Engineers (Ultra), the only other known producer or exporter of subject merchandise identified in the *Initiation Notice,*[11] had no sales of in-scope merchandise to the United States during the POI. Therefore, we have not calculated an estimated weighted-average dumping margin for Ultra in this preliminary determination.[12]

Consistent with section 733(d) of the Act, Commerce has not calculated an estimated weighted-average dumping margin for all other producers and exporters because it has not made an affirmative preliminary determination of sales at LTFV.

Suspension of Liquidation

Because Commerce has made a negative preliminary determination of sales at LTFV with regard to subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation or to require a cash deposit of estimated antidumping duties for entries of fluid end blocks from India.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination concerning the estimated weighted-average dumping margin calculated for Bharat.

As explained in the Preliminary Decision Memorandum, Ultra reports that it had no sales of in-scope merchandise to the United States during the POI.[13] As provided in section 782(i)(1) of the Act, we intend to verify Ultra's claim that it did not sell the subject merchandise to the United States during the POI.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.[14] Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[15] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. On June 24, 2020, the petitioners[16] requested that Commerce postpone the final determination in the event of a negative preliminary determination.[17] In accordance with section 735(a)(2)(B) of the Act, because

Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination, 85 FR 31454 (May 26, 2020); *Forged Steel Fluid End Blocks from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 31452 (May 26, 2020); *Fluid End Blocks from Italy: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 31460 (May 26, 2020) (collectively, *Forged Fluid End Blocks CVD Determinations*). *See* Preliminary Scope Decision Memorandum at 4. Accordingly, the deadline for the scope case briefs was Thursday, June 25, 2020; and the deadline for the scope rebuttal briefs was Thursday, July 2, 2020.

[8] Scope case briefs are now due on July 23, 2020 and rebuttal scope case briefs are due on July 30, 2020. *See* Memorandum ''Antidumping and Countervailing Duty Investigations on Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People's Republic of China: Revision of Schedule for Scope Case Briefs,'' dated June 25, 2020.

[9] Parties were already permitted the opportunity to file scope case and rebuttal briefs. Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum at 4; *see also* ''Public Comment'' section of this notice.

[10] *See* Memorandum, ''Forged Steel Fluid End Blocks from India—Preliminary Determination Analysis Memorandum for Bharat Forge Limited,'' dated concurrently with this notice.

[11] *See Initiation Notice,* 85 FR at 2397.

[12] *See* Preliminary Decision Memorandum at 5–6.

[13] *Id.*

[14] *See* 19 CFR 351.309; and 19 CFR 351.303 (for general filing requirements); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[15] *See Temporary Rule.*

[16] The petitioners are FEB Fair Trade Coalition, Ellwood City Forge Company, Ellwood Quality Steels Company, Ellwood National Steel Company, and A. Finkl & Sons.

[17] *See* Petitioners' Letter, ''Forged Steel Fluid End Blocks from India: Petitioner's Request to Postpone the Antidumping Investigation Final Determination,'' dated June 24, 2020.

the preliminary determination is negative, and the petitioners have requested the postponement of the final determination, Commerce is postponing the final determination. Accordingly, Commerce will make its final determination by no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of fluid end blocks from India are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: July 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are forged steel fluid end blocks (fluid end blocks), whether in finished or unfinished form, and which are typically used in the manufacture or service of hydraulic pumps.

The term ''forged'' is an industry term used to describe the grain texture of steel resulting from the application of localized compressive force. Illustrative forging standards include, but are not limited to, American Society for Testing and Materials (ASTM) specifications A668 and A788.

For purposes of this investigation, the term ''steel'' denotes metal containing the following chemical elements, by weight: (i) Iron greater than or equal to 60 percent; (ii) nickel less than or equal to 8.5 percent; (iii) copper less than or equal to 6 percent; (iv) chromium greater than or equal to 0.4 percent, but less than or equal to 20 percent; and (v) molybdenum greater than or equal to 0.15 percent, but less than or equal to 3 percent. Illustrative steel standards include, but are not limited to, American Iron and Steel Institute (AISI) or Society of Automotive Engineers (SAE) grades 4130, 4135, 4140, 4320, 4330, 4340, 8630, 15–5, 17–4, F6NM, F22, F60, and XM25, as well as modified varieties of these grades.

The products covered by this investigation are: (1) Cut-to-length fluid end blocks with an actual height (measured from its highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) of 11 inches (279.4 mm) to 75 inches (1,905.0 mm); and (2) strings of fluid end blocks with an actual height (measured from its highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) up to 360 inches (9,144.0 mm).

The products included in the scope of this investigation have a tensile strength of at least 70 KSI (measured in accordance with ASTM A370) and a hardness of at least 140 HBW (measured in accordance with ASTM E10).

A fluid end block may be imported in finished condition (*i.e.,* ready for incorporation into a pump fluid end assembly without further finishing operations) or unfinished condition (*i.e.,* forged but still requiring one or more finishing operations before it is ready for incorporation into a pump fluid end assembly). Such finishing operations may include: (1) Heat treating; (2) milling one or more flat surfaces; (3) contour machining to custom shapes or dimensions; (4) drilling or boring holes; (5) threading holes; and/or (6) painting, varnishing, or coating.

Excluded from the scope of this investigation are fluid end block assemblies which (1) include (a) plungers and related housings, adapters, gaskets, seals, and packing nuts, (b) valves and related seats, springs, seals, and cover nuts, and (c) a discharge flange and related seals, and (2) are otherwise ready to be mated with the ''power end'' of a hydraulic pump without the need for installation of any plunger, valve, or discharge flange components, or any other further manufacturing operations.

The products included in the scope of this investigation may enter under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7218.91.0030, 7218.99.0030, 7224.90.0015, 7224.90.0045, 7326.19.0010, 7326.90.8688, or 8413.91.9055. While these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Treatment of Ultra Engineers
IV. Period of Investigation
V. Scope of Investigation
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2020–15914 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Foreign Fishing Vessel Permits, Vessel, and Gear Identification, and Reporting Requirements

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 25, 2020, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Vessel Permits, Vessel, and Gear Identification, and Reporting Requirements.

OMB Control Number: 0648–0075.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 4.

Average Hours per Response: Permit applications: 1.5 hours for an application for a directed fishery; 2 hours for a joint venture application, and 45 minutes for a transshipment permit; Fishing activity report: 6 minutes for a joint venture report; 30 minutes per day for joint venture record-keeping; and 7.5 minutes per day for record-keeping by transport vessels; Weekly reports, 30 minutes per response; Foreign vessel and gear identification marking: 15 minutes per marking.

Total Annual Burden Hours: 16.

Needs and Uses: This request is for extension of a currently approved information collection. The National Marine Fisheries Service (NMFS) issues permits, under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*; MSA), to foreign fishing vessels fishing or operating in United States (U.S.) waters. MSA and associated regulations at 50

CFR part 600 require that: (1) Vessels apply for fishing permits, (2) vessels and certain gear be marked for identification purposes, (3) observers be embarked on selected vessels, and (4) permit holders report their fishing effort and catch or, when processing fish under joint ventures, the amount and locations of fish received from U.S. vessels. These requirements apply to all foreign vessels fishing, transshipping, or processing fish in U.S. waters.

Information is collected from persons who operate a foreign fishing vessel in U.S. waters to participate in a directed fishery or joint venture operation, transship fish harvested by a U.S. vessel to a location outside the U.S., or process fish in internal waters. Each person operating a foreign fishing vessel under MSA authority may be required to submit information for a permit, mark their vessels and gear, or submit information about their fishing activities. To facilitate observer coverage, foreign fishing vessel operators must provide a quarterly schedule of fishing effort and upon request must also provide observers with copies of any required records. For foreign fishing vessels that process fish in internal waters, the information collected varies somewhat from other foreign fishing vessels that participate in a directed fishery or a joint venture operation. In particular, these vessels may not be required to provide a permit application or mark their vessels. The information submitted in applications is used to determine whether permits should be used to authorize directed foreign fishing, participation in joint ventures with U.S. vessels, or transshipments of fish or fish products within U.S. waters. The display of identifying numbers on vessels and gear aids in fishery law enforcement and allow other fishermen to report suspicious activity. Reporting of fishing activities allows monitoring of fish received by foreign vessels.

Affected Public: Business or other for-profit organizations.

Frequency: Annually, weekly and on occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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 and entering either the title of the collection or the OMB Control Number 0648–0075.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–15939 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Highly Migratory Species Vessel Logbooks and Cost-Earnings Data Reports

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comments.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 21, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0371 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Cliff Hutt, Fisheries Management Specialist, NOAA Fisheries, (301) 427–8503, *Cliff.Hutt@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for renewal of a current information collection. Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the NOAA's National Marine Fisheries Service (NMFS) is responsible for management of the nation's marine fisheries. In addition, NMFS must comply with the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*), under which the agency implements recommendations by the International Commission for the Conservation of Atlantic Tunas (ICCAT), as necessary and appropriate.

NMFS collects information via vessel logbooks to monitor the U.S. catch of Atlantic swordfish, sharks, billfish, and tunas in relation to the quotas, thereby ensuring that the United States complies with its domestic and international obligations. The Highly Migratory Species (HMS) logbook program, OMB Control No. 0648–0371, was specifically designed to collect the vessel-level information needed for the management of Atlantic HMS, and includes set forms, trip forms, negative reports, and cost-earning requirements for both commercial and recreational vessels. The information supplied through the HMS logbook program provides the catch and effort data on a per-set or per-trip level of resolution for both directed and incidental species. In addition to HMS fisheries, the HMS logbook program is also used to report catches of dolphin and wahoo in commercial dolphin wahoo permit holders that do not hold any other Federal permits. Additionally, the HMS logbook collects data on incidental species, such as sea turtles, which is necessary to evaluate the fisheries in terms of bycatch and encounters with protected species. While most HMS fishermen use the HMS logbook program, HMS can also be reported as part of several other logbook collections including the Northeast Region Fishing Vessel Trip Reports (0648–0212) and Southeast Region Coastal Logbook (0648–0016).

These data are necessary to assess the status of HMS, dolphin, and wahoo in each fishery. International stock assessments for tunas, swordfish, billfish, and some species of sharks are conducted through ICCAT's Standing Committee on Research and Statistics periodically and provide, in part, the basis for ICCAT management recommendations, which become binding on member nations. Domestic stock assessments for most species of sharks and for dolphin and wahoo are

used as the basis of managing these species.

Supplementary information on fishing costs and earnings has been collected via the HMS logbook program. This economic information enables NMFS to assess the economic impacts of regulatory programs on small businesses and fishing communities, consistent with the National Environmental Policy Act (NEPA), Executive Order 12866, the Regulatory Flexibility Act, and other domestic laws.

II. Method of Collection

Paper logbooks have historically been the primary mode of reporting, but electronic logbooks, including mobile applications, will be offered on a voluntary basis for the HMS logbook in the near future.

III. Data

OMB Control Number: 0648–0371.

Form Number(s): NOAA Form 88–191.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations (vessel owners).

Estimated Number of Respondents: 7,281.

Estimated Time per Response: 10 minutes for cost/earnings summaries attached to logbook reports, 30 minutes for annual expenditure forms, 12 minutes for logbook catch trip and set reports, 2 minutes for negative logbook catch reports.

Estimated Total Annual Burden Hours: 33,828.

Estimated Total Annual Cost to Public: $80,329.50 in maximum recordkeeping/reporting costs.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–15964 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA308]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council.

DATES: The meetings will be held Monday, August 10, 2020, from 1 p.m. to 5 p.m., Tuesday, August 11, 2020, from 9 a.m. to 4 p.m.; Wednesday, August 12, 2020, from 9 a.m. to 3 p.m.; and, Thursday, August 13, 2020, from 9 a.m. to 1 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Due to public health concerns related to the spread of COVID–19 (coronavirus), the Mid-Atlantic Fishery Management Council's August meeting will be conducted by webinar only. This webinar-based meeting replaces the in-person meeting previously scheduled to be held in Philadelphia, PA. Please see the Council's website (*www.mafmc.org*) for log-in procedures.

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 meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Monday, August 10, 2020

Mackerel, Squid, Butterfish Committee, Meeting as a Committee of the Whole—Butterfish, Longfin Squid, and Atlantic Mackerel Specifications

Review SSC, Advisory Panel, Monitoring Committee, and staff recommendations, adopt 2021–23 specifications for longfin squid including butterfish cap, and adopt 2021–22 specifications for butterfish and mackerel

River Herring/Shad (RH/S) Committee, Meeting as a Committee of the Whole—RH/S Cap for the Mackerel Fishery

Review RH/S cap operation and adopt 2021–22 RH/S cap for the mackerel fishery

Acknowledge Outgoing Council Members

Tuesday, August 11, 2020

Swearing in of New and Reappointed Council Members and Election of Officers

Bluefish Specifications

Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations for 2021 specifications and review previously implemented 2021 specifications and recommend changes if necessary

Summer Flounder Specifications

Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations for 2021 specifications and review previously implemented 2021 specifications and recommend changes if necessary

Scup Commercial Discards Report

Review commercial scup discards through 2019

Scup Specifications

Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations for 2021

specifications and review previously implemented 2021 specifications and recommend changes if necessary

Black Sea Bass Specifications and February Recreational Fishery

Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations for 2021 specifications, review previously implemented 2021 specifications and recommend changes if necessary, consider revisions to the February recreational fishery opening for 2021, and consider North Carolina proposal to account for February 2020 harvest (Board action only)

Wednesday, August 12, 2020

Summer Flounder, Scup, and Black Sea Bass Commercial/Recreational Allocation Amendment

Review FMAT recommendations for draft alternatives and approve a range of alternatives for inclusion in a public hearing document

Surfclam and Ocean Quahog Specifications and Updates

Review SSC, Advisory Panel, and staff recommendations, adopt 2021–26 specifications, and receive an update on the Surfclam and Ocean Quahog Commingling/Discard Issue and Genetics Study

Thursday, August 13, 2020

Business Session

Committee Reports: SSC; Executive Director's Report (Discuss Executive Order on Promoting American Seafood Competitiveness and Economic Growth); Organization Reports; and, Liaison Reports

Continuing and New Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions 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 Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are 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: July 20, 2020.

Diane M. DeJames-Daly,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–16002 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Management and Oversight of the National Estuarine Research Reserve System

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 11, 2020 (85 FR 14188) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Management and Oversight of the National Estuarine Research Reserve System.

OMB Control Number: 0648–0121.

Form Number(s): None.

Type of Request: Regular submission [extension of a current information collection].

Number of Respondents: 149.

Average Hours per Response: Management plan, 1500 hours; site profile, 1800 hours; site nomination documents, 2500 hours; award application, 24 hours; award reports, 10 hours; NEPA documentation, 2 hours.

Total Annual Burden Hours: 9,232.

Needs and Uses: The National Estuarine Research Reserve System (NERRS) is a partnership between the National Oceanic and Atmospheric Administration (NOAA) and 22 states and Puerto Rico that protects more than 1.3 million coastal and estuarine acres in 28 Reserves for long-term research, monitoring, education, and stewardship, established under Section 315 of the Coastal Zone Management Act (CZMA) of 1972 (16 U.S.C. 1451), 16 U.S.C. 1461. The NERRS consists of carefully selected estuarine areas of the United States that are designated, preserved, and managed for research and educational purposes. The Reserves are chosen to reflect regional differences and to include a variety of ecosystem types according to the classification scheme of the national program as presented in 15 CFR part 921. As part of a national system, the Reserves collectively provide a unique opportunity to address research questions and estuarine management issues of national significance. The Reserves also serve to enhance public awareness and understanding of estuarine areas and provide suitable opportunities for public education and interpretation. Regulations provide guidance for delineating Reserve boundaries and additional guidance for arriving at the most effective and least costly approach to establishing adequate state control of key land and water areas. Any qualified public or private persons, organizations or institutions may compete for research funding to work in research Reserves. In fact, applicants are almost always states.

Subsection 3l5(e)(1)(B) of the CZMA authorizes the National Ocean Service (NOS) to make grants to, or cooperative agreements with, any coastal state or public or private institution or person for purposes of supporting research within the NERRS. This program is listed in the Catalog of Federal Domestic Assistance under ''Coastal Zone Management Estuarine Research Reserve, Number 11.420''. Applications for such grants follow the provisions of 2 CFR 200. During the site selection and designation process, information is collected from states in order to prepare a management plan and environmental impact statement. Designated Reserves apply annually for operations funds by submitting a work plan; subsequently, progress reports are required every six months for the duration of the award. Each Reserve compiles an ecological characterization or site profile to describe the biological and physical environment of the Reserve, research to date and research gaps. Reserves revise their management plans every five years. This information is required to ensure that Reserves are adhering to regulations and that the Reserves are in

keeping with the purpose for which they were designated.

Affected Public: Non-profit institutions; state, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Coastal Zone Management Act (CZMA) of 1972 (16 U.S.C. 1451), 16 U.S.C. 1461.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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 and entering either the title of the collection or the OMB Control Number 0648–0121.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–15941 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Gulf of Alaska Catcher Vessel and Processor Trawl (CVPT) Economic Data Reports (EDRs)

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 21, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0700 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Scott Miller, 907–586–7416.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Services (NMFS), Alaska Regional Office, is requesting extension of the currently approved information collection for the Annual Trawl Catcher Vessel Economic Data Report (EDR) and the Annual Shoreside Processor EDR.

The EDRs collects economic data on the information for the Gulf of Alaska Trawl Groundfish Economic Data Report Program (GOA Trawl EDR Program). The Gulf of Alaska Trawl Groundfish Economic Data Report Program evaluates the economic effects of current and future groundfish management measures for Gulf of Alaska (GOA) trawl fisheries. This program provides NMFS and the North Pacific Fishery Management Council with baseline information on affected harvesters, crew, processors, and communities in the GOA. Data collected through the EDRs include labor information, revenues received, capital and operational expenses, and other operational or financial data. NMFS and the Council use this information to assess the impacts of major changes in the groundfish management regime, including catch share program implementation.

The Catcher Vessel GOA Trawl EDR is submitted annually by owners or leaseholders of catcher vessels that harvest groundfish using trawl gear from the GOA or parallel fisheries. This EDR focuses on vessel identifiers, employment data, and variable cost data (associated with fuel usage and gear purchases). The Processor GOA Trawl EDR is submitted annually by owners or leaseholders of shoreside processors or stationary floating processors that receive deliveries from vessels that harvest groundfish using trawl gear from the GOA or parallel fisheries. This EDR focuses on employment and labor costs and for processors located in Kodiak, utility consumption and cost.

Requirements for the EDRS are located at 50 CFR 679.110.

II. Method of Collection

Pacific States Marine Fisheries Commission (PSMFC) has been designated by NMFS as the Data Collection Agent. PSMFC mails EDR announcements and filing instructions to respondents by April 1 of each year. Respondents are encouraged to complete the form online on the PSMFC website at *www.psmfc.org/goatrawl/.* The EDR is also available as a fillable PDF on the PSFMC website and may be submitted by mail or fax.

III. Data

OMB Control Number: 0648–0700.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions.

Estimated Number of Respondents: 120.

Estimated Time per Response: Annual Trawl Catcher Vessel EDR, 15 hours; Annual Shoreside Processor EDR, 15 hours.

Estimated Total Annual Burden Hours: 1,800 hours.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information

collection request (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–15978 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NOAA Fisheries Greater Atlantic Region Vessel Identification Requirements

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 21, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0350 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Laura Hansen, Fishery Management Specialist, Greater Atlantic Regional Fisheries Office, (978) 281–9225, *Laura.Hansen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

Regulations at 50 CFR 648.8 and 697.8 require that owners of vessels over 25 ft (7.6 m) in registered length that have Federal permits to fish in the Greater Atlantic Region display the vessel's name and official number. The name and number must be of a specific size at specified locations: the vessel name must be affixed to the port and starboard sides of the bow and, if possible, on its stern. The official number must be displayed on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The success of fisheries management programs depends upon regulatory compliance. The vessel identification requirement, which is required of all federally permitted fishing vessels in the Greater Atlantic region, is essential to facilitate enforcement. The ability to link fishing or other activities to a vessel owner or operator is crucial to the enforcement of regulations issued under the authority of the Magnuson-Stevens Fisheries Conservation and Management Act. When this information is clearly displayed, it enables enforcement personnel to easily identify Federal permit holders while engaged in fishing.

II. Method of Collection

No information is submitted to the National Marine Fisheries Service (NMFS) as a result of this collection. The vessel's identification information must be affixed to the vessel in the designated locations, as specified in the regulations.

III. Data

OMB Control Number: 0648–0350.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 3,893.

Estimated Time Per Response: 45 minutes (.75 hours) to affix vessel information to the required locations.

Estimated Total Annual Burden Hours: 2,920.

Estimated Total Annual Cost to Public: $38,930.

Respondent's Obligation: Mandatory.

Legal Authority: 50 CFR 648.8.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–15968 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Groundfish Trawl Catcher Processor Economic Data Report (EDR)

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 21, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0564 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Scott Miller, 907–586–7416.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Services (NMFS), Alaska Regional Office, is requesting extension of the currently approved information collection for the Annual Trawl Catcher/Processor Economic Data Report (the EDR).

The EDR collects economic data on the information for the Gulf of Alaska Trawl Groundfish Economic Data Report Program (GOA Trawl EDR Program) and for Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

The GOA Trawl EDR Program evaluates the economic effects of current and potential future fishery management measures for the GOA trawl fisheries. This program provides NMFS and the North Pacific Fishery Management Council (Council) with baseline economic information on affected harvesters, crew, processors, and communities in the GOA.

Amendment 80 primarily allocates several Bering Sea and Aleutian Islands non-pollock trawl groundfish fisheries among fishing sectors, and facilitates the formation of harvesting cooperatives among vessels in the non-American Fisheries Act (non-AFA) Trawl Catcher/Processor Cooperative Program. This program established a limited access privilege program for the non-AFA trawl catcher/processor sector.

Data collected through the EDR includes labor information, revenues received, capital and operational expenses, and other operational or financial data. NMFS and the Council use this to assess the economic effects of Amendment 80 on vessels or entities regulated by the non-AFA Trawl Catcher/Processor Cooperative Program, and impacts of major changes in the groundfish management regime, including allocation of prohibited species catch species and target species to harvesting cooperatives.

The EDR is submitted annually by each person who held an Amendment 80 Quota Share permit or was an owner or leaseholder of an Amendment 80 vessel, or was an owner or leaseholder of a vessel named on a License Limitation Program groundfish license with catcher/processor vessel and trawl gear designations and endorsed for the GOA during a calendar year. The EDR requirements are located at 50 CFR 679.94.

II. Method of Collection

Pacific States Marine Fisheries Commission (PSMFC) has been designated by NMFS as the Data Collection Agent. PSMFC mails EDR announcements and filing instructions to respondents by April 1 of each year. Respondents are encouraged to complete the form online on the PSMFC website at *www.psmfc.org/goatrawl/.* The EDR is also available as a fillable PDF on the PSFMC website and may be submitted by mail or fax.

III. Data

OMB Control Number: 0648–0564.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 30.

Estimated Time per Response: Annual Trawl Catcher/Processor Economic Data Report 22 hours.

Estimated Total Annual Burden Hours: 660 hours.

Estimated Total Annual Cost to Public: $35 in recordkeeping/reporting costs.

Respondent's Obligation: Mandatory.

Legal Authority: 16 U.S.C. 1801 *et seq.*

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–15980 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA307]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold joint public meeting of the Council and the Atlantic States Marine Fisheries Commission (ASMFC).

DATES: The meeting will be held Thursday, August 6, 2020. beginning at 8:30 a.m. and will conclude by 3:30 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Webinar instructions and

additional meeting details will be posted on the ASMFC's website at *http://www.asmfc.org/home/2020-summer-meeting-webinar.*

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 meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The proposed agenda is as follows, though time blocks are approximate based on the pace of discussion, and agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Thursday August 6, 2020

Mid-Atlantic Fishery Management Council (MAFMC) and ASMFC Bluefish Management Board

Progress Update on Bluefish Allocation and Rebuilding Amendment

MAFMC and ASMFC Summer Flounder, Scup, and Black Sea Bass Management Board

Consider Black Sea Bass Commercial State Allocation Amendment/Draft Addendum XXXVIII for Public Comment, progress Update on Recreational Reform Initiative, and review and consider approval of Massachusetts 2020 Black Sea Bass Recreational Proposal (Board only).

Special Accommodations

These meetings are 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: July 20, 2020.

Diane M. DeJames-Daly,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–16001 Filed 7–22–20; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0053]

Agency Information Collection Activities; Proposed Extension of Approval of Information Collection; Comment Request—Safety Standard for Multi-Purpose Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information associated with the collection of information for the Safety Standard for Multi-Purpose Lighters. The Office of Management and Budget (OMB) previously approved the collection of information under control number 3041–0130. OMB's most recent extension of approval will expire on October 31, 2020. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: Submit written or electronic comments on the collection of information by September 21, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0053, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *https://www.regulations.gov.* The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7479.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit electronically confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2010–0053, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7791, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Safety Standard for Multi-Purpose Lighters.

OMB Number: 3041–0130.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of multi-purpose lighters.

Estimated Number of Respondents: 62 firms will test on average 2 models per firm.

Estimated Time per Response: 50 hours/model including testing, recordkeeping, data maintenance, and submitting records requested by CPSC.

Total Estimated Annual Burden: 6,200 hours (62 firms × 2 models × 50 hours).

General Description of Collection: The Commission issued a safety standard for multi-purpose lighters (16 CFR part 1212) in 1999. The standard includes requirements that manufacturers (including importers) of multi-purpose lighters issue certificates of compliance based on a reasonable testing program. The standard also requires that manufacturers and importers maintain certain records. Respondents must comply with these testing, certification, and recordkeeping requirements for multi-purpose lighters.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

• Whether the estimated burden of the proposed collection of information is accurate;

• Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

• Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Abioye Mosheim,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2020–15904 Filed 7–22–20; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0054]

Agency Information Collection Activities; Proposed Extension of Approval of Information Collection; Comment Request—Procedures for Export of Noncomplying Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information relating to the procedures for the export of noncomplying products. The Office of Management and Budget (OMB) previously approved the collection of information under control number 3041–0003. OMB's most recent extension of approval will expire on October 31, 2020. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: Submit written or electronic comments on the collection of information by September 21, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0054, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *https://www.regulations.gov.* The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7479.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit electronically confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2010–0054, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7791, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Procedures for the Export of Noncomplying Products.

OMB Number: 3041–0003.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Exporters of products that do not comply with Commission requirements.

Estimated Number of Respondents: 7 exporters will file approximately 9 notifications.

Estimated Time per Response: 1 hour per notification.

Total Estimated Annual Burden: 9 hours (9 notifications × 1 hour).

General Description of Collection: The Commission has procedures that exporters must follow to notify the Commission of the exporter's intent to export products that are banned or fail to comply with an applicable CPSC safety standard, regulation, or statute. Respondents must comply with the requirements in 16 CFR part 1019 and file a statement with the Commission in accordance with these requirements.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

• Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

• Whether the estimated burden of the proposed collection of information is accurate;

• Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

• Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Abioye Mosheim,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2020–15905 Filed 7–22–20; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of 2020 Public Interface Control Working Group for the NAVSTAR GPS Public Documents

AGENCY: Global Positioning System (GPS), Department of the Air Force, DoD.

ACTION: Meeting notice.

SUMMARY: This notice informs the public that the Space and Missile Systems Center, Portfolio Architect Corp will host the 2020 Public Interface Control Working Group and Open Public Forum on September 30, 2020 for the following NAVSTAR GPS public documents: IS–GPS–200 (Navigation User Interfaces), IS–GPS–705 (User Segment L5 Interfaces), IS–GPS–800 (User Segment L1C Interface), and ICD–GPS–240 (NAVSTAR GPS Control Segment to User Support Community Interfaces). Additional logistical details can be found below.

DATES: Open to the public Wednesday, September 30, 2020 from 8:30 a.m. to 4:00 p.m. (Pacific Standard Time).

ADDRESSES: SAIC, 200 N Pacific Coast Highway, El Segundo, CA 90245, Coronado Conference Room (17th Floor, Check-in 18th Floor at SAIC Front Desk).

Primary Dial In: 312–874–6300, Conference Number: 647396419.

Primary Screen Share URL: https://conference.apps.mil/webconf/gpspublicmeeting2020.

Backup Dial In: 646–828–7666, Meeting ID: 16117342565, Password: 12345.

Backup Screen Share URL: https://saicwebconferencing.zoomgov.com/j/16117342565?pwd=Njg5TVBTbXpKMVVndzNoL0pPMkhTZz09.

FOR FURTHER INFORMATION CONTACT: Please email *SMCGPER@us.af.mil* and/or contact Lieutenant Julia Corton at 310–653–9518 or Mr. Daniel Godwin at 310–653–3640.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to update the public on GPS public document revisions and collect issues/comments for analysis and possible integration into future GPS public document revisions. The 2020 Public Interface Control Working Group and Open Forum are open to the general public. For those who would like to attend and participate, we request that you register no later than 18 September 2020. Please send the registration information to *SMCGPER@us.af.mil,* providing your name, organization, telephone number, email address, and country of citizenship.

Attendees are highly encouraged to participate virtually. Meeting facility person capacity may be reduced based on government restrictions; in-person attendees should plan accordingly. Attendees are also expected to comply with COVID–19 health precautions (such as maintaining social distance and wearing a facemask). Backup dial-in & screen share website will only be used in case of primary system technical difficulties.

Comments will be collected, catalogued, and discussed as potential inclusions to the version following the current release. If accepted, these changes will be processed through the formal change management process for IS–GPS–200, IS–GPS–705, IS–GPS–800, and ICD–GPS–240. All comments must be submitted in a Comments Resolution Matrix. This form along with proposed document revisions of the documents and the official meeting notice are posted at: *https://www.gps.gov/technical/icwg/meetings/2020.*

Please submit comments to the Space & Missile Systems Center GPS Requirements Section (SMC/ZAC–PNT) workflow at *SMCGPER@us.af.mil* by August 30, 2020. Special topics may also be considered for the Public Open Forum. If you wish to present a special topic, please submit any materials to SMC/ZAC–PNT no later than August 19, 2020.

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2020–15953 Filed 7–22–20; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0117]

Agency Information Collection Activities; Comment Request; Measures and Methods for the National Reporting System for Adult Education

AGENCY: Office of Career, Technical and Adult Education (OCTAE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision to an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 21, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0117. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Braden Goetz, 202–245–7405.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Measures and Methods for the National Reporting System for Adult Education.

OMB Control Number: 1830–0027.

Type of Review: A revision of a currently approved information collection.

Respondents/Affected Public: State, Local and Tribal Organizations.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 5,700.

Abstract: This information collection request annually solicits performance and related information from the states and outlying areas that receive adult education state grant funds under the Adult Education and Family Literacy Act (AEFLA). The data are used to ensure that states and outlying areas meet the performance accountability requirements of AEFLA. Through this proposal, the Department is submitting a revised the National Reporting System for Adult Education (NRS) Information Collection Request (ICR) to include additional data collection elements consistent with the Workforce Innovation and Opportunity Act of 2014 (WIOA) performance accountability requirements for the AEFLA program. These new data collection elements will become effective on July 1, 2021 and required to be included in the annual

performance reports due on October 1, 2021.

Dated: July 20, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–15990 Filed 7–22–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case Number 2020–001; EERE–2020–BT–WAV–0005]

Energy Conservation Program: Notice of Petition for Waiver of Hoshizaki America, Inc. From the Department of Energy Automatic Commercial Ice Makers Test Procedure and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver and grant of an interim waiver; request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver and interim waiver from Hoshizaki America, Inc. (''Hoshizaki''), which seeks a waiver for specified Automatic Commercial Ice Maker (''ACIM'') basic models from the U.S. Department of Energy (''DOE'') test procedure used for determining the energy use of ACIM. DOE also gives notice of an Interim Waiver Order that requires Hoshizaki to test and rate the specified ACIM basic models in accordance with the alternate test procedure set forth in the Interim Waiver Order. DOE solicits comments, data, and information concerning Hoshizaki's petition and its suggested alternate test procedure so as to inform DOE's final decision on Hoshizaki's waiver request.

DATES: The Interim Waiver Order is effective on July 23, 2020. Written comments and information will be accepted on or before August 24, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, interested persons may submit comments, identified by case number ''2020–001'', and Docket number ''EERE–2020–BT–WAV–0005,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Hoshizaki2020WAV0005@ee.doe.gov.* Include Case No. 2020–001 in the subject line of the message.
- *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, Petition for Waiver Case No. 2020–001, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th floor, Washington, DC, 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *http://www.regulations.gov/docket?D=EERE-2020-BT-WAV-0005.* The docket web page contains instruction on how to access all documents, including public comments, in the docket. See the **SUPPLEMENTARY INFORMATION** section for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *AS_Waiver_Request@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–2588. Email: *amelia.whiting@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is publishing Hoshizaki's petition for waiver in its entirety, pursuant to 10 CFR 431.401(b)(1)(iv).[1] DOE invites all interested parties to submit in writing by August 24, 2020, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 431.401(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Stephen Schaefer, *STSchaefer@hoshizaki.com,* 618 Hwy. 74 South, Peachtree City, GA 30269.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments

[1] The petition did not identify any of the information contained therein as confidential business information.

will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. Faxes will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signing Authority

This document of the Department of Energy was signed on July 17, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 20, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

Case Number 2020–001

Interim Waiver Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[2] authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[3] of EPCA established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes ACIMs, the subject of this Interim Waiver Order. (42 U.S.C. 6311(1)(F))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the covered equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) The test procedure for ACIM is contained in the Code of Federal Regulations (''CFR'') at 10 CFR 431.134, Uniform Test Methods for the Measurement of Energy and Water Consumption of Automatic Commercial Ice Makers.

Under 10 CFR 431.401, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. *See* 10 CFR 431.401(f)(2). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the performance of the equipment type in a manner representative of the energy consumption characteristics of the basic

[2] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[3] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated as Part A–1.

model. *See* 10 CFR 431.401(b)(1)(iii). DOE may grant the waiver subject to conditions, which may include adherence to alternate test procedures specified by DOE. 10 CFR 431.401(f)(2).

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. *See* 10 CFR 431.401(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.*

The waiver process also provides that DOE may grant an interim waiver from the test procedure requirements if it appears likely that the underlying petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the underlying petition for waiver. *See* 10 CFR 431.401(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. *See* 10 CFR 431.401(h)(1).

When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. *See* 10 CFR 431.401(h)(2).

II. Hoshizaki's Petition for Waiver and Interim Waiver

On January 28, 2020, Hoshizaki filed a petition for waiver and interim waiver from the test procedure for ACIM set forth at 10 CFR 431.134. Hoshizaki additionally provided technical information to support its waiver petition in communications to DOE on February 13, 2020, and March 19, 2020.[4] Hoshizaki noted that the DOE ACIM test procedure requires that the ice bin of a unit under test be one-half full of ice prior to the test. Specifically, Hoshizaki cited the test condition in section 6.5 of American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') Standard 29–2009, *Method of Testing Automatic Ice Makers* (''ASHRAE Standard 29–2009''), which is incorporated by reference in the DOE ACIM test procedure. *See* 10 CFR 431.133 and 431.134(b). Section 6.5 of ASHRAE Standard 29–2009 requires in relevant part that ''Bins shall be used when testing and shall be filled one-half full with ice.'' Additionally, the DOE ACIM test procedure requires, through reference to section 7.2.1 of ASHRAE Standard 29–2009, that ice produced during the collection period be ''intercepted'' from the half-full bin for the purpose of determining the capacity of the unit under test.

Hoshizaki stated that in the basic models for which it is requesting a waiver,[5] the ice bin is situated in a position that is between the production and dispensing areas of the units. Specifically, Hoshizaki stated that the basic models are continuous type ice makers that have a self-contained bin situated just above the evaporator compartment that produces the ice and that a unique design characteristic of these models is that the ice is pushed up through the evaporator directly into the bottom of a bin. Hoshizaki claimed that, because the ice bin is situated just above the evaporator and that ice is pushed up through the evaporator directly into the bottom of the bin, filling the ice bin one-half full of ice prior to the test makes it impossible to test ice harvest accurately. Hoshizaki stated that all other ice makers on the market fill ice bins using gravity or a transport hose to move ice from the evaporator into a bin area, which allows for placing a container in the ice bin prior to testing to segregate the ice harvested in the test from the ice added to the ice bin to satisfy the half-full requirement prior to testing. Hoshizaki claimed that, because ice is formed in the evaporator and pushed up to the bottom of the ice bin for the specified models, one cannot intercept the ice produced during the collection period. Additionally, Hoshizaki stated that accessing ice through the dispenser further interferes with separating ice produced during the collection period from any ice in the bin at the start of the test. Hoshizaki asserted that the inability to segregate ''fill-ice'' from ''produced ice'' within the bin could lead to inaccurate measurements because of fill-ice placed in the bin prior to the collection period being captured in the test sample.

The DOE ACIM test procedure also incorporates by reference Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') Standard 810–2007 with Addendum 1, *Performance Rating of Automatic Commercial Ice-Makers,* (''AHRI 810–2007''). *See* 10 CFR 431.133 and 431.134(b). Section 4.1.4 of AHRI 810–2007 requires that the test unit be set up per the manufacturer's written instructions, and that no adjustments of any kind shall be made to the test unit prior to or during the test that would affect the ice capacity, energy usage, or water usage of the test sample. In its petition for waiver, Hoshizaki requested that the specified basic models be modified for testing by inserting a bracket to hold the dispenser shutter open during the test. In response to DOE questions on this request, Hoshizaki stated that ice is only accessible to the user through use of the dispenser, and that the dispenser assembly includes a safeguard that prevents dispensing for longer than 20 seconds when activated by button or sensor. Hoshizaki stated that the requested bracket installation would hold the dispenser shutter open, allowing for dispensing of ice throughout the test. Hoshizaki also asserted that the installation of the bracket rather than typical dispenser operation does not bypass any typical dispensing motor operation within the unit.

Hoshizaki also requests an interim waiver from the existing DOE test procedure. DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. See 10 CFR 431.401(e)(2).

Based on the assertions in the petition, absent an interim waiver, Hoshizaki asserts that the ACIM basic models it identified in its petition for a waiver cannot be tested and rated for energy consumption on a basis representative of their actual energy consumption characteristics. Hoshizaki claimed that it cannot accurately perform the ice harvest test with the bin half full for the specified models, as is required by the DOE test procedure (*i.e.,* the ice cannot be intercepted in the collection container by ''catching'' the ice produced, as is typically done for gravity-fed ice bins), or without modifying the test unit to allow for continuous ice collection through the dispenser.

III. Requested Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy consumption and energy consumption costs of covered equipment. (42 U.S.C. 6314(d)) Consistency is important when making representations about the energy efficiency of covered equipment,

[4] See documents in the Docket No. EERE–2020–BT–WAV–0005 available on *http://www.regulations.gov.*

[5] The specific basic models for which the petition applies are ACIM basic models DCM–270BAH and DCM–270BAH–OS. These basic model names were provided by Hoshizaki in its January 28, 2020 petition.

including when demonstrating compliance with applicable DOE energy conservation standards. Pursuant to 10 CFR 431.401, and after consideration of public comments on the petition, DOE may establish in a subsequent Decision and Order an alternate test procedure for the basic models addressed by the interim waiver.

Hoshizaki seeks to use an alternate test procedure to test and rate specific ACIM basic models. Hoshizaki specifically requests to test the specified basic models by: (1) Removing the front panel to the ice maker, (2) inserting a bracket to hold the shutter open during test (shutter must be completely open to allow for dispensing of ice during test), (3) replacing the front panel, and (4) starting the stabilization and capacity test with the bin empty.

IV. Interim Waiver Order

DOE has reviewed Hoshizaki's application for an interim waiver, the alternate test procedure requested by Hoshizaki, specification and parts sheets for the specified basic models, and additional technical correspondence.

Based on this review, DOE tentatively agrees with the claims outlined in Hoshizaki's petition as discussed in section II of this order, and the alternate test procedure suggested by Hoshizaki appears to allow for the accurate measurement of the energy use of the specified basic models, while alleviating the testing problems associated with Hoshizaki's implementation of DOE's test procedure for these basic models. Consequently, DOE has determined that Hoshizaki's petition for waiver likely will be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant Hoshizaki immediate relief pending a determination of the petition for waiver.

For the reasons stated, it is *Ordered* that:

(1) Hoshizaki must test and rate the following Automatic Commercial Ice Maker (''ACIM'') basic models with the alternate test procedure set forth in paragraph (2).

Brand	Basic model
Hoshizaki	DCM–270BAH.
Hoshizaki	DCM–270BAH–OS.

(2) The alternate test procedure for the Hoshizaki basic models identified in paragraph (1) of this Interim Waiver Order is the test procedure for ACIM prescribed by DOE at 10 CFR 431.134, except that the test unit setup and initial conditions are modified, as detailed below. All other requirements of the test procedure at 10 CFR 431.134 and DOE's regulations remain applicable.

Prior to the start of the test, remove the front panel of the unit under test and insert a bracket to hold the shutter (which allows for the dispensing of ice during the test) completely open for the duration of the test. After inserting the bracket, return the front panel to its original position on the unit under test. Conduct the test procedure as specified in 10 CFR 431.134 except that the ice bin for the unit under test shall be empty at the start of the test and intercepted ice samples shall be obtained at the outlet of the ice dispenser.

(3) *Representations.* Hoshizaki may not make representations about the energy use of a basic model listed in paragraph (1) for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions in this alternate test procedure and such representations fairly disclose the results of such testing according to the requirements in 10 CFR 429.45.

(4) This Interim Waiver Order shall remain in effect according to the provisions of 10 CFR 431.401.

(5) This Interim Waiver Order is issued to Hoshizaki on the condition that the statements, representations, specification sheets, and documents provided by Hoshizaki are valid. If Hoshizaki makes any modifications to the controls or configurations of a basic model subject to this Interim Waiver Order, such modifications will render the waiver invalid with respect to that basic model, and Hoshizaki will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for the Interim Waiver Order is incorrect, or the results from the alternate test procedure are unrepresentative of the basic model's true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, Hoshizaki may request that DOE rescind or modify the Interim Waiver Order if Hoshizaki discovers an error in the information provided to DOE as part of its petition, determines that the interim waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) Issuance of this Interim Waiver Order does not release Hoshizaki from the certification requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. Hoshizaki may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of ACIM. Alternatively, if appropriate, Hoshizaki may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 431.401(g).

Signed in Washington, DC, on July 17, 2020.

Alexander N. Fitzsimmons,
Deputy Assistant Secretary for Energy Efficiency Energy Efficiency and Renewable Energy.

HOSHIZAKI AMERICA, INC.

January 28, 2020

U.S. Department of Energy
Building Technologies Program, Test Procedure Waiver
1000 Independence Avenue SW,
Mailstop EE–SB,
Washington, DC 20585–0121

Re: Notice of petition for waiver, petition of interim waiver, and request for public comment

Pursuant to 10 CFR 431.401, Hoshizaki America, Inc. respectfully requests expedited attention to this Petition for both an interim waiver and final waiver to modify the DOE test procedure (10 CFR 431 Subpart H) for Hoshizaki America, Inc. in relation to ice/water dispenser products DCM–270BAH and DCM–270BAH–OS and future iterations. The reason for this is to amend the test protocol to allow these products to be tested with an empty bin instead of a half full bin as directed by ASHRAE 29–2009 Method of Testing Automatic Ice Makers. This request would allow accurate measurement of the ice produced for the test in ASHRAE 29–2009 Method of Testing Automatic Ice Makers. Hoshizaki America, Inc. submits that this product is unique in its design and it cannot accurately perform the ice harvest test with the bin half full.

10 CFR 431.401 provides that a manufacturer may submit a petition to waive a requirement of 10 CFR 431 subpart H upon grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a matter so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. Hoshizaki America requests that DOE grant this Petition on

both grounds for the reasons set forth below.

1. Petitioner

Hoshizaki America, Inc. is a subsidiary of Hoshizaki Corporation. Hoshizaki America's corporate headquarters is located in Peachtree City, Georgia and was founded in 1986. Hoshizaki is the world leader in Commercial Ice Makers. Hoshizaki America designs and manufactures Commercial Ice Makers and Commercial Refrigerators/Freezers in both Peachtree City, Georgia and Griffin, Georgia. The Brand Name for Hoshizaki America is Hoshizaki. Additional information can be found at *http://www.hoshizakiamerica.com.*

2. Background

The DCM–270BAH and DCM–270BAH–OS are continuous type ice makers that have a self-contained bin situated just above the evaporator compartment that produces the ice. These models are manufactured at Hoshizaki America's Peachtree City, Georgia facility, and are for dispensing ice and/or water into cups, pitchers, or other serving apparatuses on demand. A unique design characteristic of this machine is the ice is pushed up through the evaporator directly into the bottom of a bin. All other ice makers in the field fill ice bins using gravity to drop ice from the evaporator or a transport hose downward into a bin area. With ice dropping downward to the ice bin, one usually places a container in the ice bin prior to testing to segregate the ice harvested in the test from ice added to ice bin prior to testing as required by ASHRAE 29 Method of Testing Automatic Ice Makers. In the DCM–270BAH and DCM–270BAH–OS, ice is continuously pushed into the bottom of the ice bin until the quantity of ice in the ice bin reaches the bin control mechanism that triggers a stop function. This model was first released to the US market in 1994 as Hoshizaki model DCM–240BAB and has been updated through various model changes up to the most recent models DCM–270BAH and DCM–270BAH–OS.

3. Grounds for Waiver

Hoshizaki America's intent is to accurately test the ice harvest, energy, and water consumption based on the ASHRAE 29 Method of Testing Automatic Ice Makers test. As stated above, the unique design of the DCM–270BAH and DCM–270BAH–OS makes it impossible to accurately test ice harvest if you test as the test standard stipulates with the bin filled one-half full with ice prior to test. To accurately collect the ice produced in the time allotted by the ASHRAE 29 test we respectfully request to start each collection cycle with the ice bin empty. Since ice is formed in the evaporator and pushed up to the bottom of the ice bin, one cannot accurately segregate ice placed in the bin prior to the test from ice made in the collection period. Full instructions are specified in the following section Requirements Sought to be Waived.

4. Requirements Sought To Be Waived

The DOE test procedure refers to ASHRAE 29 Method of Testing Automatic Ice Makers for the testing of Automatic Commercial Ice Makers. The section for which we are requesting a waiver is as follows:

6.5 Bins shall be used when testing and shall be filled one-half full with ice. Ice makers that convey ice through a conduit to a remote bin shall be tested with the minimum length of conduit that can be used.

The issue with the test procedure with regards to this design is that filling the ice bin of the DCM–270BAH and DCM–270BAH–OS one-half full of ice prior to the test will cause a problem in being able to accurately record the ice produced during the test versus the total amount of ice placed in the bin prior to testing.

Hoshizaki America, Inc. is requesting an interim waiver and final waiver from this stipulation and requests the following variation to overcome this issue:

1. Remove front panel to ice maker
2. Insert bracket to hold shutter open during test. Shutter must be completely open to allow for dispensing of ice during test
3. Replace front panel
4. Start stabilization and capacity test with the bin empty

Hoshizaki America requests that DOE extend the scope of a waiver or an interim waiver to include future basic models employing the same technology as the basic models set forth in the original petition consistent with 10 CFR 431.401.

5. Identification of Basic Models

This Petition for Waiver and Application for Interim Waiver is made with respect to the Basic Model of an ice/water dispenser that incorporates a self-contained ice bin above a continuous ice making system. The system incorporates a dispensing motor to dispense ice to users on demand.

Specific Basic Models are:

Hoshizaki brand: DCM–270BAH and DCM–270BAH–OS

6. Economic Hardship

Hoshizaki America respectfully acknowledges that the inability to accurately test the specific models will leave them unable to provide proper test data to certify the models and list with the U.S. Department of Energy Compliance Certification Management System (CCMS). The inability to do so would leave Hoshizaki America unable to sell the models in the United States and thus cause a significant economic loss. Further, Hoshizaki America will be at a competitive disadvantage if the waiver and interim waiver are not approved.

7. Manufacturer's of Similar Products and Affected Manufacturers

To the best of our knowledge, Hoshizaki America is not aware of other manufacturers in the United States with this unique characteristic of having an ice bin directly above the ice making evaporator with ice pushed directly into the bottom of the ice bin.

Other manufacturers that sell commercial ice/water dispensers in the United States include Follett, Manitowoc, and Scotsman.

8. Likelihood of Success

By granting Hoshizaki America this Waiver and interim waiver, Hoshizaki America will be able to test the DCM–270BAH and DCM–270BAH–OS with great accuracy to ASHRAE 29 Method of Testing Automatic Ice Makers. Hoshizaki America sees no obstacles to accepting this petition.

9. Conclusion

For the above reasons, Hoshizaki America, Inc. requests that the U.S. Department of Energy grant the above Petition for an interim and final waiver. Hoshizaki America, Inc. would be pleased to discuss this petition and provide any additional information that the Department may require.

Thank you for your help in this matter.

Sincerely yours,

Stephen Schaefer

[FR Doc. 2020–15984 Filed 7–22–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–152–011; ER13–1143–008; ER13–1144–008; ER10–2196–007; ER20–528–002; ER17–1849–006; ER10–2740–015; ER15–1657–011; ER10–2742–014.

Applicants: Elgin Energy Center, LLC, Essential Power OPP, LLC, Essential Power Rock Springs, LLC, Lakewood Cogeneration, L.P., Lincoln Power, L.L.C., Nautilus Power, LLC, Rocky Road Power, LLC, SEPG Energy Marketing Services, LLC, Tilton Energy LLC.

Description: Notice of Non-Material Change in Status of Elgin Energy Center, LLC, et al.

Filed Date: 7/17/20.

Accession Number: 20200717–5172.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER15–704–017.

Applicants: Pacific Gas and Electric Company.

Description: Compliance filing: CCSF Compliance filing for order on rehearing CCSF WDT IA (SA 275) to be effective 7/1/2015.

Filed Date: 7/17/20.

Accession Number: 20200717–5104.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER15–704–018.

Applicants: Pacific Gas and Electric Company.

Description: Compliance filing: Compliance filing following order on rehearing CCSF WDT IA (SA 275) to be effective 7/23/2015.

Filed Date: 7/17/20.

Accession Number: 20200717–5105.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER19–1368–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report_Manitiwoc Public Uitlities to be effective N/A.

Filed Date: 7/17/20.

Accession Number: 20200717–5093.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER19–1936–002.

Applicants: Idaho Power Company.

Description: Compliance filing: Compliance Filing—Order Nos. 845 and 845–A to be effective 5/22/2019.

Filed Date: 7/17/20.

Accession Number: 20200717–5083.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER19–1951–002.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Compliance filing: ISO–NE & NEPOOL; Revisions in Further Compliance with Order Nos. 845 and 845–A to be effective 3/19/2020.

Filed Date: 7/17/20.

Accession Number: 20200717–5050.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER19–1961–003.

Applicants: GridLiance High Plains LLC.

Description: Compliance filing: GHP Order No. 845 Compliance Filing—OATT Attachments M and N to be effective 5/22/2019.

Filed Date: 7/17/20.

Accession Number: 20200717–5125.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER19–2224–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report_Turtle Creek to be effective N/A.

Filed Date: 7/17/20.

Accession Number: 20200717–5097.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER19–2235–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report_Tuscaola Bay to be effective N/A.

Filed Date: 7/17/20.

Accession Number: 20200717–5100.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER20–2433–001.

Applicants: Duke Energy Florida, LLC.

Description: Tariff Amendment: Amendment to DEF-Archer Solar EP Agreement Filing to be effective 7/17/2020.

Filed Date: 7/16/20.

Accession Number: 20200716–5136.

Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2446–000.

Applicants: Bitter Ridge Wind Farm, LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 9/14/2020.

Filed Date: 7/16/20.

Accession Number: 20200716–5133.

Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2447–000.

Applicants: Florida Power & Light Company.

Description: Tariff Cancellation: FPL and 77IV 8me LLC–LGIA Service Agreement No. 328 Notice of Cancellation to be effective 7/17/2020.

Filed Date: 7/16/20.

Accession Number: 20200716–5147.

Comments Due: 5 p.m. ET 8/6/20.

Docket Numbers: ER20–2448–000.

Applicants: American Kings Solar, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 11/1/2020.

Filed Date: 7/17/20.

Accession Number: 20200717–5012.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER20–2449–000.

Applicants: The United Illuminating Company.

Description: Section 205(d) Rate Filing: Localized Costs Sharing Agreement No. 20 to be effective 7/1/2020.

Filed Date: 7/17/20.

Accession Number: 20200717–5051.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER20–2450–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Original WMPA SA No. 5700; Queue No. AF1–001 to be effective 6/17/2020.

Filed Date: 7/17/20.

Accession Number: 20200717–5084.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER20–2451–000.

Applicants: Basin Electric Power Cooperative.

Description: Initial rate filing: Submission of Transmission-Related Agreements to be effective 7/17/2020.

Filed Date: 7/17/20.

Accession Number: 20200717–5086.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER20–2452–000.

Applicants: Hamilton Liberty LLC.

Description: Compliance filing: Non-Material Change in Status, Notice of Succession, and New eTariff Baseline to be effective 7/18/2020.

Filed Date: 7/17/20.

Accession Number: 20200717–5088.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER20–2453–000.

Applicants: Hamilton Patriot LLC.

Description: Compliance filing: Non-Material Change in Status, Notice of Succession, and New eTariff Baseline to be effective 7/18/2020.

Filed Date: 7/17/20.

Accession Number: 20200717–5089.

Comments Due: 5 p.m. ET 8/7/20.

Docket Numbers: ER20–2454–000.

Applicants: New England Power Company.

Description: Section 205(d) Rate Filing: Filing of Eng'g & Procurement Agmt with DWW REV I & Request for CEII Treatment to be effective 6/17/2020.

Filed Date: 7/17/20.

Accession Number: 20200717–5139.

Comments Due: 5 p.m. ET 8/7/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: July 17, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15971 Filed 7–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2854–025]

City of Vidalia, Louisiana; Catalyst Old River Hydroelectric Limited Partnership The Bank of New York Mellon Trust Company, N.A., Successor in Interest to First National Bank of Commerce of New Orleans; Notice of Application for Partial Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On May 22, 2020, the City of Vidalia, Louisiana (City), Catalyst Old River Hydroelectric Limited Partnership (Catalyst), and the Bank of New York Mellon Trust Company, N.A., not in its individual capacity, but solely as owner trustee (Owner Trustee), successor in interest to the original owner trustee First National Bank of Commerce of New Orleans co-licensees, filed a joint application for partial transfer of the license for the Old River Hydroelectric Project No. 2854. The project is located at the U.S. Army Corps of Engineers' Old River Control Channel, on the Mississippi and Old rivers, in Concordia Parish, Louisiana.

The applicants seek Commission approval to partially transfer the license for the Old River Project from the City, Catalyst, and Owner Trustee as co-licensees to the City and Catalyst as co-licensees. In addition, the application includes a request for approval of an after-the-fact partial transfers of the license from the original owner trustee, First National Bank of Commerce of New Orleans, to the current Owner Trustee.

Applicants Contact: Julia S. Wood, Van Ness Feldman, LLP, 1050 Thomas Jefferson Street NW, Washington, DC 20007, Phone: (202) 298–3800, Email: *jsw@vnf.com*

FERC Contact: Anumzziatta Purchiaroni, (202) 502–6191, *Anumzziatta.purchiaroni@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp. See* 18 CFR 385.2001(a)(1)(iii). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2854–025. Comments emailed to Commission staff are not considered part of the Commission record.

Dated: July 17, 2020..

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15965 Filed 7–22–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–04–2020–2501; FRL–10007–79–Region 4]

Ward Transformer Superfund Site, Raleigh, North Carolina; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has entered into an Administrative Settlement Agreement and Order on Consent for Removal Actions with Ward Transformer Co. Inc., Ward Ventures, LLC and Reward Properties, LLC (collectively ''Ward'') concerning the Ward Transformer Superfund Site located in Raleigh, North Carolina. The settlement addresses recovery of CERCLA costs for a cleanup action performed by the EPA at the Site.

DATES: The Agency will consider public comments on the settlement until August 24, 2020. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using information provided in this notice or through the Agency's web page *https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices.* Comments may be submitted by referencing the Site's name or Docket # CERCLA–04–2020–2501 and emailed to *Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: April 14, 2020.

Maurice Horsey,

Chief, Enforcement Branch, Superfund & Emergency Management Division.

Editorial Note: This document was received for publication by the Office of the Federal Register on July 20, 2020.

[FR Doc. 2020–15962 Filed 7–22–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10012–74–OA]

Notification of Two Public Teleconferences of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two public teleconferences of the chartered SAB to review the scientific and technical basis of the proposed rule ''Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process.''

DATES: The public teleconferences of the chartered Science Advisory Board will be held on Tuesday, August 11, 2020, from 1:00 p.m. to 5:00 p.m. (Eastern Time) and Tuesday, September 15, 2020, from 1:00 p.m. to 5:00 p.m. (Eastern Time).

ADDRESSES: The teleconferences will be conducted by telephone only. Please refer to the SAB website at *http://www.epa.gov/sab* for information on how to access the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public teleconferences may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), EPA Science Advisory Board via telephone/voice mail (202) 564–2155, or email at *armitage.thomas@epa.gov.* General information concerning the SAB can be found on the EPA website at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: *Background:* The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB will hold two public teleconferences to review the scientific and technical basis of the proposed rule ''Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process'' described in 85 FR 35612–35627. Under the SAB's authorizing statute, the SAB ''may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis'' of proposed rules. The SAB will hold two public teleconferences to receive briefings from the EPA on the proposed rule and discuss its scientific and technical basis.

Availability of Meeting Materials: Prior to the teleconferences, the agenda and other meeting materials for each teleconference will be placed on the SAB website at *http://epa.gov/sab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes. Persons interested in providing oral statements should contact Dr. Thomas Armitage, DFO, in writing (preferably via email) at the contact information noted above by August 4, 2020, to be placed on the list of registered speakers for the August 11, 2020, teleconference and by September 8, 2020, for the September 15, 2020, teleconference.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be received in the SAB Staff Office by August 4, 2020, for consideration at the public teleconference on August 11, 2020. Written statements should be received in the SAB Staff Office by September 8, 2020, for consideration at the public teleconference on September 15, 2020. Written statements should be supplied to the DFO at the contact information above via email with original signature. Submitters are requested to provide a signed and unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Armitage at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Dated: July 20, 2020.

Thomas Brennan,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2020–15988 Filed 7–22–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than August 24, 2020.

A. Federal Reserve Bank of Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *Liberty Northwest Bancorp, Inc., Poulsbo, Washington;* to become a bank holding company by acquiring Liberty Bank, also of Poulsbo, Washington.

Board of Governors of the Federal Reserve System, July 20, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–15973 Filed 7–22–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces a Special Emphasis Panel (SEP) meeting on ''HSQR ZHS1 HSR X–(02).'' This SEP meeting will be closed to the public.

DATES: August 19, 2020.

ADDRESSES: Agency for Healthcare Research and Quality, (Video Assisted Review), 5600 Fishers Lane, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Jenny Griffith, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20850, Telephone: (301) 427–1557.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the AHRQ, and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for the ''AHRQ–HSQR ZHS1 HSR X–(02).'' are to be reviewed and discussed at this meeting. 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.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 17, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–15933 Filed 7–22–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces a Special Emphasis Panel (SEP) meeting on ''AHRQ RFAHS20–002 Supporting Primary Care to Advance Cardiovascular Health in States with High Prevalence of Preventable CVD Events (U18).'' This SEP meeting will be closed to the public.

DATES: August 25, 2020.

ADDRESSES: Agency for Healthcare Research and Quality, (Video Assisted Review), 5600 Fishers Lane, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Jenny Griffith, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20850, Telephone: (301) 427–1557.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by AHRQ, and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for the ''AHRQ RFAHS20–002 Supporting Primary Care to Advance Cardiovascular Health in States with High Prevalence of Preventable CVD Events (U18).'' are to be reviewed and discussed at this meeting. 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.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 17, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–15932 Filed 7–22–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces a Special Emphasis Panel (SEP) meeting on ''AHRQ RFAHS20–003 Novel, High-Impact Studies Evaluating Health System and Healthcare Professional Responsiveness to COVID–19 (R01).'' This SEP meeting will be closed to the public.

DATES: August 27–28, 2020.

ADDRESSES: Agency for Healthcare Research and Quality, (Video Assisted Review), 5600 Fishers Lane, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Jenny Griffith, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20850. Telephone: (301)427–1557.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the AHRQ, and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth

in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for the ''AHRQ RFAHS20–003 Novel, High-Impact Studies Evaluating Health System and Healthcare Professional Responsiveness to COVID–19 (R01).'' are to be reviewed and discussed at this meeting. 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.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 17, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–15936 Filed 7–22–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces a Special Emphasis Panel (SEP) meeting on ''HCRT SEP 2020/10 ZHS1 HSR A (01).'' This SEP meeting will be closed to the public.

DATES: August 14, 2020.

ADDRESSES: Agency for Healthcare Research and Quality, (Video Assisted Review), 5600 Fishers Lane, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Jenny Griffith, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20850, Telephone: (301) 427–1557.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by AHRQ, and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for the ''HCRT SEP 2020/10 ZHS1 HSR A (01).'' are to be reviewed and discussed at this meeting. 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.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 17, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–15935 Filed 7–22–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces a Special Emphasis Panel (SEP) meeting on ''HSQR ZHS1 HSR X-(01).'' This SEP meeting will be closed to the public.

DATES: August 19, 2020.

ADDRESSES: Agency for Healthcare Research and Quality, (Video Assisted Review), 5600 Fishers Lane, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Jenny Griffith, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20850, Telephone: (301) 427–1557.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the AHRQ, and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for the ''AHRQ-HSQR ZHS1 HSR X-(01).'' are to be reviewed and discussed at this meeting. 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. Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 17, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–15934 Filed 7–22–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), ICD–10 Coordination and Maintenance (C&M) Committee Meeting

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The CDC, National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, announces the following meeting of the ICD–10 Coordination and Maintenance (C&M) Committee meeting. This meeting is open to the public, limited only by audio and web conferences lines available. Online Registration is not required.

DATES: The meeting will be held on September 8, 2020, from 9:00 a.m. to 5:00 p.m., EDT, and September 9, 2020, from 9:00 a.m. to 5:00 p.m., EDT.

ADDRESSES: This is a virtual meeting. Information will be provided on each of our respective web pages when it becomes available. For CDC/NCHS *https://www.cdc.gov/nchs/icd/icd10cm_maintenance.htm.*

For CMS *https://www.cms.gov/Medicare/Coding/ICD9ProviderDiagnosticCodes/meetings.*

FOR FURTHER INFORMATION CONTACT: Traci Ramirez, Program Specialist, CDC, 3311 Toledo Road, Hyattsville, Maryland 20782, Telephone (301) 458–4454; *TRamirez@cdc.gov.*

SUPPLEMENTARY INFORMATION: *Purpose:* The ICD–10 Coordination and Maintenance (C&M) Committee is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Tenth Revision, Clinical Modification and ICD–10 Procedure Coding System.

Matters To Be Considered: The tentative agenda will include discussions on ICD–10–CM and ICD–10–PCS topics listed below. Agenda items are subject to change as priorities dictate.

Please refer to the posted agenda for updates one month prior to the meeting.

ICD–10–PCS Topics

Vertebral Body Tethering
Removal of a Transplanted/Rejected Kidney
Isotope Administration
Administration of Lifileucel
Administration of Narsoplimab
Insertion of Implantable Bone Void Filler
Single-Use Duodenoscope
Administration of Immune Effector Cell Therapy
Spinal Stabilization
Administration of Idecabtagene Vicleucel (ide-cel)
Restriction of Coronary Sinus Embolic Protection

ICD–10–CM Topics:

Complications of immune effector cellular (IEC) therapy
Endometriosis
Immune Effector Cell Associated Neurotoxicity Syndrome (ICANS) Addenda

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–16000 Filed 7–22–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0490]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Cosmetic Labeling Regulations and Voluntary Cosmetic Registration Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by August 24, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0599. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Cosmetic Labeling Regulations—21 CFR part 701 and Voluntary Cosmetic Registration Program—21 CFR parts 710 and 720

OMB Control Number 0910–0599—Revision

The Federal Food, Drug, and Cosmetic Act (FD&C Act) and the Fair Packaging and Labeling Act (FPLA) require that cosmetic manufacturers, packers, and distributors disclose information about themselves or their products on the labels or labeling of their products. Sections 201, 301, 502, 601, 602, 603, 701, and 704 of the FD&C Act (21 U.S.C. 321, 331, 352, 361, 362, 363, 371, and 374) and sections 4 and 5 of the FPLA (15 U.S.C. 1453 and 1454) provide authority to FDA to regulate the labeling of cosmetic products. Failure to comply with the requirements for cosmetic labeling may render a cosmetic adulterated under section 601 of the FD&C Act or misbranded under section 602 of the FD&C Act.

I. Cosmetic Labeling Regulations

FDA's cosmetic labeling regulations are codified in part 701 (21 CFR part 701). Section 701.3 requires the label of a cosmetic product to bear a declaration of the ingredients in descending order of predominance. Section 701.11 requires the principal display panel of a cosmetic product to bear a statement of the identity of the product. Section 701.12 requires the label of a cosmetic product to specify the name and place of business of the manufacturer, packer, or distributor. Section 701.13 requires the label of a cosmetic product to declare the net quantity of contents of the product. The information collection provisions found in part 701 are currently approved under OMB control number 0910–0027. To improve the efficiency of Agency operations, we are consolidating these information collection elements into OMB control number 0910–0599.

II. Voluntary Cosmetic Registration Program

Information collection associated with our Voluntary Cosmetic Registration Program (VCRP) are found in parts 710 and 720 (21 CFR parts 710 and 720). Participants have the option of submitting information via paper forms or via an online interface. The use of the term ''form'' refers to both the paper form and the online system.

Pursuant to part 710, we request that establishments that manufacture or package cosmetic products voluntarily register with us using Form FDA 2511 entitled ''Registration of Cosmetic Product Establishment.'' The online version of Form FDA 2511 is available on our VCRP website at *https://www.fda.gov/cosmetics/voluntary-cosmetic-registration-program/online-registration-voluntary-cosmetic-registration-program-vcrp.* We encourage online registration of Form FDA 2511 because it is faster and more efficient for the filer and the Agency. A registering facility will receive confirmation of online registration, including a registration number by

email. The online system also allows for amendments to past submissions.

Because registration of cosmetic product establishments is not mandatory, voluntary registration provides FDA with the best information available about the locations, business trade names, and types of activity (manufacturing or packaging) of cosmetic product establishments. We store the registration information in a computer database and use the information to generate mailing lists for distributing regulatory information and for inviting firms to participate in workshops on topics in which they may be interested. Registration is permanent, although we request that respondents submit an amended Form FDA 2511 if any of the originally submitted information changes.

Pursuant to part 720, we request firms that manufacture, pack, or distribute cosmetics to file with the Agency an ingredient statement for each of their products. Filing of cosmetic product ingredient statements is also voluntary. Ingredient statements for new submissions are reported on Form FDA 2512, ''Cosmetic Product Ingredient Statement,'' and on Form FDA 2512a, a continuation form. Amendments to product formulations also are reported on Forms FDA 2512 and FDA 2512a. When a firm discontinues the commercial distribution of a cosmetic, we request that the firm notify FDA that they have discontinued a cosmetic product formulation by submitting an amended Form FDA 2512. If any of the information submitted on these forms is confidential, the firm may submit a request for confidentiality of a cosmetic ingredient.

FDA's use of an electronic submission system has been designed to make it easier for participants to provide information to FDA about their products. The online version of Forms FDA 2512 and FDA 2512a are available on our VCRP website at *https://www.fda.gov/cosmetics/voluntary-cosmetic-registration-program/online-registration-voluntary-cosmetic-registration-program-vcrp.*

Description of Respondents: Respondents to this collection of information include cosmetic manufacturers, packers, and distributors. Respondents are from the private sector (for-profit businesses).

In the **Federal Register** of April 3, 2020 (85 FR 18993), we published a 60-day notice requesting public comment on the proposed collection of information. One comment was received communicating general support for the information collection.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section; activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
701.3; ingredients in order of predominance	1,518	21	31,878	1	31,878
701.11; statement of identity	1,518	24	36,432	1	36,432
701.12; name and place of business	1,518	24	36,432	1	36,432
701.13; net quantity of contents	1,518	24	36,432	1	36,432
Total					141,174

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated annual third-party disclosure burden is based on data available to the Agency, our knowledge of and experience with cosmetics, and communications with industry. The hour burden is the additional or incremental time that establishments need to design and print labeling that includes the following required elements: A declaration of ingredients in decreasing order of predominance, a statement of the identity of the product, a specification of the name and place of business of the establishment, and a declaration of the net quantity of contents. These requirements increase the time establishments needed to design labels because they increase the number of label elements that establishments must consider when designing labels. These requirements do not generate any recurring burden per label because establishments must already print and affix labels to cosmetic products as part of normal business practices. We estimate that the total third-party disclosure burden is 141,174 hours.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section or part	Form FDA No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (minutes)	Total hours
Part 710 (registrations)	[2] 2511	1,702	1	1,702	0.20 (12)	340
720.1 through 720.4 (new submissions)	[3] 2512	6,843	1	6,843	0.33 (20)	2,258
720.6 (amendments)	2512	2,477	1	2,477	0.17 (10)	421
720.6 (notices of discontinuance)	2512	232	1	232	0.10 (6)	23
720.8 (requests for confidentiality)		1	1	1	2	2
Total						3,044

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] The term ''Form FDA 2511'' refers to both the paper Form FDA 2511 and online Form FDA 2511 in the online system known as the VCRP, which is available at *https://www.fda.gov/cosmetics/voluntary-cosmetic-registration-program/online-registration-voluntary-cosmetic-registration-program-vcrp.*

[3] The term ''Form FDA 2512'' refers to the paper Forms FDA 2512 and 2512a and online Form FDA 2512 in the online system known as the VCRP, which is available at *https://www.fda.gov/cosmetics/voluntary-cosmetic-registration-program/online-registration-voluntary-cosmetic-registration-program-vcrp.*

We base our estimate on information from cosmetic industry personnel and FDA experience entering data submitted on paper Forms FDA 2511, 2512, and 2512a into the online system. We estimate that, annually, 1,702 establishments that manufacture or package cosmetic products will each submit 1 registration on Form FDA 2511, for a total of 1,702 annual responses. Each submission is estimated to take about 0.20 hour per response for a total of 340.4 hours, rounded to 340. We estimate that, annually, firms that manufacture, pack, or distribute cosmetics will file 6,843 ingredient statements for new submissions on Forms FDA 2512 and FDA 2512a. Each submission is estimated to take about 0.33 hour per response for a total of 2,258.19 hours, rounded to 2,258. We estimate that, annually, firms that manufacture, pack, or distribute cosmetics will file 2,477 amendments to product formulations on Forms FDA 2512 and FDA 2512a. Each submission is estimated to take about 0.17 hour per response for a total of 421.09 hours, rounded to 421. We estimate that, annually, firms that manufacture, pack, or distribute cosmetics will file 232 notices of discontinuance on Form FDA 2512. Each submission is estimated to take about 0.10 hour per response for a total of 23.2 hours, rounded to 23. We estimate that, annually, one firm will file one request for confidentiality. Each such request is estimated to take 2 hours to prepare for a total of 2 hours. Thus, the estimated total reporting burden is 3,044 hours.

Our estimated burden for the information collection reflects an overall increase of 3,044 hours and a corresponding increase of 11,255 responses. We attribute this adjustment to an increase in the number of hours and responses due to the consolidation of OMB control numbers 0910–0027 and 0910–0599. Total burden for the combined collection of information is therefore, 144,218 hours (141,174 hours from OMB control number 0910–0599 and 3,044 hours from OMB control number 0910–0027).

Dated: July 20, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–15996 Filed 7–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1648]

Pediatric Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Pediatric Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on September 15, 2020, from 10 a.m. to 4:30 p.m.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2020–N–1648. The docket will close on September 14, 2020. Submit either electronic or written comments on this public meeting by September 14, 2020. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 14, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 14, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before August 31, 2020, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1648 for ''Pediatric Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those

submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Marieann Brill, Office of Pediatric Therapeutics, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5154, Silver Spring, MD 20993–0002, 240–402–3838, *marieann.brill@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION: *Agenda:* The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On September 15, 2020, the Pediatric Advisory Committee (PAC) will discuss pediatric-focused safety reviews, as mandated by the Best Pharmaceuticals for Children Act (Pub. L. 107–109) and the Pediatric Research Equity Act of 2003 (Pub. L. 108–155).

The PAC will meet to discuss the following products (listed by FDA Center):

(1) Center for Biologics Evaluation and Research

a. GAMUNEX®-C (immune globulin intravenous (human)), 10%, Caprylate/Chromatography Purified

(2) Center for Devices and Radiological Health

a. FLOURISH™ Pediatric Esophageal Atresia Device (humanitarian device exemption)

(3) Center for Drug Evaluation and Research

a. ADZENYS ER (amphetamine) extended-release oral suspension,

b. MYDAYIS (mixed salts of a single-entity amphetamine product) extended-release capsule, for oral use,

c. ORENCIA (abatacept) for injection, for intravenous use

d. VYVANSE® (lisdexamfetamine dimesylate) capsule and chewable tablet,

FDA will discuss acute dystonia associated with the use of attention deficit hyperactivity disorder (ADHD) medications (including methylphenidate products, amphetamine products, and atomoxetine). Additionally, FDA will discuss acute hyperkinetic movement disorder associated with the combined use of ADHD stimulants and antipsychotics (including first-generation antipsychotics and second-generation antipsychotics).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 8, 2020. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11:30 a.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 31, 2020. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 1, 2020.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Marieann Brill (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 17, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–15998 Filed 7–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0324]

Agency Information Collection Request: 30-Day Public Comment Request

AGENCY: Office of the Secretary, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the information collection request (ICR) must be received on or before August 24, 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: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990-New-30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Resport of Dental Examination of Applicants to the Commissioned Corps of the U.S. Public Health Service.

Type of Collection: Reinstatement.

OMB No.: 0990–0324.

Abstract: The Commissioned Corps of the U.S. Public Health Service has a need for the information in order to assess the qualifications of each applicant and make a determination whether the applicant meets the requirements to receive a commission. The information is used to make determinations on candidates/applicants seeking appointment to the Corps to assess their medical suitability. The purpose is to evaluate the medical suitability of applicants on the basis of the Corps' medical accession standards and policy. The protected information is accessed by appropriate personnel and clinical reviewers. The form is not disclosed to external entities, other than for uses authorized by law.

Type of respondent; frequency (annual); Applicants/Candidates to the Commissioned Corps of the U.S. Public Health Service.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Annual	1,000	1	1	1,000
Total	1,000	1	1	1,000

Sherrette A. Funn,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2020–15928 Filed 7–22–20; 8:45 am]

BILLING CODE 4150–49–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Chimpanzee Research Use Form (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

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 more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: C. Taylor Gilliland, The Division of Program Coordination, Planning, and Strategic Initiatives, OD, NIH, Building 1, Room 260, 1 Center Drive, Bethesda, MD 20892; or call non-toll-free number 301–402–9852; or email your request, including your address, to *dpcpsi@od.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on April 30, 2020, (85 FR 23977) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The Office of the Director, National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Chimpanzee Research Use Form, 0925–0705, exp., date 9/30/2020, EXTENSION, Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI), Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of this form is to obtain information needed by the NIH to assess whether the proposed research satisfies the agency's policy for permitting only noninvasive research involving chimpanzees. NIH will consider the information submitted through this form prior to the agency making funding decisions or otherwise allowing the research to begin. Completion of this form is a mandatory step toward receiving NIH support or approval for noninvasive research involving chimpanzees. NIH does not fund any research involving chimpanzees proposed in new or other competing projects (renewals or revisions) unless the research is consistent with the definition of ''noninvasive research,'' as described in the ''Standards of Care for Chimpanzees Held in the Federally Supported Chimpanzee Sanctuary System'' (42 CFR part 9). See NOT–OD–16–095 at *https://grants.nih.gov/grants/guide/notice-files/NOT-OD-16-095.html* and 81 FR 6873.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 10.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Research Community	20	1	30/60	10
Total		20		10

Dated: July 17, 2020.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2020–15999 Filed 7–22–20; 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; PAR19–319: NIDDK Central Repositories Non-Renewable Sample Access (X0)-Digestive and Liver Diseases.

Date: September 3, 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 Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@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: July 20, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15951 Filed 7–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2020–N087; FXES11140800000–201–FF08ECAR00]

Notice of Availability; Amendment to the Multiple Species Conservation Program, County of San Diego Subarea Plan for Otay Ranch Village 14 and Planning Areas 16 and 19, San Diego County, California; Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce receipt of an application from the County of San Diego (County) to amend its existing incidental take permit for the Multiple Species Conservation Program (MSCP) County of San Diego Subarea Plan (Subarea Plan) for Otay Ranch Village 14 and Planning Areas 16 and 19. Under the National Environmental Policy Act, we are making available the draft amendment and draft environmental assessment, which evaluates the impacts on the human environment associated with the proposed amendment. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: To ensure consideration, please send your written comments by August 24, 2020.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents by the following methods:

- *Internet: https://www.fws.gov/carlsbad/HCPs/HCP_Docs.html.*
- *Telephone:* 760–431–9440.

Submitting Comments: You may submit comments by one of the following methods. Please include ''Otay Ranch Village 14'' at the beginning of your comments.

- *U.S. Mail:* Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
- *Email: fw8cfwocomments@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Wynn, Carlsbad Fish and Wildlife Office, 760–431–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service (FRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce receipt of an application from the County of San Diego (County) to amend its existing incidental take permit (PRT–840414) for the Multiple Species Conservation Program (MSCP) County of San Diego Subarea Plan (Subarea Plan) for Otay Ranch Village 14 and Planning Areas 16 and 19 (Project). The County is requesting an amendment to change the footprint of the Project, as well as add incidental take coverage for the federally endangered Quino checkerspot butterfly (*Euphydryas editha quino*) and San Diego fairy shrimp (*Branchinecta sandiegonensis*). The amendment is needed to authorize take of listed wildlife species (including harm, death, and injury) resulting from covered activities related to the Project. The proposed Project encompasses 1,543 acres in the southwestern portion of San Diego County, California.

We also make available an environmental assessment (EA), which evaluates the impacts of the proposed Project and the no-action alternative. The EA also analyzes the environmental consequences of a proposed land disposal and exchange for 219.4 acres of land that was acquired, in part, from a Federal cooperative agreement and an Endangered Species Act section 6 Habitat Conservation Plan Land Acquisition grant.

We make these documents available under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

Background

Section 9 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), and Federal regulations prohibit the ''take'' of fish and wildlife species federally listed as endangered or threatened. Take of federally listed fish or wildlife is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct (16 U.S.C. 1538). ''Harm'' includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). Under limited circumstances, we may issue permits to authorize incidental take, which is defined under the Act as take that is incidental to, and not the purpose of, otherwise lawful activities. The definition of ''Take'' under the Act does not apply to plant species; however, plant species can be listed on the Federal Permit as Covered Species in recognition of the conservation measures provided for them under the Plan and to receive ''No Surprises'' regulatory assurances under the Federal Permit.

Proposed Action

The County's existing permit covers 85 species, and the County is requesting amended incidental take authorization for covered wildlife species related to the change in the Project footprint. Additionally, the County is requesting Project-specific incidental take authorization for the San Diego fairy shrimp (currently on the permit but with no take authorized) and the federally endangered Quino checkerspot butterfly (a new Project-specific covered species). Collectively these 86 species are referred to as ''covered species'' by the Village 14 and Planning Areas 16 and 19 amendment. Take authorized for covered wildlife species would be effective upon permit issuance.

The proposed action includes approval of the land disposal/exchange and the issuance of an amendment to the Subarea Plan incidental take permit to extend incidental take authorization for the Project. The proposed action will:

1. Allow the California Department of Fish and Wildlife Service to dispose of 219.4 acres of land to the Project proponent in exchange for 339.7 acres of land in fee title;
2. Reclassify 44.5 acres of the Subarea Plan from ''Otay Ranch areas where no 'take permits' will be authorized'' to ''take authorized area,'' to allow for future development;
3. Reclassify 2.2 acres of the Subarea Plan from ''hardline preserve'' to ''take authorized area'';
4. Provide take authorization for the Quino checkerspot butterfly and San Diego fairy shrimp; and
5. Designate 531.2 acres as ''hardline preserve.''

In combination, these actions would result in permanent conservation of high-quality habitat (connected to other conserved, high-value habitat areas) that support listed and/or sensitive plant and animal species, and would contribute to the overall conservation goals of the region.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Scott Sobiech,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2020–15952 Filed 7–22–20; 8:45 am]

BILLING CODE 4333–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact Amendment in the State of Wisconsin

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The State of Wisconsin entered into a compact amendment with the Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin governing certain forms of class III gaming; this notice announces the approval of the 2020 Amendment to the Lac du Flambeau Band of Lake Superior Chippewa Indians and State of Wisconsin Gaming Compact of 1992.

DATES: This amendment takes effect July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and compact amendments are subject to review and approval by the Secretary. The Amendment increases the threshold amount for gaming related contracts that require Wisconsin Lottery Board approval and adjusts the credits the Tribe may claim against its revenue

sharing payments in exchange for providing certain government services to Wisconsin residents.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–15974 Filed 7–22–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Extension of Tribal-State Class III Gaming Compact (Rosebud Sioux Tribe and the State of South Dakota)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Class III gaming compact between the Rosebud Sioux Tribe and the State of South Dakota.

DATES: The extension takes effect on July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066, *paula.hart@bia.gov.*

SUPPLEMENTARY INFORMATION: An extension to an existing Tribal-State Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. 25 CFR 293.5. The Rosebud Sioux Tribe and the State of South Dakota have reached an agreement to extend the expiration date of their existing Tribal-State Class III gaming compact to October 19, 2020. This publication provides notice of the new expiration date of the compact.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–15975 Filed 7–22–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X.LLUTW01000.L14400000.ET0000, UTU–78501]

Public Land Order No. 7893; Extension of Public Land Order No. 7422, Diamond Fork System, Bonneville Unit of the Central Utah Project; Utah; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** on December 4, 2019, concerning a Public Land Order (PLO) that extended the duration of the withdrawal created by an earlier PLO for an additional 20-year term. The document's subject heading incorrectly stated the new PLO number.

FOR FURTHER INFORMATION CONTACT: Allison Ginn, Assistant Field Manager, BLM Salt Lake Field Office, 801–977–4300, or by email *utslmail@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to reach Ms. Ginn. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

Correction

In the **Federal Register** of December 4, 2019, in FR Doc. 2019–26212, on page 66431, in the first column, correct the subject heading to read:

Public Land Order No. 7893; Extension of Public Land Order No. 7422, Diamond Fork System, Bonneville Unit of the Central Utah Project; Utah

Timothy R. Petty,

Assistant Secretary for Water and Science.

[FR Doc. 2020–15937 Filed 7–22–20; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1151 (Second Review)]

Citric Acid and Certain Citrate Salts From Canada; Termination of Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission instituted the subject five-year review on May 1, 2020 to determine whether revocation of the antidumping duty order on citric acid and certain citrate salts from Canada would be likely to lead to continuation or recurrence of material injury. On June 23, 2020, the Department of Commerce published notice that it was revoking the order effective June 24, 2020, because the domestic interested parties withdrew their intent to participate in this review. (85 FR 37626). Accordingly, the subject review is terminated.

DATES: June 24, 2020.

FOR FURTHER INFORMATION CONTACT: Jason Duncan (202–205–3432), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). This notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: July 17, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–15927 Filed 7–22–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0116]

Proposed Extension of Information Collection; Examinations and Testing of Electrical Equipment, Including Examination, Testing, and Maintenance of High Voltage Longwalls

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public

and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that 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 on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Examinations and Testing of Electrical Equipment, Including Examination, Testing, and Maintenance of High Voltage Longwalls.

DATES: All comments must be received on or before September 21, 2020.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Electronic Submissions: Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for docket number MSHA–2020–0022. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket, with no changes. Because your comment will be made public, you are responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as your or anyone else's Social Security number or confidential business information.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Roslyn Fontaine, Deputy Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines. The Mine Act and 30 CFR parts 75 and 77, mandatory safety standards for coal mines, make this collection of information necessary.

Inadequate maintenance of electric equipment is a major cause of serious electrical accidents in the coal mining industry. It is imperative that mine operators adopt and follow an effective maintenance program to ensure that electric equipment is maintained in a safe operating condition to prevent electrocutions, mine fires, and mine explosions. MSHA regulations require the mine operator to establish an electrical maintenance program by specifying minimum requirements for the examination, testing, and maintenance of electric equipment. The regulations also contain recordkeeping requirements that help operators in implementing an effective maintenance program.

(a) Examinations of Electric Equipment

(1) Section 75.512 requires that all electric equipment be frequently examined, tested, and maintained by a qualified person to assure safe operating conditions and that a record of such examinations be kept. Section 75.512–2 specifies that required examinations and tests be made at least weekly.

(2) Section 75.703–3(d)(11) requires that all grounding diodes be tested, examined, and maintained as electric equipment and records of these activities be kept in accordance with the provisions of § 75.512.

(3) Section 77.502 requires that electric equipment be frequently examined, tested, and maintained by a qualified person to ensure safe operating conditions and that a record of such examinations be kept. Section 77.502–2 requires these examinations and tests at least monthly.

(b) Examinations of High-Voltage Circuit Breakers

(1) Section 75.800 requires that circuit breakers protecting high-voltage circuits, which enter the underground area of a coal mine, be properly tested and maintained as prescribed by the Secretary. Section 75.800–3 requires that such circuit breakers be tested and examined at least once each month. Section 75.800–4 requires that a record of the examinations and tests be made.

(2) Section 75.820 requires persons to lock-out and tag disconnecting devices when working on circuits and equipment associated with high-voltage longwalls.

(3) Section 75.821(a) requires testing and examination of each unit of high-voltage longwall equipment and circuits to determine that electrical protection, equipment grounding, permissibility, cable insulation, and control devices are being properly maintained to prevent fire, electrical shock, ignition, or operational hazards. These tests and examinations, including the activation of the ground-fault test circuit, are required once every seven days. Section 75.821(b) requires that each ground-wire monitor and associated circuits be examined and tested at least once every 30 days. Section 75.821(d) requires that, at the completion of examinations and tests, the person making the examinations and tests must certify that they have been conducted. In addition, a record must be made of any unsafe condition found and any corrective action taken. These certifications and records must be kept at least 1 year.

(4) Section 77.800 requires that circuit breakers protecting high-voltage portable or mobile equipment be properly tested and maintained. Section 77.800–1 requires that such circuit breakers be tested and examined at least once each month. Section 77.800–2 requires a record of each test, examination, repair, or adjustment of all circuit breakers protecting high-voltage circuits.

(c) Examinations of Low- and Medium-Voltage Circuits

(1) Section 75.900 requires that circuit breakers protecting low- and medium-voltage power circuits serving three-phase alternating-current equipment be properly tested and maintained. Section 75.900–3 requires that such circuit breakers be tested and examined at least once each month. Section 75.900–4 requires that a record of the required examinations and tests be made.

(2) Section 77.900 requires that circuit breakers protecting low- and medium-voltage circuits which supply power to portable or mobile three-phase alternating-current equipment be properly tested and maintained. Section 77.900–1 requires that such circuit breakers be tested and examined at least once each month. Section 77.900–2

requires that a record of the examinations and tests be made.

(d) Tests and Calibrations of Automatic Circuit Interrupting Devices

Section 75.1001–1(b) requires that automatic circuit interrupting devices that protect trolley wires and trolley feeder wires be tested and calibrated at intervals not to exceed 6 months. Section 75.1001–1(c) requires that a record of the tests and calibrations be kept.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Examinations and Testing of Electrical Equipment, Including Examination, Testing, and Maintenance of High Voltage Longwalls. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to 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.

Background documents related to this information collection request are available at *https://regulations.gov* and in DOL–MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice from the previous collection of information.

III. Current Actions

This information collection request concerns provisions for Examinations and Testing of Electrical Equipment, Including Examination, Testing, and Maintenance of High Voltage Longwalls. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0116.

Affected Public: Business or other for-profit.

Number of Respondents: 674.

Frequency: On occasion.

Number of Responses: 291,074.

Annual Burden Hours: 55,339 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Roslyn B. Fontaine,

Certifying Officer.

[FR Doc. 2020–15960 Filed 7–22–20; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0039]

Portable Fire Extinguishers Standard (Annual Maintenance Certification Record); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Portable Fire Extinguishers Standard (Annual Maintenance Certification Record).

DATES: Comments must be submitted (postmarked, sent, or received) by September 21, 2020.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0039, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2010–0039) for the Information Collection Request (ICR). All comments, including any personal information you provide, such as social security number and date of birth, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the below phone number to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection

instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraph (e)(3) of the Standard specifies that employers must subject each portable fire extinguisher to an annual maintenance inspection and record the date of the inspection. In addition, this provision requires employers to retain the inspection record for one year after the last entry or for the life of the shell, whichever is less, and to make the record available to OSHA on request. This recordkeeping requirement assures workers and agency compliance officers that portable fire extinguishers located in the workplace will operate normally in case of fire; in addition, this requirement provides evidence to OSHA compliance officers during an inspection that the employer performed the required maintenance checks on the portable fire extinguishers.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the collection of information (paperwork) requirements contained in the Portable Fire Extinguishers Standard (Annual Maintenance Certification Record). OSHA will retain the current number of burden hours of 293,496 for this Information Collection Request.

Type of Review: Extension of a currently approved collection.

Title: Portable Fire Extinguishers Standard (Annual Maintenance Certification Record Portable Fire Extinguishers Standard. (29 CFR 1910.157(e)(3)).

OMB Number: 1218–0238.

Affected Public: Business or other for-profit; farms.

Number of Respondents: 5,869,911.

Frequency of Response: On occasion.

Total Responses: 586,991.

Average Time per Response: 30 minutes

Estimated Total Burden Hours: 293,496.

Estimated Cost (Operation and Maintenance): $101,432,062.

IV. Public Participation—Submission of Comments on this Notice and internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal e-Rulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for this ICR (Docket No. OSHA–2010–0039). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled ''ADDRESSES''). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as your social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on July 20, 2020.

Loren Sweatt,

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

[FR Doc. 2020–15961 Filed 7–22–20; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0144]

Information Collection: NRC Online Form, ''Request for Alternative to 10 CFR 50.55a(z)(1) and (2)''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget (OMB) for emergency processing; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on our request for emergency review for and OMB approval of the information collection that is summarized below. The information collection is entitled, ''NRC Online Form, 'Request for Alternative to 10 CFR 50.55a(z)(1) and (2).' ''

DATES: Submit comments by September 21, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2020–0144. For

technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail Comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0144 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2020–0144. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0144 on this website.

• *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession Nos. ML20164A202 and ML20164A211. The supporting statement is available in ADAMS under Accession No. ML20164A205.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2020–0144 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov/* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations under section 1320.13 of title 5 of the *Code of Federal Regulations* (CFR). We cannot reasonably comply with the normal clearance procedures because an unanticipated event has occurred, as stated in 5 CFR 1320.13(a)(2)(ii). This information collection only addresses the incremental burden change to an existing clearance and not the total burden for the clearance.

1. *The title of the information collection:* ''NRC Online Form, 'Request for Alternative to 10 CFR 50.55a(z)(1) and (2).' ''

2. *OMB approval number:* 3150–XXXX.

3. *Type of submission:* New.

4. *The form number, if applicable:* There is no form number for the online submission form.

5. *How often the collection is required or requested:* On Occasion.

6. *Who will be required or asked to respond:* All holders of, and certain applicants for, nuclear power plant construction permits and operating licenses under the provisions of 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities'' who use alternatives to the requirements of 10 CFR 50.55a paragraphs (b) through (h) when authorized by the NRC have the option of using the online form.

7. *The estimated number of annual responses:* 120.

8. *The estimated number of annual respondents:* 120.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 240.

10. *Abstract:* The NRC requested an emergency review of this information collection in order to obtain approval to use the form for a period of 6 months. The purpose of this information collection is to introduce the optional online form for COVID–19 related Requests for Alternatives that simplifies and reduces the burden of filing of requests for alternatives described in the following paragraphs. Under the existing collection under OMB Control No. 3150–0011, licensees are already able to request alternatives. This information collection only addresses the incremental burden change to this existing clearance due to the form and not the total burden for the clearance.

10 CFR 50.55a incorporates by reference Division 1 rules of Section III, ''Rules for Construction of Nuclear Power Plant Components,'' and Section XI, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (B&PV Code); and the rules of the ASME ''Code for Operation and Maintenance of Nuclear Power Plants'' (OM Code). These rules of the ASME B&PV and OM Codes set forth the requirements to which nuclear power plant components are designed, constructed, tested, repaired, and inspected. 10 CFR 50.55a(z) allows applicants to use alternatives to the requirements of 10 CFR 50.55a paragraphs (b) through (h) when authorized by the NRC. To facilitate licensees' requests for alternatives to the requirements in the above regulations, the NRC is providing an optional online form to submit the required information for a specific alternative request under 10 CFR 50.55a(z).

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: July 20, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–15942 Filed 7–22–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 7, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 637 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–196, CP2020–221.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–15920 Filed 7–22–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 13, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 640 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–200, CP2020–225.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–15924 Filed 7–22–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 16, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 642 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–202, CP2020–229.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–15926 Filed 7–22–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 13, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 639 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–199, CP2020–224.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–15923 Filed 7–22–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 6, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 636 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–195, CP2020–220.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–15919 Filed 7–22–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 6, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 635 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–194, CP2020–219.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–15918 Filed 7–22–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 13, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 641 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–201, CP2020–226.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–15925 Filed 7–22–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 9, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 638 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–197, CP2020–222.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–15921 Filed 7–22–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 9, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 115 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–198, CP2020–223.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–15922 Filed 7–22–20; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89338; File No. SR–NYSEAMER–2020–55]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Modify the NYSE American Options Fee Schedule

July 17, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 10, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule (''Fee Schedule'') regarding certain limits or caps on transactions fee and credits. The Exchange proposes to implement the fee change effective July 10, 2020.[4] The proposed 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on June 26, 2020, effective July 1, 2020 (SR–NYSEAMER–2020–48), and withdrew such filing on July 10, 2020.

of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule regarding certain limits or caps on transactions fee and credits. The Exchange proposes to implement the fee change effective July 10, 2020.

Background

On March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective Monday, March 23, 2020, as a precautionary measure to prevent the potential spread of COVID–19. Following the temporary closure of the Trading Floor, the Exchange modified certain fees for April and May 2020 and, after the Floor partially reopened, the Exchange extended those changes through June 2020.[5] The aforementioned changes—applicable April, May and June 2020 only—included (i) raising the Floor Broker QCC Cap from $425,000 to $625,000 and (ii) modifying the $1,000 daily Strategy Execution Cap to allow the inclusion of reversal and conversion strategies executed as QCCs in such Cap.

The Exchange proposes to (i) indefinitely increase the Floor Broker QCC Cap to from $425,000 to $525,000, and (ii) continue to allow reversal and conversion strategies executed as QCCs to be included in the Strategy Execution Cap.

Floor Broker QCC Cap

Currently, Floor Brokers earn a credit for executed QCC orders of $0.07 per contact up to 300,000 contracts or $0.10 per contract above 300,000.[6] The Exchange currently limits the maximum Floor Broker credit to $425,000 per month per Floor Broker firm (the ''regular FB QCC Cap''). As noted above, during the months of April through June, when the Trading Floor was either temporarily closed or reopened with limited capacity, the Exchange experienced a surge in QCC trades and increased the regular FB QCC Cap up to $625,000 per month per Floor Broker (the ''temporary FB QCC Cap'').[7]

The temporary FB QCC Cap increase, which expires at the end of June, was designed to accommodate the unanticipated and unprecedented Floor closure resulting from the COVID–19 pandemic. However, even with the partial reopening of the Trading Floor, the Exchange has continued to receive increased volumes of QCC trades. Accordingly, the Exchange proposes to raise the regular FB QCC Cap of $425,000 to $525,000, which reduces the temporary FB QCC Cap as the Floor is no longer closed, but still increases the regular FB QCC Cap to accommodate the level of QCC trading on the Exchange.[8] This proposed change—to increase by $100,000 the regular FB QCC Cap—is designed to continue to encourage ATP Holders acting as Floor Brokers to execute QCCs on the Exchange, particularly given the increase in QCC transactions on the Exchange over the last several months. The Exchange believes that $525,000 is a reasonable increase and remains competitive with similar incentives offered on other options markets.[9]

Strategy Fee Execution Cap

Currently, the Exchange offers a $1,000 daily Strategy Execution Cap (the ''Strategy Cap'') for certain strategy executions, including (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls, which are described in detail in the Fee Schedule (the ''Strategy Executions'').[10] Any qualifying Strategy Execution executed as a QCC order is not eligible for this fee cap. As noted above, during the months of April through June, when the Trading Floor was either temporarily closed or reopened with limited capacity, in response to the increase of reversals and conversions executed as QCCs (''RevCon QCCs''), the Exchange modified the Fee Schedule to include RevCon QCCs in the Strategy Cap (the ''temporary Strategy Cap'').

Although the temporary Strategy Cap expires at the end of June, because of the continued increase use of RevCon QCCs, the Exchange proposes to continue to allow the inclusion of RevCon QCCs in the Strategy Cap, and will therefore remove language regarding the time limitation.[11] Absent this change, RevCon QCCs would no longer be eligible for the Strategy Cap (but instead revert to being subject to QCC Fees & Credits).[12] Although the Floor has partially reopened and open outcry is supported, the Exchange believes that the proposed continued inclusion of RevCon QCCs in the Strategy Cap, which is available to all ATP Holders, would encourage ATP Holders (including those acting as Floor Brokers) to execute their RevCon QCC volume on the Exchange, and to increase the number of such RevCon QCC transactions. The Exchange believes that proposed change is a reasonable increase and remains competitive with similar incentives offered on other options markets.[13]

[5] *See* Securities Exchange Act Release Nos. 88595 (April 8, 2020), 85 FR 20737 (April 14, 2020) (SR–NYSEAMER–2020–25) (waiving Floor-based fixed fees); 88594 (April 8, 2020), 85 FR 20799 (April 14, 2020) (SR–NYSEAMER–2020–26) (raising the regular FB QCC Rebate Cap); 88682 (April 17, 2020), 85 FR 22772 (April 23, 2020) (SR–NYSEAMER–2020–31) (including reversals and conversions in Strategy Execution Fee Cap). *See also* Securities Exchange Act Release Nos. 88840 (May 8, 2020), 85 FR 28992 (May 14, 2020) (SR–NYSEAMER–2020–37) (extending April 2020 fee changes through May 2020); and 89049 (June 11, 2020), 85 FR 36649 (June 17, 2020) (SR–NYSEAMER–2020–44) (extending April and May fee changes through June 2020).

[6] *See* Fee Schedule, Section I.F., QCC Fees & Credits, n. 1, available here, *https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.* QCC executions in which a Customer or Professional Customer is on both sides of the QCC trade are not eligible for the Floor Broker credit.

[7] *See id.*

[8] *See* proposed Fee Schedule, Section I.F., QCC Fees & Credits, n. 1 (setting forth available credits to Floor Brokers and providing that ''[t]he maximum Floor Broker credit paid shall not exceed $525,000 per month per Floor Broker firm'' and deleting the following, now obsolete, text: ''(the 'Cap'), except that for the months of April, May and June 2020, the Cap would be $625,000 per Floor Broker firm'').

[9] *See, e.g.,* NASDAQ PHLX, Options 7 Pricing Schedule, Section 4. Multiply Listed Options Fees, QCC Rebate Schedule, available here, *http://nasdaqphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F3%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Dllcrules%2F* (providing that ''[t]he maximum QCC Rebate to be paid in a given month will not exceed $550,000''); NASDAQ ISE, Options 7 Pricing Schedule, Section 6. Other Options Fees and Rebates, A. QCC and Solicitation Rebate, *available here, http://ise.cchwallstreet.com/tools/PlatformViewer.asp?selectednode=chp_1_1_22&manual=/contents/ise/ise-rules/* (providing no cap on the maximum on the amount of QCC rebate to be paid in a given month).

[10] *See* Fee Schedule, Section I.J. (Strategy Execution Fee Cap), *supra* note 6.

[11] *See* proposed Fee Schedule, Sections I.J., Strategy Execution Fee Cap (including RevCon QCCs in the Strategy Cap) and Section I.F., QCC Fees & Credits, n. 1 (providing that ''[t]he Floor Broker credit will not apply to any QCC trades that are included in the Strategy Cap (per Section I.J.)'').

[12] *See* Fee Schedule, Section I.F., QCC Fees & Credits, *supra* note 6.

[13] *See e.g.,* BOX Options Market LLC (''BOX'') fee schedule, Section II.D (Strategy QOO Order Fee Cap and Rebate). BOX caps fees for each participants at $1,000 for the following strategies executed on the same trading day: Short stock interest, long stock interest, merger, reversal, conversion, jelly roll, and box spread strategies. BOX also caps participant fees at $1,000 for all dividend strategies executed on the same trading day in the same options class. BOX also offers a $500 rebate to floor brokers for presenting certain Strategy QOO Orders on the BOX

Continued

The Exchange cannot predict with certainty whether any Floor Brokers would benefit from the proposed change to the FB QCC Cap; however, the Exchange believes the proposal would encourage Floor Brokers from diverting QCC order flow from the Exchange if and when they hit the revised (and indefinitely increased) Cap. The Exchange likewise cannot predict with certainty whether any ATP Holders would benefit from the proposed Strategy Cap because, at present, whether or when an ATP Holder qualifies for the Strategy Cap varies day-to-day, month-to-month. That said, the Exchange believes that ATP Holders would be encouraged to take advantage of the modified Strategy Cap. In addition, the Exchange believes the proposed change is necessary to prevent ATP Holders from diverting RevCon QCC order flow from the Exchange to a more economical venue.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[17] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in June 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[18]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and credits can have a direct effect on the ability of an exchange to compete for order flow. The proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as ATP Holders (including those who act as Floor Brokers) may direct their order flow to any of the 16 options exchanges.

FB QCC Cap

This proposed modification of the regular FB QCC Cap is reasonable, equitable, and not unfairly discriminatory because it would allow Exchange incentives to operate as intended and continue to encourage QCC volume. As noted above, the temporary FB QCC Cap increase (in effect from April through June), was designed to accommodate the unanticipated and unprecedented Floor closure resulting from the COVID–19 pandemic. Given that the Exchange has continued to receive increased volumes of QCC trades even with the partial reopening of the Floor, the Exchange believes the proposed increase of the regular FB QCC Cap by $100,000—from $425,000 to $525,000—is reasonable to accommodate the level of QCC trading on the Exchange. In addition, this proposed change is designed to continue to encourage ATP Holders acting as Floor Brokers to execute QCCs on the Exchange, particularly given the increase in QCC transactions on the Exchange over the last several months. The Exchange believes that $525,000 is a reasonable increase and remains competitive with similar incentives offered on other options markets.[19]

This proposed change—which increases indefinitely the maximum available monthly credit for Floor Brokers executing QCCs—is designed to incent Floor Brokers to increase their QCC volumes on the Exchange. The Exchange notes that all market participants stand to benefit from increased volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

To the extent that the proposed change attracts more QCC trades to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

The Exchange cannot predict with certainty whether any Floor Brokers would benefit from this proposed fee change. However, the Exchange also believes the proposed change is necessary to prevent Floor Brokers from diverting QCC order flow from the Exchange if and when they hit the proposed regular FB QCC Cap.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits and not unfairly discriminatory because it is based on the amount and type of business transacted on the Exchange and Floor Brokers can opt to avail themselves of the modified regular FB QCC Cap (*i.e.,* by executing more QCC transactions) or not. The proposed change would incent Floor Brokers to attract increased QCC order flow to the Exchange that might otherwise go to other options exchanges.

The Exchange believes it is not unfairly discriminatory to modify the maximum allowable credit on QCC transactions to Floor Brokers because the proposed modification would be available to all similarly-situated market participants (*i.e.,* Floor Brokers) on an equal and non-discriminatory basis.

Strategy Cap

This proposed modification to continue to allow the inclusion of

trading floor, which is applied ''once the $1,000 fee cap, per customer, for all dividend, short stock interest, long stock interest, merger, reversal, conversion, jelly roll, and box spread strategies is met.'' *See id.* The Exchange does not include dividend or long stock interest strategies in the Strategy Cap, nor does the Exchange offer a similar rebate.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[17] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[18] Based on OCC data, *see id.,* the Exchange's market share in equity-based options increased slightly from 8.20% for the month of June 2019 to 8.32% for the month of June 2020.

[19] *See supra* note 9 (regarding NASDAQ PHLX's $550,000 monthly cap on QCC rebate and NASDAQ ISE's lack of any such monthly cap of QCC rebate).

RevCon QCCs in the $1,000 daily Strategy Cap (and remove the month-to-month time limitation) is reasonable, equitable, and not unfairly discriminatory because it would (continue to) encourage ATP Holders to execute their RevCon QCC volume on the Exchange. Further, the proposal is designed to encourage ATP Holders to aggregate all Strategy Executions—particularly RevCon QCCs—at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Strategy Executions (including to the Exchange Trading Floor), this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits and not unfairly discriminatory because it is based on the amount and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of the modified Strategy Cap (*i.e.,* by executing more RevCon QCC transactions) or not. In addition, the proposal caps fees on all similar transactions, regardless of size and similarly-situated ATP Holders can opt to try to achieve the modified Strategy Cap. The proposal is designed to encourage ATP Holders to send all Strategy Executions to the Exchange regardless of size or type.

The Exchange believes the Strategy Cap, as modified, it is not unfairly discriminatory because the proposed change would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

Further, to the extent the proposed change continues to attract greater volume and liquidity (to the Floor or otherwise), the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as ATP Holders may direct their order flow to any of the 16 options exchanges, including those with similar Strategy Fee Caps.[20] Thus, ATP Holders have a choice of where they direct their order flow—including their Strategy Executions. The proposed rule change is designed to incent ATP Holders to direct liquidity to the Exchange—in particular RevCon QCCs, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.

The Exchange cannot predict with certainty whether any ATP Holders would benefit from this proposed fee change. At present, whether or when an ATP Holder qualifies for the Strategy Cap varies day-to-day, month-to-month. That said, the Exchange believes that ATP Holders would be encouraged to take advantage of the modified Cap. In addition, the Exchange believes the proposed change is necessary to prevent ATP Holders from diverting RevCon QCC order flow from the Exchange to a more economical venue.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, 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 Exchange believes that the proposed changes would encourage the continued participation of affected ATP Holders, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [21]

Intramarket Competition. The proposed fee changes are designed to attract additional order flow (particularly Floor Broker executed QCCs and RevCon QCCs) to the Exchange. The Exchange believes that the proposal would incent market participants to direct their volume to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Floor Broker executed QCCs and RevCon QCCs would increase opportunities for execution of other trading interest. The proposed Strategy Cap would be available to all similarly-situated market participants that incur transaction fees or credits on QCCs or Strategy Executions, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[22] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in June 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[23]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to be competitive with other options markets and to encourage ATP Holders to direct trading interest (particularly QCCs and RevCon QCCs) to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

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.

[20] *See supra* note 13 (regarding BOX's Strategy QOO Order Fee Cap and Rebate).

[21] *See* Reg NMS Adopting Release, *supra* note 16, at 37499.

[22] *See supra* note 17.

[23] Based on OCC data, *supra* note 18, the Exchange's market share in equity-based options was 8.20% for the month of June 2019 and 8.32% for the month of June 2020.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [24] of the Act and paragraph (f)(2) of Rule 19b–4 [25] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–55 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–NYSEAMER–2020–55. 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–NYSEAMER–2020–55, and should be submitted on or before August 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15910 Filed 7–22–20; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(2).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89339; File No. SR–NASDAQ–2020–042]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Add the Consolidated Audit Trail Industry Member Compliance Rules to the List of Minor Rule Violations

July 17, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''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 and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add the Consolidated Audit Trail (''CAT'') industry member compliance rules to the list of minor rule violations in IM–9216 and in Options 11, Section 1.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Nasdaq's CAT industry member compliance rules (the ''CAT Compliance Rules'') to the list of minor rule violations in IM–9216 and in Options 11, Section 1. This proposal is based upon the Financial Industry Regulatory Authority, Inc. (''FINRA'') filing to amend FINRA Rule 9217 in order to add FINRA's corresponding CAT Compliance Rules to FINRA's list of rules that are eligible for minor rule violation plan treatment.[3]

Proposed Rule Change

The Exchange adopted the CAT Compliance Rules in General 7, Sections 1 through 13 in order to implement the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[4] The CAT NMS Plan was filed by the Plan Participants

[3] *See* Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR–FINRA–2020–013); *see also* Release No. 89123 (June 23, 2020), 85 FR 39016 (June 29, 2020) (SR–NYSE–2020–51).

[4] *See* Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR–NASDAQ–2017–008) (Order Approving Proposed Rule Changes To Adopt Consolidated Audit Trail Compliance Rules).

to comply with Rule 613 of Regulation NMS under the Exchange Act,[5] and each Plan Participant accordingly has adopted the same compliance rules as the Exchange's General 7 Sections. The common compliance rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurately customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

IM–9216 sets forth the list of rules under which a member or associated person may be subject to a fine under Rule 9216(b). Exchange Rule 9216 permits the Exchange to impose a fine (not to exceed $2,500) and/or censure on any member or associated person with respect to any rule listed under IM–9216. The Exchange proposes to amend IM–9216 to add the CAT Compliance Rules in General 7 to the list of rules in IM–9216 eligible for disposition pursuant to a minor fine under Rule 9216(b). In addition, Options 11, Section 1 sets forth the minor rule violation plan for Options Participants on The Nasdaq Options Market (''NOM''). Accordingly, the Exchange proposes to make conforming changes in Options 11, Section 1 to add the CAT Compliance Rules to the list of rules therein, and specify that for failures to comply with the Consolidated Audit Trail Compliance Rule requirements under General 7, the Exchange may impose a minor rule violation fine of up to $2,500.[6]

The Exchange is coordinating with FINRA and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants' CAT Compliance Rules. The Commission recently approved a Rule 17d–2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant (''common members'').[7] Under the Rule 17d–2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d–2 Plan, responsibility for common members of multiple other Plan Participants and not a member of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to Nasdaq pursuant to the Rule 17d–2 Plan, the Exchange and FINRA entered into a Regulatory Services Agreement (''RSA'') pursuant to which FINRA will conduct surveillance, investigation, examination, and enforcement activity in connection with the CAT Compliance Rules on the Exchange's behalf. We expect that the other exchanges would be entering into a similar RSA.

FINRA, in connection with its proposed amendment to FINRA Rule 9217 to make FINRA's CAT Compliance Rules MRVP eligible, has represented that it will apply the minor fines for CAT Compliance Rules in the same manner that FINRA has for its similar existing audit trail-related rules.[8] Accordingly, in order to promote regulatory consistency, the Exchange plans to do the same. Specifically, application of a minor rule fine with respect to CAT Compliance Rules will be guided by the same factors that FINRA referenced in its filing. However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;
- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;
- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.[9]

Upon effectiveness of this rule change, the Exchange will publish a regulatory alert notifying its members, associated persons, or Options Participants of the rule change and the specific factors that will be considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed rule change will result in a coordinated, harmonized approach to CAT compliance rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

Additionally, the Exchange proposes to make a technical change to remove a cross reference to General 5, Section 2 in Options 11. Currently, Nasdaq Rule General 5 does not have a Section 2. Therefore, the Exchange is deleting the erroneous cross reference to Section 2.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, because 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, 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.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through an AWC if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the

[5] 17 CFR 242.613.

[6] FINRA's maximum fine for minor rule violations under FINRA Rule 9216(b) is $2,500. The Exchange will apply an identical maximum fine amount for eligible violations of the General 7 Sections to achieve consistency with FINRA and also to amend its minor rule violation plan (''MRVP'') to include such fines. Like FINRA, the Exchange would be able to pursue a fine greater than $2,500 for violations of the rules in General 7, Sections in a regular disciplinary proceeding or an acceptance, waiver, and consent (''AWC'') under the Rule 9000 Series as appropriate. Any fine imposed in excess of $2,500 or not otherwise covered by Rule 19d–1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d–1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. *See* text accompanying notes 8–9, *infra*.

[7] *See* Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020) (File No. 4–618).

[8] *See* SR–FINRA–2020–013; *see also* FINRA Notice to Members 04–19 (March 2004) (providing specific factors used to inform dispositions for violations of OATS reporting rules).

[9] *See id.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Rather, the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the CAT Compliance Rules in General 7 where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct.

The Exchange further believes that the proposed amendments to IM–9216 and Options 11, Section 1 are consistent with Section 6(b)(6) of the Act,[12] which provides that members, or associated persons, or Options Participants shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of General 7 pursuant to the Exchange's rules.

The Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of a member, or associated person, or Options Participant consistent with Sections 6(b)(7) and 6(d) of the Act.[13] IM–9216 and Options 11, Section 1 do not preclude a member, or associated person, or Options Participant from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

Finally, removing the erroneous cross reference in Options 11 is reasonable as it would add clarity to the Exchange's rules.

[12] 15 U.S.C. 78f(b)(6).

[13] 15 U.S.C. 78f(b)(7) and 78f(d).

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with making the CAT Compliance Rules in General 7 eligible for a minor rule fine disposition, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

Removing the erroneous cross reference to Section 2 in Options 11 is not designed to impact competition but instead should add clarity to the Exchange's rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. 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–NASDAQ–2020–042 the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2020–042. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2020–042 and should be submitted on or before August 13, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act[16] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,[17] which governs minor rule violation plans.

As stated above, the Exchange proposes to add the CAT Compliance Rules to the list of minor rule violations in IM–9216 and in Options 11, Section

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[17] 17 CFR 240.19d–1(c)(2).

1 to be consistent with the approach FINRA has taken for minor violations of its corresponding CAT Compliance Rules.[18] The Commission has already approved FINRA's treatment of CAT Compliance Rules violations when it approved the addition of CAT Compliance Rules to FINRA's MRVP.[19] As noted in that order, and similarly herein, the Commission believes that Exchange's treatment of CAT Compliance Rules violations as part of its MRVP provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects that, as with FINRA, the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. Accordingly, the Commission believes the proposal raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[20] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds the CAT Compliance Rules to the Exchange's MRVP and harmonizes its application with FINRA's application of CAT Compliance Rules under its own MRVP. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[21] and Rule 19d–1(c)(2) thereunder,[22] that the proposed rule change (SR–NASDAQ–2020–042) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15911 Filed 7–22–20; 8:45 am]

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[18] As discussed above, the Exchange has entered into a Rule 17d-2 Plan and an RSA with FINRA with respect to the CAT Compliance Rules. The Commission notes that, unless relieved by the Commission of its responsibility, as may be the case under the Rule 17d-2 Plan, the Exchange continues to bear the responsibility for self-regulatory conduct and liability for self-regulatory failures, not the self-regulatory organization retained to perform regulatory functions on the Exchange's behalf pursuant to an RSA. *See* Securities Exchange Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031), note 93 and accompanying text.

[19] *See* SR–FINRA–2020–013.

[20] 15 U.S.C. 78s(b)(2).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 240.19d–1(c)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–40, OMB Control No. 3235–0313]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 203–2 and Form ADV–W.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 203–2 (17 CFR 275.203–2) and Form ADV–W (17 CFR 279.2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b).'' Rule 203–2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration or pending registration with the Commission. Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W electronically on the Investment Adviser Registration Depository (''IARD''). The purpose of the information collection is to notify the Commission and the public when an investment adviser withdraws its pending or approved SEC registration. Typically, an investment adviser files a Form ADV–W when it ceases doing business or when it is ineligible to remain registered with the Commission.

The potential respondents to this information collection are all investment advisers registered with the Commission or have applications pending with the Commission. The Commission has estimated that compliance with the requirement to complete Form ADV–W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. Based on historical filings, the Commission estimates that there are approximately 802 respondents annually filing for full withdrawal and approximately 454 respondents annually filing for partial withdrawal. Based on these estimates, the total estimated annual burden would be 715 hours ((802 respondents × .75 hours) + (454 respondents × .25 hours)).

Rule 203–2 and Form ADV–W do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–W are filings with the Commission. These filings are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: >*www.reginfo.gov*<. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i)*www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 17, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15913 Filed 7–22–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33929, File No. 812–15122]

Spinnaker ETF Series, et al.

July 17, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment

Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

Applicants: Spinnaker ETF Series (the ''Trust''), OBP Capital LLC (the ''Adviser'') and Capital Investment Group, Inc. (the ''Distributor'').

Summary of Application: Applicants request an order (''Order'') that permits: (a) Shielded Alpha ETFs (as described in the Reference Order (defined below)) to issue shares (''Shares'') redeemable in large aggregations only (''creation units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; (c) certain Shielded Alpha ETFs to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of a Shielded Alpha ETF to deposit securities into, and receive securities from, the Shielded Alpha ETF in connection with the purchase and redemption of creation units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Shielded Alpha ETFs to acquire Shares of the Shielded Alpha ETFs. The Order would incorporate by reference terms and conditions of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (''Reference Order'').[1]

Filing Date: The application was filed on April 16, 2020.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on August 11, 2020, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, *Secretarys-Office@sec.gov.* Applicants: c/o Tracie Coop, Secretary, Spinnaker ETF Series, *tracie.coop@ncfunds.com.*

FOR FURTHER INFORMATION CONTACT: Kay M. Vobis, Senior Counsel, at (202) 551–6728 or Trace W. Rakestraw, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants

1. The Trust is a statutory trust organized under the laws of Delaware and will consist of one or more series operating as a Shielded Alpha ETFs. The Trust is registered as an open-end management investment company under the Act. Applicants seek relief with respect to Funds (as defined below), including an initial Fund (the ''Initial Fund''). The Funds will operate as Shielded Alpha ETFs as described in the Reference Order.[2]

2. The Adviser, a North Carolina limited liability company, will be the investment adviser to the Initial Fund. Subject to approval by the Fund's board of trustees, the Adviser (as defined below) will serve as investment adviser to each Fund. The Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with other investment advisers to act as sub-advisers with respect to the Funds (each a ''Sub-Adviser''). Any Sub-Adviser to a Fund will be registered under the Advisers Act.

3. The Distributor is a North Carolina corporation and a broker-dealer registered under the Securities Exchange Act of 1934, as amended, and will act as the principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser and/or Sub-Adviser (included in the term ''Distributor''). Any Distributor will comply with the terms and conditions of the Order.

Applicants' Requested Exemptive Relief

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested Order would permit applicants to offer Funds that operate as Shielded Alpha ETFs. Because the relief requested is the same as the relief granted by the Commission under the Reference Order and because the Adviser has entered into a licensing agreement with Blue Tractor Group LLC, or an affiliate thereof, in order to offer Funds that operate as Shielded Alpha ETFs, the Order would incorporate by reference the terms and conditions of the Reference Order.

5. Applicants request that the Order apply to the Initial Fund and to any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (any such entity included in the term ''Adviser''); (b) operates as a Shielded Alpha ETF as described by the Reference Order; and (c) complies with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference into the Order (each such company or series and the Initial Fund, a ''Fund'').[3]

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence

[1] Blue Tractor ETF Trust and Blue Tractor Group, LLC, Investment Company Act Rel. Nos. 33682 (Nov. 14, 2019) (notice) and 33710 (Dec. 10, 2019) (order).

[2] To facilitate arbitrage, among other things, each day a Fund would publish a basket of securities and cash that, while different from the Fund's portfolio, is designed to closely track its daily performance.

[3] All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference into the Order.

establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants submit that for the reasons stated in the Reference Order the requested relief meets the exemptive standards under sections 6(c), 17(b) and 12(d)(1)(J) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15903 Filed 7–22–20; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11163]

Notice of Department of State Update to the Public Guidance for Section 232 of the Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA)

ACTION: Notice.

SUMMARY: The Department of State is updating the public guidance for CAATSA Section 232 on July 15, 2020 to expand the focus of implementation of Section 232 to address certain growing threats to U.S. national security and foreign policy related to Russian energy export pipelines, particularly with respect to Nord Stream 2 and the second line of TurkStream. The Department of State deleted the portions of the public guidance in effect prior to July 15, 2020, that limited the focus of implementation of Section 232 to Russian energy export pipeline projects for which a contract was signed on or after August 2, 2017. In doing so, the Department of State clarified that the focus of implementation will include Russian energy export pipelines such as Nord Stream 2 and the second line of TurkStream.

DATES: The update to the public guidance for Section 232 is effective on July 15, 2020.

ADDRESSES: The Department of State has published the updated public guidance for Section 232 on its website. *https://www.state.gov/caatsa-crieea-section-232-public-guidance/*

FOR FURTHER INFORMATION CONTACT: Stu Hoffman at *CAATSA_EnergySanctions@state.gov* or (202)–647–7201.

SUPPLEMENTARY INFORMATION:

Background

The Department of State is updating the public guidance for Section 232 on July 15, 2020 to expand the focus of implementation of Section 232 to address certain growing threats to U.S. national security and foreign policy related to Russian energy export pipelines, particularly with respect to Nord Stream 2 and the second line of TurkStream. Russia uses its energy export pipelines to create national and regional dependencies on Russian energy supplies, leveraging these dependencies to expand its political, economic, and military influence and undermining U.S. national security and foreign policy interests. In this context, Nord Stream 2 and the second line of TurkStream—both of which are under construction—could undermine Europe's energy security by maintaining Russia's dominant share in Europe's gas markets for decades, discouraging investment in critical diversification projects, and limiting the ability of European countries to gain leverage over Russia on issues of price, commercial transparency, and the environment. These projects could severely limit gas transit revenues through Ukraine, thereby depriving the Ukrainian government of significant transit revenues and reducing a large deterrent against further Russian aggression against Ukraine. The development of these projects also provides Russia with vehicles to further spread its malign influence in Europe.

The Department of State deleted the portions of the public guidance in effect prior to July 15, 2020, that limited the focus of implementation of Section 232 to Russian energy export pipeline projects for which a contract was signed on or after August 2, 2017. In doing so, the Department of State clarified that the focus of implementation will include Russian energy export pipelines such as Nord Stream 2 and the second line of TurkStream.

In addition, the Department of State deleted the portions of the public guidance in effect prior to July 15, 2020 that stated that investments and loan agreements made prior to August 2, 2017 would not be subject to Section 232. The Department of State has clarified how it intends to apply Section 232 to such investments and loan agreements in FAQs #3–5 below.

The updated public guidance continues to make clear that implementation of Section 232 will not target investments or other activities related to the standard repair and maintenance of pipelines in existence on, and capable of transporting commercial quantities of hydrocarbons, as of August 2, 2017.

Accordingly, the Department of State's public guidance for Section 232 is updated as follows:

CAATSA Section 232 Public Guidance

The Department of State is committed to fully implementing sanctions authorities in the Countering America's Adversaries Through Sanctions Act (CAATSA or the Act). We continue to call on Russia to honor its commitments to the Minsk agreement and to cease its malicious cyber intrusions.

Section 232 sanctions are discretionary. In accordance with Sections 212 and 232 of the Act, the Secretary of State, in consultation with the Secretary of the Treasury, will coordinate with allies of the United States in imposing these sanctions. The intent of such sanctions would be to impose costs on Russia for its malign behavior, such as in response to aggressive actions against the United States and our allies and partners.

Any implementation of Section 232 sanctions would seek to avoid harming the energy security of our partners or endangering public health and safety. Consistent with the Act (Section 257), it remains the policy of the United States to ''work with European Union Member States and European institutions to promote energy security through developing diversified and liberalized energy markets that provide diversified sources, suppliers, and routes.''

For the purposes of Section 232, the focus of implementation would be on energy export pipelines that (1) originate in the Russian Federation, and (2) transport hydrocarbons across an international land or maritime border for delivery to another country. Pipelines that originate outside the Russian Federation and transit through the territory of the Russian Federation would not be the focus of implementation.

The focus of implementation of Section 232 sanctions would be on persons who the Secretary of State, in consultation with the Secretary of the Treasury, determines knowingly, on or after August 2, 2017, (1) made an investment that meets the fair market value thresholds in Section 232(a) and directly and significantly enhances the

ability of the Russian Federation to construct energy export pipelines, or (2) sells, leases, or provides to the Russian Federation goods or services that meet the fair market value thresholds in Section 232(a) and that directly and significantly facilitate the expansion, construction, or modernization of energy export pipelines by the Russian Federation.

Implementation of Section 232 sanctions would not target investments or other activities related to the standard repair and maintenance of pipelines in existence on, and capable of transporting commercial quantities of hydrocarbons, as of August 2, 2017.

Frequently Asked Questions

1. Why is the Department of State issuing updated public guidance for Section 232 on July 15, 2020?

The Department of State is updating the public guidance for Section 232 on July 15, 2020, to expand the focus of implementation of Section 232 to address certain growing threats to U.S. national security and foreign policy interests related to Russian energy export pipelines, particularly with respect to Nord Stream 2 and the second line of TurkStream. Russia uses its energy export pipelines to create national and regional dependencies on Russian energy supplies and leverages these dependencies to expand its political, economic, and military influence and undermine U.S. national security and foreign policy interests.

In this context, Nord Stream 2 and the second line of TurkStream—both of which are under construction—could undermine Europe's energy security by maintaining Russia's dominant share in Europe's gas markets for decades, discouraging investment in critical diversification projects, and limiting the ability of European countries to gain leverage over Russia on issues of price, commercial transparency, and the environment. These projects could destabilize the Ukrainian economy and government severely limiting gas transit through Ukraine, thereby depriving the Ukrainian government of significant transit revenues and reducing a large deterrent against further Russian aggression against Ukraine. The development of these projects also provides Russia with vehicles to further spread its malign influence in Europe.

2. What specific changes to the public guidance for Section 232 did the Department of State make on July 15, 2020?

The Department of State deleted the portions of the public guidance in effect prior to July 15, 2020, that limited the focus of implementation of Section 232 to Russian energy export pipeline projects for which a contract was signed on or after August 2, 2017. In doing so, the Department of State clarified that the focus of implementation will include Russian energy export pipelines such as Nord Stream 2 and the second line of TurkStream.

In addition, the Department of State deleted the portions of the public guidance in effect prior to July 15, 2020, that stated that investments and loan agreements made prior to August 2, 2017, would not be subject to Section 232. The Department of State has clarified how it intends to apply Section 232 to such investments and loan agreements in FAQs #3–5 below.

The updated public guidance continues to make clear that implementation of Section 232 will not target investments or other activities related to the standard repair and maintenance of pipelines in existence on, and capable of transporting commercial quantities of hydrocarbons, as of August 2, 2017.

3. Will the Department of State impose sanctions under Section 232 on a person who made investments or engaged in other activities prior to July 15, 2020, that were not the focus of implementation of Section 232 sanctions pursuant to the public guidance in effect prior to July 15, 2020, but are now the focus of implementation of Section 232 sanctions pursuant to the public guidance in effect on July 15, 2020?

No. The Department of State will not impose Section 232 sanctions for activity undertaken prior to July 15, 2020, that was consistent with the public guidance in effect prior to July 15, 2020; see also FAQs 4 and 5.

4. Will the Department of State impose sanctions under Section 232 on a person who made investments or engaged in other activities on or after July 15, 2020, that are ordinarily incident and necessary to the wind down of operations, contracts, or other agreements in effect prior to July 15, 2020?

No, provided that: (1) Such investments or other activities are consistent with the guidance in effect prior to July 15, 2020; (2) such investments or other activities are undertaken pursuant to a written contract or written agreement entered into prior to July 15, 2020; and (3) the person making such investments or engaging in such activities is taking reasonable steps to wind down the operations, contracts, or other agreements as soon as possible after July 15, 2020.

5. Will the Department of State impose sanctions under Section 232 on a person who made investments or engaged in other activities on or after July 15, 2020, that are ordinarily incident and necessary to the maintenance of operations, contracts, or other agreements in effect prior to July 15, 2020?

The Department of State may impose sanctions under Section 232 on a person who made such investments or engaged in such activities on or after July 15, 2020. This applies, but is not limited, to persons facilitating the construction or deployment of the pipelines such as financing partners, pipe-laying vessel operators, and related engineering service providers. Except as provided in FAQ #4 above, the updated guidance does not grandfather contracts or other agreements signed prior to July 15, 2020.

6. Does the Department of State consider either the Nord Stream 2 pipeline or the second line of TurkStream to be a pipeline in existence on, and capable of transporting commercial quantities of hydrocarbons, as of August 2, 2017, for purposes of Section 232?

No. As a result, investments or other activities related to the standard repair and maintenance of these pipelines could be the target of sanctions.

7. How will the Department of State interpret the term ''investment'' as used in Section 232 of CAATSA?

For purposes of implementing Section 232 of CAATSA, the Department of State will interpret the term ''investment'' broadly as a transaction that constitutes a commitment or contribution of funds or other assets or a loan or other extension of credit to an enterprise. For purposes of this interpretation, a loan or extension of credit is any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including: Overdrafts, currency swaps, purchases of debt securities issued by the Government of Russia, purchases of a loan made by another person, sales of financial assets subject to an agreement to repurchase, renewals or refinancing whereby funds or credits are transferred or extended to a borrower or recipient described in the provision, the issuance of standby letters of credit, and drawdowns on existing lines of credit.

8. Does the updated public guidance apply to the first line of TurkStream?

The first line of TurkStream, which is designed exclusively to supply Turkey's domestic natural gas market, is not the focus of our Section 232 implementation efforts.

Melissa Simpson,

Deputy Assistant Secretary, Bureau of Energy Resources, Department of State.

[FR Doc. 2020–15901 Filed 7–22–20; 8:45 am]

BILLING CODE 4710–AE–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions and Amendments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: On August 20, 2019, at the direction of the President, the U.S. Trade Representative determined to modify the action being taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by imposing additional duties of 10 percent *ad valorem* on goods of China with an annual trade value of approximately $300 billion. The additional duties on products in List 1, which is set out in Annex A of that action, became effective on September 1, 2019. The U.S. Trade Representative initiated a product exclusion process in October 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice, and make certain amendments to previously announced exclusions.

DATES: The product exclusions announced in this notice apply as of September 1, 2019, the effective date of List 1 of the $300 billion action, and extend to September 1, 2020.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsels Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including: 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 84 FR 20459 (May 9, 2019), 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019), 84 FR 69447 (December 18, 2019), 85 FR 3741 (January 22, 2020), 85 FR 13970 (March 10, 2020), 85 FR 15244 (March 17, 2020), 85 FR 17936 (March 31, 2020), 85 FR 28693 (May 13, 2020), 85 FR 32098 (May 28, 2020), 85 FR 35975 (June 12, 2020), and 85 FR 41658 (July 10, 2020).

On August 20, 2019, the U.S. Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing an additional 10 percent *ad valorem* duty on products of China with an annual aggregate trade value of approximately $300 billion. 84 FR 43304 (August 20, 2019) (August 20 notice). The August 20 notice contains two lists of tariff subheadings, with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, was effective September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, was scheduled to take effect on December 15, 2019.

On August 30, 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 to 15 percent *ad valorem* on the goods of China specified in Annex A (List 1) and Annex C (List 2) of the August 20 notice. *See* 84 FR 45821. Subsequently, the U.S. Trade Representative announced determinations suspending until further notice the additional duties on products set out in Annex C (List 2) and reducing the additional duties for the products covered in Annex A of the August 20 notice (List 1) to 7.5 percent. *See* 84 FR 69447, 85 FR 3741.

On October 24, 2019, the U.S. Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading covered by List 1 of the $300 billion action from the additional duties. *See* 84 FR 57144 (October 24 notice). Under the October 24 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant eight-digit subheading covered by the $300 billion action. Requestors also had to provide the ten-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years, among other information. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The October 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objectives of the Section 301 investigation.

The October 24 notice required submission of requests for exclusion from List 1 of the $300 billion action no later than January 31, 2020, and noted that the U.S. Trade Representative periodically would announce decisions. In March 2020, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 85 FR 13970. The U.S. Trade Representative granted additional exclusions in March, May, June and July 2020. *See* 85 FR 15244, 85 FR 17936, 85 FR 28693, as modified by 85 FR 32098, 85 FR 35975 and 85 FR 41658. The Office of the United States Trade Representative regularly updates the status of each pending request on the Exclusions Portal at *https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0017.*

B. Determination To Grant Certain Exclusions

Based on the evaluation of the factors set out in the October 24 notice, which

are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex, the exclusions are reflected in 11 existing ten-digit HTSUS subheadings and 53 specially prepared product descriptions, which together respond to 242 separate exclusion requests.

In accordance with the October 24 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the ten-digit HTSUS subheading as described in the Annex, and not by the product descriptions set out in any particular request for exclusion.

Paragraph A, subparagraphs (3)–(4) of the Annex contain conforming amendments to the HTSUS reflecting the modifications made by the Annex.

Paragraph B, subparagraphs (1)–(5) of the Annex contain technical corrections to address periodic revisions to the HTSUS subheadings in previously published exclusions.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

ANNEX

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.88.53 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled "Heading/Subheading", "Article Description", and "Rates of Duty 1-General", respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
"9903.88.53	Articles the product of China, as provided for in U.S. note 20(fff) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative	The duty provided in the applicable subheading"		

2. by inserting the following new U.S. note 20(fff) to subchapter III of chapter 99 in numerical sequence:

"(fff) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.15 and provided for in U.S. notes 20(r) and (s) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.15. See 84 Fed. Reg. 43304 (August 20, 2019), 84 Fed. Reg. 45821 (August 30, 2019), 84 Fed. Reg. 57144 (October 24, 2019) and 85 Fed. Reg. 3741 (January 22, 2020). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that, as provided in heading 9903.88.53, the additional duties provided for in heading 9903.88.15 shall not apply to the following particular products, which are provided for in the following enumerated statistical reporting numbers:

1) 0505.10.0055
2) 5504.10.0000
3) 8215.99.3500
4) 9506.70.4000
5) 9701.10.0000
6) 9702.00.0000

7) 9703.00.0000
8) 9705.00.0085
9) 9706.00.0020
10) 9706.00.0040
11) 9706.00.0060
12) Sodium alginate resins (CAS No. 9005-38-3) (described in statistical reporting number 3913.10.0000)
13) Boot hangers of plastics and steel, each designed to hold one pair of boots, presented with couplers of plastics to link two or more boot hangers vertically (described in statistical reporting number 3924.90.5650)
14) Exterior doors having outer faces of plastics with foamed plastics insulation between those faces, each measuring at least 213 cm but not more than 245 cm in height, at least 80 cm but not more than 95 cm in width and not more than 45 mm in thickness (described in statistical reporting number 3925.20.0010)
15) Clamps and clips of molded plastics, each with a fastener or adhesive backing for affixing a cord or cable to a flat surface (described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)
16) Molded shells of plastics, each measuring at least 11.1 cm but not more than 11.7 cm in length and at least 7.9 cm but not more than 8.6 cm in width, weighing at least 38 g but not more than 42 g, having two drilled holes (one near the midpoint of each long side and in horizontal alignment with each other), of a kind used to form a housing for an earphone (described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)
17) Sets of three polyvinyl chloride-coated foam pads, of plastics, of a kind used to assemble flotation work vests by passing adjustable straps with buckles through slots in the pads, each set comprising two irregularly shaped front/side pads and one rectangular back pad (described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)
18) Women's knit robes in chief weight of cotton, with hook and loop tab closure (described in statistical reporting number 6108.91.0030)
19) Babies' gowns of cotton knitted interlock fabric, each with sleeves, neck opening and elasticized bottom opening (described in statistical reporting number 6111.20.6070)
20) Babies' sleep sacks, knitted, of cotton, each with neck opening and two-way zipper (described in statistical reporting number 6111.20.6070)
21) Babies' sleep sacks of cotton interlock knitted fabric, sleeveless, each with neck opening and two-way zipper (described in statistical reporting number 6111.20.6070)
22) Babies' swaddle sacks of cotton knitted interlock fabric, each with sleeves and mitten cuffs (described in statistical reporting number 6111.20.6070)

23) Babies' blanket sleepers of polyester knitted fleece, sleeveless, each with two-way zipper (described in statistical reporting number 6111.30.5015)
24) Men's and boys' cotton terry bathrobes with muslin trim, each beltless but featuring a hook-and-loop tab (described in statistical reporting number 6207.91.1000)
25) Women's cotton terry bathrobes with muslin trim, each beltless but featuring a hook-and-loop tab (described in statistical reporting number 6208.91.1010)
26) Girls' cotton terry bathrobes with muslin trim, each beltless but featuring a hook-and-loop tab (described in statistical reporting number 6208.91.1020)
27) Girls' fleece bathrobes, each beltless but featuring a hook-and-loop tab (described in statistical reporting number 6208.92.0020)
28) Blankets (other than electric blankets) of cotton, woven, each measuring at least 116 cm but not more than 118 cm on an edge (described in statistical reporting number 6301.30.0010)
29) Blankets (other than electric blankets) of cotton, other than woven, each measuring at least 116 cm but not more than 118 cm on an edge (described in statistical reporting number 6301.30.0020)
30) Crib sheets of muslin cotton, fitted with elastic (described in statistical reporting number 6302.31.9020)
31) Protective covers of cotton for pillows, not knitted or crocheted, of cotton, not napped or printed, each with full encasement construction and zipper opening (described in statistical reporting number 6302.31.9040)
32) Oven mitts, not knitted or crocheted, of cotton, each incorporating a hanging loop, measuring at least 16 cm but not more than 19 cm in width by at least 29 cm but not more than 32 cm in length (described in statistical reporting number 6304.92.0000)
33) Handrail covers for spas and pools, the foregoing composed of 95 percent polyester and 5 percent spandex by weight, each measuring at least 60 cm but not more than 306 cm in length (described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)
34) Outdoor shelters, each comprising a canopy of textiles, a folding frame and a carrying case with wheels (described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)
35) Athletic, recreational and sporting headgear (other than of reinforced or laminated plastics), each with an inner protective suspension system and a sun visor, each weighing not more than 500 g and designed for off-road use with bicycles (described in statistical reporting number 6506.10.6045)
36) Folding helmets of injected plastic parts, each measuring not more than 85 mm in thickness when folded, weighing not more than 525 g (described in statistical reporting number 6506.10.6075)

37) Fittings of galvanized steel, including but not limited to support frames, wings, legs, connector and sign supports, all of which are parts of retail display fixtures (described in statistical reporting number 8302.42.3065)

38) Electric snowblowers, corded or cordless, each weighing not more than 46 kg, with a motor not more than 15 A, wheeled (described in statistical reporting number 8430.20.0060)

39) Cylindrical steel drives specially designed for adjusting color on machines that print on corrugated paper and paperboard, each article measuring at least 8 mm but not more than 9 mm in diameter and at least 2.5 mm but not more than 3 mm in length, and each article weighing at least 12 kg but not more than 14.1 kg (described in statistical reporting number 8443.91.3000)

40) Cylindrical steel drives specially designed to control color registration (alignment) and material tension on printing machinery, each drive measuring at least 155 mm but not more than 160 mm in diameter and at least 165 mm but not more than 170 mm in length, weighing at least 3 kg but not more than 4 kg (described in statistical reporting number 8443.91.3000)

41) Electrical automated embroidery machines capable of being programmed by an operator at a machine control console and also capable of saving or loading digital programming commands through a USB port or a local area network connection, each machine having at least two but not more than eight parallel-operating multi-thread embroidery heads and a single liquid-crystal display ("LCD") panel with a video display diagonal measuring at least 160 mm but not more than 170 mm and associated control panel (described in statistical reporting number 8447.90.5000)

42) Cast iron covers for hand-operated gate valves (described in statistical reporting number 8481.90.3000)

43) Iron or steel bodies of hand-operated disc (or disk) valves (described in statistical reporting number 8481.90.3000)

44) Steel parts of hand-operated gate valves (described in statistical reporting number 8481.90.3000)

45) Lithium-ion batteries consisting of cases of base metal containing 18650 individual lithium-ion battery cells, such batteries having a total capacity of at least 60 but not more than 200 watt hours, with at least one USB Type-C port, at least one USB Type-A port, at least one wireless charging pad and a digital screen that displays the power conditions of the battery (described in statistical reporting number 8507.60.0020)

46) Lithium-ion batteries consisting of cases of base metal containing 18650 individual lithium-ion battery cells, such batteries having a total capacity of at least at least 90 but not more than 6,500 watt hours, with at least one AC outlet, at least one USB port, at least one female barrel port and a digital screen that displays the power conditions of the battery (described in statistical reporting number 8507.60.0020)

47) Electric coffee makers of a kind used for domestic purposes, DC powered via a USB cable, each weighing not more than 0.5 kg (described in statistical reporting number 8516.71.0020)

48) Wireless communication apparatus that can receive audio data to be distributed to wireless speakers (described in statistical reporting number 8518.22.0000)
49) Fuse-type incandescent tungsten-filament lamps, designed for a voltage of 12 V or more but not exceeding 14 V, each measuring not more than 7 mm in diameter and not more than 32 mm in length (described in statistical reporting number 8539.29.3050)
50) Headlight brackets of aluminum, for motorcycles, each measuring not more than 34 cm by 29 cm by 19 cm, weighing not more than 2 kg (described in statistical reporting number 8714.10.0050)
51) Electric guitar kits, each consisting of all of the parts necessary to construct an electric guitar (described in statistical reporting number 9207.90.0040)
52) Parts of music synthesizers of heading 9207, comprising specially designed printed circuit assemblies for affecting the characteristics or qualities of sound (described in statistical reporting number 9209.94.8000)
53) Pre-charged pneumatic ("PCP") air rifles, each measuring at least 101 cm but not more than 115 cm in length, weighing at least 2.8 kg but not more than 3.5 kg (described in statistical reporting number 9304.00.2000)
54) Modular diving boards, suitable for mounting on boats or docks (described in statistical reporting number 9506.29.0080)
55) Swim masks, snorkeling masks, snorkels and water fins (described in statistical reporting number 9506.29.0080)
56) Balance trainers of plastics, each measuring not more than 120 cm in length by 45 cm in width by 27 cm in height, containing an air bladder (described in statistical reporting number 9506.91.0030)
57) Exercise machines of steel, each measuring at least 157 cm but not more than 158 cm in length, at least 152 cm but not more than 153 cm in width and at least 88 cm but not more than 90 cm in height, of a kind specifically designed to train the gluteal muscles (described in statistical reporting number 9506.91.0030)
58) Push-up exercise machines, each consisting of an aluminum extrusion with hard plastic end-caps, a hard plastic center divider, two sliding handles of hard plastics and rubber and a sliding adjustment plate (described in statistical reporting number 9506.91.0030)
59) Brushes of natural goat hair bristles, which are in lengths of at least 30 mm but not more than 33 mm, enclosed in a plastic protective holder, for cleaning optical lenses (described in statistical reporting number 9603.90.8050)
60) Porous-tipped markers for applying liquid chalk (described in statistical reporting number 9608.20.0000)
61) Gold coins of numismatic (collector’s) interest, 250 years or more in age, of Chinese origin (described in statistical reporting number 9705.00.0010)
62) Numismatic (collector's) coins (other than archaeological pieces and other than of gold), 250 years or more in age (described in statistical reporting number 9705.00.0040)
63) Gold coins of numismatic (collector’s) interest, less than 250 years in age, of Chinese origin (described in statistical reporting number 9705.00.0050)

64) Coins of Chinese origin and of numismatic (collector's) interest, of any metal other than of gold, less than 250 years in age (described in statistical reporting number 9705.00.0065)"

3. by amending the last sentence of the first paragraph of U.S. note 20(r):
   a. by deleting "or (6)" and by inserting "(6)" in lieu thereof; and
   b. by inserting "; or (7) heading 9903.88.53 and U.S. note 20(fff) to subchapter III of chapter 99" after "U.S. note 20(ddd) to subchapter III of chapter 99".

4. by amending the article description of heading 9903.88.15:
   a. by deleting "9903.88.49 or" and by inserting "9903.88.49," in lieu thereof; and
   b. by inserting "or 9903.88.53" after "9903.88.51".

B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:
   1. U.S. note 20(ddd)(15) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.
   2. U.S. note 20(ddd)(16) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.
   3. U.S. note 20(ddd)(17) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.
   4. U.S. note 20(ddd)(18) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.

5. U.S. note 20(ddd)(19) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2018–0010]

National Transit Database Reporting Changes and Clarifications AGENCY: Federal Transit Administration (FTA), Transportation (DOT).

ACTION: Final notice; response to comments.

SUMMARY: This notice responds to comments received and finalizes proposed changes and clarifications to the National Transit Database (NTD) reporting requirements published in the **Federal Register** on April 9, 2019 (ID: FTA–2018–0010).

DATES: FTA will implement some changes and clarifications in Report Year 2019 and will implement other changes in Report Year 2020 or Report Year 2021.

FOR FURTHER INFORMATION CONTACT: John D. Giorgis, FTA Office of Budget and Policy, (202) 366–5430 or *john.giorgis@dot.gov.*

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A. Background and Overview

Pursuant to 49 CFR 630.4(a), each applicant for and beneficiary of FTA assistance must comply with the applicable National Transit Database (NTD) reporting requirements, as set forth in the current editions of the NTD Reporting Manuals and Uniform System of Accounts (USOA) (*https://www.transit.dot.gov/ntd/uniform-system-accounts-usoa*). These reference documents are subject to periodic revision.

Pursuant to 49 CFR 630.4(b), the Federal Transit Administration (FTA) published a notice in the **Federal Register** on April 9, 2019 (84 FR 14189) seeking public comment on several changes and clarifications to the NTD reporting requirements contained in these reference documents. The comment period closed on June 10, 2019. FTA received seventy-three (73) comments from twenty-nine (29) unique commenters.

FTA intended to implement the proposed changes in Report Year 2019; however, due to the timing of the notice's publication, FTA will implement some changes finalized in this **Federal Register** notice in Report Year 2019, and will defer others to Report Years 2020 or 2021. Implementation details are included within the responses. Following is a summary of the comments received with FTA responses.

This document on its own does not have the force and effect of law and is not meant to bind the public in any way. This document is intended to provide clarity to the public regarding existing requirements under the law. In addition, FTA will update the NTD Policy Manual to include appropriate guidance disclaimer language, pursuant to 49 CFR 5.29.

B. Additional Types of Service

a. New Type of Service To Distinguish Demand Response Taxi Service

Two comments expressed concern about how the new proposed types of service would impact Americans with Disabilities Act (ADA) or paratransit reporting. Both commenters stated that the new taxi type of service must account for ADA/paratransit taxi trips. One commenter stated that ''the definition of taxi service in the proposed changes. . .must be clarified to ensure that taxi paratransit trips. . .can continue to be reported through the NTD.'' Another commenter expressed concern that the ''proposed revisions suddenly eliminates [sic] transit-sponsored taxi-based subsidy programs'' for ADA paratransit customers from reporting to the NTD.

FTA Response: FTA reiterates that it is not changing any reporting eligibilities or requirements. If a transit system uses a partnership with a taxi company to provide ADA complimentary paratransit service, then that service can be reported to the NTD through the new type of service. However, taxi-based subsidy programs are already excluded from the NTD, as they do not meet the definition of *public transportation,* as they are not *shared-ride.*

b. New Type of Service Classification for Demand Responsive Service Provided by Transportation Network Companies

FTA received 19 comments on the proposal to create two new types of service. Five commenters supported the changes as proposed. One commenter stated that collecting these data will help all levels of government develop a better understanding of the role transportation network companies (TNCs) play in transit service, how effective they are in delivering first mile/last mile service, and whether TNCs augment or compete with traditional public transit service.

Three commenters directly opposed the inclusion of service provided by TNCs in the NTD. All three commenters expressed concerns about the impact on FTA's formula funding programs. One commenter expressed ''serious concerns that the FTA is setting the table to normalize the use of transportation network companies in cooperation with or as a substitute for public transportation without fully considering the effects of this policy on safety, the fair distribution of federal funds, and ensuring a level playing field for workers.'' The commenter further stated that FTA should not implement this change ''without accounting for the limitations of the service (TNCs) provide and the true costs of those services when compared to transit buses.'' Two commenters stated that the vehicle revenue miles provided by TNCs should not be counted in the same way as bus vehicle revenue miles in the federal formula programs. The commenters further asserted that FTA should not implement this change until Congress deliberates reauthorization of the surface transportation programs.

Six comments were submitted related to the proposed data structure. One commenter suggested that service provided by a TNC should be reported as a new mode rather than as a new type of service. Two commenters suggested that the two proposed types of service should be consolidated into one new type of service. Three commenters recommended including microtransit such as scooters and bikeshares in NTD reporting. Two commenters suggested that microtransit should be added as a new type of service.

FTA Response: In response to comments opposing the proposal, FTA clarifies that it did not propose changing the reporting eligibility for demand response services. Rather, FTA proposed a new data structure for collecting information on demand response services that are already eligible to be reported to the NTD under existing law. The NTD collects data on services that meet the definition of public transportation in Federal law (49 U.S.C. 5302(14)). These data on public transportation services are then used in the apportionment of formula grants by FTA. FTA intends to permit service provided by TNCs that meets the statutory definition of public transportation to be reported to the NTD and included in the data sets used for the apportionment of formula grants. Likewise, because all public transportation service funded through the Urbanized Area Formula Program must be reported to the NTD pursuant to 49 U.S.C. 5335(b), FTA cannot prohibit these services from being reported to the NTD without also prohibiting the use of Urbanized Area Formula Program funds on these services. Thus, FTA does not believe that it is prudent to defer this issue until Congress debates a new surface transportation reauthorization bill. These services are being provided now, and FTA believes that the NTD must have an appropriate means of accounting for these services in the present.

Further, there is no statutory basis for including microtransit services in the NTD for inclusion in the formula programs, as they do not meet the statutory definition of *public transportation* as they are not *shared-ride* services. Additional information about demand response services provided by TNCs that meet the definition of *public transportation,* and thus may be reported to the NTD, can be found in Appendix E of the NTD Policy Manual. (*https://www.transit.dot.gov/ntd/manuals*).

FTA does not have the statutory authority to count TNC vehicle revenue miles different from other bus vehicle revenue miles. Current law divides all public transportation vehicle revenue miles into either ''bus vehicle revenue miles'' or ''fixed guideway vehicle revenue miles.'' See 49 U.S.C. 5336. The category of ''bus vehicle revenue miles'' already includes miles operated by the fixed-route bus mode, as well as the demand response mode and the vanpool mode. FTA doesn't have a statutory basis for treating a demand response vehicle revenue mile operated through an agreement with a TNC any differently than a demand response vehicle revenue mile operated by a transit agency's own employees.

After considering the comments received, FTA continues to believe that creating two new types of service is the best way to collect and track service provided by taxi companies and TNCs. Creating two new types of service will allow data users to quickly identify and compare these services across transit agencies and will also provide a clear basis for comparison among traditional directly-operated and contracted demand response services. These two new types of service will be implemented in report year 2020 (beginning in September 2020).

Two commenters requested additional clarification on when TNC-provided service is considered public transportation and may be reported to the NTD. One commenter stated that NTD reporting should continue to be done by the transit agencies and not by the TNCs.

FTA Response: FTA reiterates that it is not changing any reporting eligibilities or requirements. When a transit agency enters into a purchased transportation agreement with a TNC, it is the transit agency that reports the service. If the TNC is providing public transportation service on its own, without a purchased transportation agreement with a transit agency, then the TNC reports the service on its own. The definition of a purchased transportation agreement can be found in the existing NTD Policy Manual.

FTA also received several comments that were related to this proposal but were not directly relevant to the request. In several cases, these comments misstated current NTD reporting requirements. For the sake of clarity, a summary of these comments and any necessary clarifications are included in this response.

Three commenters expressed concerns over differing safety requirements for TNC providers versus traditional public transit providers. One commenter expressed concern that the taxi exemption will ''create an environment in which transit operators are held to a different safety standard than operators contracted under TNC service.'' A second commenter requested clarification on the taxi exemption as it relates to drug testing for TNC services. The commenter further asserted that when TNCs ''clearly stand in the shoes of the transit provider, they should be subject to Part 655 requirements.''

FTA Response: This notice does not impact safety standards or requirements. FTA is not providing an ''exemption'' to TNC providers. This notice simply articulates how a transit agency that partners with a TNC to provide public transportation service can meet its NTD reporting obligation for that service.

One commenter challenged FTA's current interpretation of ''shared-ride'' service. FTA currently requires all demand response modes to use a dispatch service to attempt to share all ride requests. 49 CFR 630.4(a). The commenter argued that FTA should ''adopt a more holistic approach . . . for demand responsive services by designating the performed services, rather than the potential for sharing of the dispatch system, as the fundamental standard for evaluating NTD reporting eligibility.'' In other words, all trips sponsored by a public transit agency should be reportable to the NTD even if they are trips on a subsidized single-occupancy taxi service used for first-mile/last-mile service.

FTA Response: FTA disagrees. FTA has a long-standing policy that vouchers

or subsidies for single-person taxi service are not *public transportation* because they are not shared-ride services, even when provided by an operator of public transportation services. The same principle would apply to vouchers of subsidies for single-person TNC service. *Public transportation* is defined in Section 5302(14) as being ''shared-ride'' service, and FTA cannot change this definition administratively.

After considering the comments received, FTA will adopt the proposed changes to create the two new types of service. These changes will be implemented in Report Year 2020 (beginning in September 2020).

C. Changes to the A–30 Revenue Vehicle Asset Forms

a. Add New Data Element To Identify Automated Vehicles

FTA received four comments related to reporting automated vehicles. Two commenters supported this change as proposed. One commenter noted that the SAE standard referenced in the notice is ''copyrighted by SAE and distribution within an organization is prohibited without special license.'' The commenter suggested that FTA should provide a more comprehensive definition in the NTD glossary to ''avoid misinterpretation.'' A final commenter stated that automated bus service should only be reported as ''fixed guideway'' service to the NTD if it is operated in dedicated right-of-way.

FTA Response: FTA concurs that the use of an automated vehicle does not impact whether the fixed-route bus service should be reported as ''fixed guideway'' or not. In response to the comment noting that the SAE standard is under copyright by SAE, FTA amends the definition of *automated vehicle* to align with the description of SAE Level 4 automation provided by the National Highway Traffic Safety Administration (NHTSA): A vehicle that can itself perform all driving tasks and monitor the driving environment in certain circumstances. FTA will adopt these changes effective in Report Year 2019; effective August 31, 2019.

b. New Reporting on Safety Equipment on Rail Transit Vehicles

FTA received three comments related to reporting on safety equipment on rail transit vehicles. One commenter asked for a clarification on whether these reporting criteria apply to commuter rail modes regulated by the Federal Railroad Administration (FRA). A second commenter stated that this reporting would be a significant burden because their data is not currently kept at this level of detail. The third commenter noted that the American Public Transportation Association (APTA) Standards identified in the notice have changed. The commenter requested clarification on how FTA will account for changing standards for NTD reporting in the future.

FTA Response: FTA clarifies that these reporting requirements will not apply to rail modes that are regulated by the FRA.

In response to the request for clarification regarding changing APTA Standards, FTA will clarify in each edition of the NTD Reporting Manual the date of the APTA Standard that is in effect at the time the NTD Reporting Manual is published. Transit systems can then report whether their vehicles carry this equipment based on the date of the APTA Standard listed in the Reporting Manual. FTA believes that keeping track of the safety equipment present on rail vehicles is a sound business practice and believes that that the cost of tracking safety equipment will ultimately be de minimis, as the NTD will retain this information year after year. FTA will implement these changes to the asset inventory for the 2020 Report Year.

D. Changes to the A–20—Adjust the Reporting Categories for Special Trackwork

FTA received three comments related to adjusting the reporting categories for special trackwork. All commenters supported updating the special trackwork categories. One agency requested clarification on whether special trackwork reporting only applies to main line track. A second commenter requested that special trackwork categories be modified to align with the naming conventions used by their agency.

FTA Response: FTA clarifies that all special trackwork, including main line, yard, and pocket track, are reportable to the NTD.

After consultation with industry experts, FTA believes that the proposed categories represent the most common track-naming conventions used in the industry. FTA will implement this change, as proposed, effective immediately.

E. Changes to the D–10—New Reporting on the Use of Automatic Passenger Counters

FTA did not receive any comments on the proposed change regarding reporting on the use of automatic passenger counters (APC). FTA will implement its proposal and begin capturing the use of APCs on the D–10 effective immediately.

F. Changes to the FFA–10—New Reporting on Vehicle Revenue Miles by State for Urbanized Area Reporters

FTA received two comments on the proposal to collect vehicle revenue miles (VRM) by state for urbanized area reporters. One transit agency expressed concern that reporting VRM by state may impact its funding. The commenter further stated that reporting in this manner would require a route by route analysis and requested that this reporting be considered ''optional.''

A second agency stated that reporting VRM by state would be a significant burden because most of its service is operated within a single state. The agency requested that FTA provide an exemption for agencies that are primarily operating within a single state with only a negligible amount of service in a second state.

FTA Response: FTA is sensitive to concerns about increasing reporting burden. Both respondents indicated that reporting their service by state would require them to change their current data collection methods. As such, FTA withdraws this proposal and will not implement it. Therefore, FTA will not revise reporting to include VRM by state.

G. Changes to Safety Event Reporting

a. Clarification of Reportable Attempted Suicide

FTA received four comments on the proposed clarification of the definition of reportable attempted suicides. One agency expressed concern about the requirements that both the attempt and the intent must be verified by a third party. It stated that it is ''unlikely to have a police report to provide in a timely manner.'' A second agency recommended including ''apparent'' or ''perceived'' before ''intention'' and ''intent'' in the clarification of attempted suicide. A third commenter stated that an agency ''may not even notice, rendering it difficult if not impossible to report'' on events resulting in an individual being transported for mental health evaluation. A fourth commenter stated that attempted suicides should only be reported if there is an injury; incidents of an individual being transported for mental health evaluation should not be reported to the NTD.

FTA Response: FTA clarifies that under this proposal, a major event report is only necessary for an attempted suicide that results in a physical injury. 49 CFR 630.4(a). FTA further clarifies that third-party

verification of the event may be in the form of eyewitness statements; a police report is not required.

In response to the request to include ''apparent'' or ''perceived'' before ''intention'' and ''intent,'' FTA amends the definition of *attempted suicide* as follows: Self-inflicted physical harm where death does not occur, but the intention of the person was to cause a fatal outcome. Per regulation, the person's attempt and intent, whether perceived or stated, must be accounted for by a third party in the form of police reports, security personnel reports, or other eyewitness statements. The NTD report should identify the actions of the person in carrying out the apparent suicide attempt.

If a person is transported away from the scene for mental health evaluation following an event meeting this definition of *attempted suicide,* then per regulation a major event report in the NTD is required, even if the physical injuries alone were not sufficient to require medical transportation away from the scene. On the other hand, if a person is transported away from the scene for mental health evaluation without any self-inflicted physical harm occurring, then per regulation the event only needs to be reported on the Non-Major Monthly Summary Report. FTA will implement this change effective immediately.

b. Modify Data Collection on Vehicles Involved in Reportable Safety Events

FTA received two comments related to modifying data collection on vehicles involved in reportable safety events. One agency supported this proposal but suggested that individual vehicles should not be identified. A second agency noted that it would be unable to link vehicles that have not yet been included in the asset inventory.

FTA Response: FTA clarifies that this change would not necessarily identify individual vehicles. Rather, this change would indicate the reported vehicle fleet that contains the vehicle involved in a major safety event. The individual vehicle would be identifiable only if the reported vehicle fleet in the vehicle inventory only contains a single active vehicle. In instances where a vehicle is involved in a major safety event, but the fleet has not yet been added to the asset inventory, agencies would indicate that the fleet does not yet exist in the inventory, and they would be prompted to enter the basic vehicle information currently captured in the major events safety form. FTA will implement this change effective immediately.

c. Add Information on Drug and Alcohol Post-Accident Testing

FTA received four comments related to the proposal to include information on drug and alcohol post-accident testing. Only three of these comments are directly salient to this proposal and are included in this response. One professional association stated that this proposal is duplicative and burdensome. One agency supported this proposal so long as no personal information is included. One agency stated that the burden to report this data would be negligible.

FTA Response: FTA recognizes that this reporting is duplicative with existing drug and alcohol post-accident testing reporting requirements and will not implement this change.

H. Clarification on Reporting Service Information on a Temporary Bus Bridge

FTA received two comments related to reporting on temporary bus bridge service. One commenter restated the requirement and noted how it may apply to its agency. The second commenter stated that this proposal is too burdensome and that it does not support this change.

FTA Response: FTA restates that the proposed clarification of reporting a temporary bus bridge is not a change to current policy. Rather, it is a clarification of existing policy. The policy is intended to reduce the burden of reporting temporary bus bridge service by allowing agencies the option to report this information as a capital cost rather than creating a new mode or type of service for temporary bus bridge service. FTA will implement this clarification effective immediately.

I. Clarification of Incidental Use for Transit Asset Reporting

FTA received four comments on the clarification of incidental use for reporting administrative and maintenance facilities to the NTD. All four commenters agreed that FTA should define *incidental* as meaning less than 50 percent of the space. One commenter requested that this definition should also be applied to passenger facilities.

FTA Response: FTA disagrees with the suggestion that the 50 percent definition should be applied to passenger facilities. FTA confirms that all passenger facilities used in public transportation are reportable to the NTD asset inventory. Agencies must only conduct a condition assessment of passenger facilities for which they have direct capital replacement responsibility. See 49 CFR 625.25(b); 49 U.S.C. 5335(c). Accordingly, the definition of *incidental use* does not apply to the reporting of passenger facilities. FTA will implement this clarification effective immediately.

J. Allow Separate Mode Reporting for Geographically and Resource Separated Modes

FTA did not receive any comments on the proposal to begin collecting separate mode reporting for geographically and resource-separated modes. After further analysis, FTA has decided to postpone implementation of this change until the 2021 Report Year, to allow for the necessary time to update the online reporting system to accommodate this change.

K. Clarification on Commuter Service Survey Standards

FTA received three comments related to the proposed clarification of commuter service survey standards. Only two of the comments were relevant to the proposal. One agency requested additional clarification on how many times a survey must be conducted over a 12-month period to satisfy the requirement of accounting for seasonal variations. An industry association stated that it would not support a policy defining services of more than 90 minutes of one-way travel time as *intercity services.* The same association also sought clarification on whether this policy applies to new entrants or existing services.

FTA Response: FTA clarifies that there is no policy stating that services of more than 90 minutes will be irrefutably considered *intercity service.* Under existing policy, FTA will generally presume that services with a one-way trip time of less than 90 minutes are *commuter service*s. Although FTA will generally presume that a service with a one-way travel time of less than 90 minutes is *commuter service,* FTA may still request that this presumption be confirmed by passenger survey data. FTA will generally not presume that service with a one-way travel time of more than 90 minutes is *commuter service.* In these cases, FTA will consider such a service to be *intercity service* until survey data establishes that more than 50% of the riders make a same day return trip. These standards apply to any new services entering the NTD, as well as to any existing services that FTA chooses to examine in accordance with the NTD Policy Manual.

In response to the request for additional clarification on how many times a survey should be conducted to

account for seasonal variations, FTA clarifies that the survey methodology must be approved by a qualified statistician. 49 CFR 630.4(a). To ensure that a survey methodology is compliant with the requirement for 95% confidence, FTA further clarifies that per regulation, the survey methodology and evidence of an approval by a qualified statistician must be reviewed and approved by FTA prior to conducting the survey. A statistically valid survey will give every passenger on the service for the year an equal chance of selection or will use sample stratification to give every passenger a representative chance of selection. FTA will implement this change effective immediately.

L. Clarification on Reporting Linear Miles and Track Miles to the Asset Inventory

FTA received three comments related to the proposed definitions of linear miles and track miles. One agency supported the clarification as written. One agency suggested that FTA should require the collection of both linear miles and track miles to allow for comparisons across systems. A third agency expressed continued confusion over the distinction between linear miles and track miles.

FTA Response: In response to comments, and to simplify reporting in the future, FTA will remove linear miles from the reporting system. All reporters should report their guideway using the definition of track miles provided in this notice: The cumulative length in miles of all track—including multiple track railways over the same area. This should represent the total length of all laid track. FTA will implement this change in Report Year 2020.

M. Clarification of Rural Financial Data Reporting Requirement

FTA received one comment requesting that the clarification of the rural financial data reporting requirement should be applied to all non-dedicated providers of demand response rides.

FTA Response: FTA clarifies that per 49 CFR 630.4(a), all modes and types of service must be reported to the NTD consistent with the Uniform System of Accounts (USOA), which requires agencies to report the total cost of delivering each mode of transit service, including both direct and shared costs of providing service. FTA will implement this clarification effective immediately.

K. Jane Williams,

Acting Administrator.

[FR Doc. 2020–15906 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0090]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel HOOKED UP (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 24, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0090 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0090 and follow the instructions for submitting comments.
- Mail or Hand Delivery: Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0090, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HOOKED UP is:

—Intended Commercial Use of Vessel: ''Sport Fishing Charters in the State of Alaska with 6 or fewer people.''
—Geographic Region Including Base of Operations: ''Alaska (excluding Southeast Alaska'' (Base of Operations: Valdez, AK)
—Vessel Length and Type: 30′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0090 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0090 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that

you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

Dated: July 20, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–15944 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0091]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel REFLECTION (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 24, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0091 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0091 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0091, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel REFLECTION is:

—*Intended Commercial Use of Vessel:* ''Carrying passengers for hire''

—*Geographic Region Including Base of Operations:*'' Florida, Georgia, South Carolina, North Carolina, Alabama, Mississippi, Louisiana'' (Base of Operations: Miami, FL)

—VESSEL LENGTH AND TYPE: 85″ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0091 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0091 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal

identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

Dated: July 20, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–15947 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0093]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel OCEANS 11 (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 24, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0093 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0093 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0093, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OCEANS 11 is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Vessel will be employed as a high end luxury charter vessel carrying up to 12 passengers for dinner and sunset cruises as well as overnight voyages.''

—GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS: ''California, Oregon and Washington'' (Base of Operations: Oxnard, CA)

—VESSEL LENGTH AND TYPE: 86′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0093 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0093 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the

basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

Dated: July 20, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–15945 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0092]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LUCKY DOG (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 24, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0092 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0092 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0092, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LUCKY DOG is:

—*Intended Commercial Use of Vessel:* ''Day and overnight sailing charters for education and vacations''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Jupiter, FL)

—*Vessel Length and Type*: 44′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0092 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0092 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves,

all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

Dated: July 20, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–15943 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0195 (Notice No. 2020–07)]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on a revision to the information collection pertaining to hazardous materials public sector training and planning grants for which PHMSA intends to request a renewal with revision from the Office of Management and Budget.

DATES: Interested persons are invited to submit comments on or August 24, 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: Steven Andrews or Shelby Geller, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), title 5, Code of Federal Regulations (CFR) requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to the Office of Management and Budget (OMB) for revision. Specifically, PHMSA is notifying the public of its intent to seek additional information in hazardous materials planning grant applications. This information collection is contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on a proposed revision to this information collection. The following information is provided for this information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a 3-year term of approval for this information collection activity.

On February 28, 2019, PHMSA published a final rule titled ''Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains (FAST Act)'' [HM–251B; 84 FR 6910] which revised and clarified requirements for Comprehensive Oil Spill Response Plans (COSRPs) and expanded their applicability based on petroleum oil thresholds that apply to an entire train consist. The final rule also requires a railroad to share information about high-hazard flammable train (HHFT) operations with each State emergency response commissions (SERC), Tribal Emergency Response Commission (TERC), or other appropriate State-delegated agency in each State through which it operates to improve community preparedness. At a minimum, railroads must provide: (1) A reasonable estimate of the number of HHFTs that the railroad expects to operate each week, through each county within the State or through each tribal jurisdiction; (2) the routes over which the HHFTs will operate; (3) a description of the hazardous materials being transported and all applicable emergency response information required by the shipping papers and emergency response information requirements of the HMR; (4) an HHFT point of contact; and (5) a description of the response zones (including counties and states) and the contact information for the qualified individual and alternate as specified under § 130.120(c) if a route identified above is additionally subject to the comprehensive spill plan requirements. In addition, the HHFT notification must be maintained and transmitted in accordance with the following: (1) Railroads must update the notifications for changes in volume greater than 25%; (2) notifications and updates may be transmitted electronically or by hard copy; (3) if the disclosure includes information that a railroad believes is security sensitive or proprietary and exempt from public disclosure, the railroad should indicate that in the notification; (4) each point of contact must be clearly identified by name or title, and contact role (*e.g.,* qualified individual, HHFT point of contact) in association with the telephone number. One point of contact may fulfill multiple roles; and (5) copies of the railroad's notifications made under this section must be made available to the Department of Transportation upon request.

Following an audit conducted by the General Accounting Office (GAO), PHMSA received a recommendation (GAO–17–91) to develop a process for regularly collecting information from SERCs on the distribution of the railroad-provided hazardous materials shipping information to local planning entities. In response to this recommendation, PHMSA will have grant applicants declare if SERCs have received copies of the railroad-provided information detailed above. In addition, PHMSA will determine if the SERCs are disseminating this information to local planning entities. PHMSA expects that requesting grantees to provide this additional information will add approximately 2 minutes of burden time per respondent. For 62 grantees, this is approximately 2 additional burden hours (62 grantees × 2 minutes).

A **Federal Register** Notice with a 60-day comment period soliciting comments on this information collection was published on November 26, 2019 [84 FR 65213].

PHMSA received no comments to the 60-day notice.

Question/topic	Respondents	Responses per respondent	Number of responses	Hours per response	Total burden hours
General Grantee and Sub-grantee information	62	1	62	16	992
Information on LEPCs	62	1	62	16	992
Assessment of Potential Chemical Threats	62	1	62	8	496
Assessment of Response Capabilities for Accidents/Incidents	62	1	62	8	496
HMEP Planning and Training Grant Reporting	62	1	62	7	434
HMEP Planning Goals and Objectives	62	1	62	7	434
HMEP Training and Planning Assessment	62	1	62	7	434
Hazmat Transportation Fees	62	1	62	3.23	200.26
Grant Applicant is NIMS Compliant/Grant Application Is Reviewed By SERC	62	1	62	5.5	341
HMEP Grant Program Administration	62	1	62	5.5	341
HHFT Information Sharing Compliance Questions	62	1	62	0.033	2.067

As described above, PHMSA currently estimates the OMB Control Number 2137–0586 burden to be revised as follows:

Title: Hazardous Materials Public Sector Training and Planning Grants

OMB Control Number: 2137–0586

Summary: Part 110 of 49 CFR sets forth the procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Territories, and Indian tribes to manage hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection reporting requirements regarding the application for grants, the monitoring of expenditures, and the reporting and requesting of modifications.

Information collection	Respondents	Total annual responses	Hours per response	Total annual burden hours
Hazardous Materials Public Sector Training & Planning Grants	62	62	83.26	5,162

Affected Public: State and local governments, Indian tribes.

Increase in Annual Reporting and Recordkeeping Burden:

Increase in Annual Respondents: 0.

Increase in Annual Responses: 0.

Increase in Annual Burden Hours: 2.

Frequency of collection: Annually.

Issued in Washington, DC.

William A. Quade,

Deputy Associate Administrator of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2020–15949 Filed 7–22–20; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Concerning Time and Manner of Making Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988, and the Redesignation of Certain Other Temporary Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning time and manner of making certain elections under the technical and miscellaneous revenue act of 1988, and the redesignation of certain other temporary elections.

DATES: Written comments should be received on or before September 21, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Chakinna B. Clemons, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988 and the Redesignation of Certain Other Temporary Elections Regulations.

OMB Number: 1545–1112.

Regulation Project Number: TD 8435.

Abstract: Regulation section 301.9100–8 provides final income, estate and gift, and employment tax regulations relating to elections made under the Technical and Miscellaneous Revenue Act of 1988. This regulation enables taxpayers to take advantage of various benefits provided by the Internal Revenue Code.

Current Actions: There are no changes being made to the regulations at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 21,740.

Estimated Time per Respondent: 17 minutes.

Estimated Total Annual Burden Hours: 6,010.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 17, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–15948 Filed 7–22–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0770]

Agency Information Collection Activity: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 21, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Brian McCarthy, Office of Regulatory and Administrative Affairs (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Brian.McCarthy4@va.gov.* Please refer to ''OMB Control No. 2900–0770'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 615–9241.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 2900–0770.

Type of Review: Revision of a currently approved collection.

Abstract: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design

(including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Affected Public: Individuals and Households; Businesses and Organizations; State, Local or Tribal Government.

Estimated Annual Burden: 235,584 total hours.

Customer Satisfaction Surveys: 73,334.

Focus Groups: 33,000.

Customer Comment Cards: 5,500.

Small Discussion Groups: 2,750.

Cognitive Laboratory Studies: 33,000.

Qualitative Customer Satisfaction Surveys: 41,250.

In-Person Observation Testing: 5,500.

Patient Surveys: 41,250.

Estimated Average Burden per Respondent:

Customer Satisfaction Surveys: 40 minutes.

Focus Groups: 60 minutes.

Customer Comment Cards: 30 minutes.

Small Discussion Groups: 30 minutes.

Cognitive Laboratory Studies: 60 minutes.

Qualitative Customer Satisfaction Surveys: 30 minutes.

In-Person Observation Testing: 30 minutes.

Patient Surveys: 30 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 368,500 total.

Customer Satisfaction Surveys: 110,000.

Focus Groups: 33,000.

Customer Comment Cards: 11,000.

Small Discussion Groups: 5,500.

Cognitive Laboratory Studies: 33,000.

Qualitative Customer Satisfaction Surveys: 82,500.

In-Person Observation Testing: 11,000.

Patient Surveys: 82,500.

By direction of the Secretary.

Danny S. Green,

VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2020–15909 Filed 7–22–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Slickspot Peppergrass (Lepidium papilliferum); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2010–0071; FF09E21000 FXES11110900000 201]

RIN 1018–BE61

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Slickspot Peppergrass (Lepidium papilliferum)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), again revise our previous proposal to designate critical habitat for slickspot peppergrass (*Lepidium papilliferum*) under the Endangered Species Act (Act). In total, approximately 17,049 hectares (ha) (42,129 acres (ac)) in Ada, Elmore, Gem, Payette, and Owyhee Counties in Idaho fall within the boundaries of the revised proposed critical habitat designation. If we finalize this revised rule as proposed, it would extend the Act's protections to this species' critical habitat. We are proposing changes to our previous critical habitat proposal for slickspot peppergrass based on new information available on the current condition of slickspot peppergrass occurrences, as well as use of an alternative method for mapping critical habitat for the species that more precisely includes areas that provide the physical and biological features essential to the conservation of the species. The effect of the revised proposed critical habitat would be to conserve slickspot peppergrass and its habitat under the Act.

DATES: We will accept comments received or postmarked on or before September 21, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by September 8, 2020.

ADDRESSES: You may submit comments by the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R1–ES–2010–0071, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R1–ES–2010–0071; U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information that you provide us (see the Information Requested section below for more information).

Availability of supporting materials: The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this proposed revised critical habitat designation and are available at *http://www.fws.gov/idaho* and *http://www.regulations.gov* under Docket No. FWS–R1–ES–2010–0071. Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the U.S. Fish and Wildlife Service website and may also be included in the preamble and/or at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Christopher Swanson, Acting State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; telephone 208–378–5243. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This is a second revision of the proposed rule to designate critical habitat for the threatened plant species, slickspot peppergrass (76 FR 27184, May 10, 2011, and 79 FR 8402, Feb. 12, 2014). All areas we are proposing as critical habitat are occupied by the species, and the majority of the area proposed is located on lands administered by the Bureau of Land Management (BLM). Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), any species that is determined to be threatened or endangered requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule. We reinstated slickspot peppergrass as a threatened species under the Act effective September 16, 2016 (81 FR 55058, Aug. 17, 2016). We are revising our previously proposed critical habitat rule to incorporate new information we received from the Idaho Department of Fish and Game (IDFG) regarding habitat quality rankings of slickspot peppergrass occurrences (Kinter and Miller 2016, Table 5).

The basis for our action. Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Economic analysis. In order to consider economic impacts, we previously prepared an analysis of the economic impacts of the proposed critical habitat designation and related factors. The final economic analysis, which was completed March 12, 2012, concluded that critical habitat designation would not likely affect levels of economic activity or conservation measures being implemented within the proposed critical habitat area. The analysis stated that the primary reason critical habitat is unlikely to generate economic impacts beyond administrative costs of consultation is that approximately 85.8 percent of the proposed critical habitat is Federal land managed by the BLM, which is a party to a binding conservation agreement established for the purpose of slickspot peppergrass conservation; all projects and activities occurring on these public lands within the proposed critical habitat, are already subject to section 7 consultation for slickspot peppergrass (IEC 2012, p. ES–5). The BLM administers Federal lands that encompass approximately 84.7 percent of the current critical habitat

proposal; we consider this 1.1 percent decrease in the percentage of proposed critical habitat administered by BLM to be inconsequential relative to the conclusions of the 2012 economic analysis. Unless unforeseen changes occur to existing conservation measures or the management of land use activities, the incremental impacts of critical habitat designation described in the 2012 final economic analysis would continue to be limited to additional administrative costs of section 7 consultations for Federal agencies (primarily BLM), associated with considering the potential for adverse modification of critical habitat. The final economic analysis is available at *http://www.regulations.gov* under the docket number for this rulemaking, which is FWS–R1–ES–2010–0071.

Peer review. In accordance with our peer review policy published July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited expert opinion in 2011 from five appropriate and independent specialists regarding the 2011 proposed rule. We received input from three of the five individuals. Since that time, we have implemented a standard practice of developing a species status assessment (SSA) as the scientific foundation to inform our listing determinations and recovery plans (U.S. Fish and Wildlife Service 2016, *in litt.,* pp. 1–2). In 2018, we initiated the development of an SSA for slickspot peppergrass, and in August 2018, we solicited expert opinion from four independent specialists with scientific expertise on slickspot peppergrass and its habitat regarding our draft SSA report. These four individuals generally concurred with the information and conclusions in the draft SSA report, including our use of data from the IDFG (Kinter and Miller 2016, entire); these data were used extensively in the SSA. The purpose of peer review is to ensure that our critical habitat designations are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species. The final SSA report (USFWS 2020) is available at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2010–0071.

Because we will consider all comments and information we receive during the comment period, our final designation may differ from this proposal. Based on the new information we receive (and any comments on that new information), our final designation may not include all areas proposed, may include some additional areas, and may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion. Such final decisions would be a logical outgrowth of this proposal, as long as we: (1) Base the decisions on the best scientific and commercial data available and take into consideration the relevant impacts; (2) articulate a rational connection between the facts found and the conclusions made, including why we changed our conclusion; and (3) base removal of any areas on a determination either that the area does not meet the definition of ''critical habitat'' or that the benefits of excluding the area will outweigh the benefits of including it in the designation.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, Native American tribes, the scientific community, industry, or any other interested party concerning this revised proposed rule. Comments previously submitted during earlier public comment periods on proposed critical habitat for slickspot peppergrass will be considered in our final decision and need not be resubmitted. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

(2) Specific information on:

(a) The amount and distribution of [species] habitat;

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments:

(i) Regarding whether occupied areas are inadequate for the conservation of the species; and

(ii) Providing specific information that supports the determination that unoccupied areas will, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species.

(3) Any additional areas occurring within the historical range of the species that should be included in the designation because they (a) are occupied at the time of listing and contain the physical and biological features that are essential to the conservation of the species and that may require special management considerations, or (b) are unoccupied at the time of listing and are essential for the conservation of the species.

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(6) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(7) New scientific information regarding critical habitat for this species that has become available since the May 10, 2011, publication of our proposed rule to designate critical habitat for slickspot peppergrass (76 FR 27184, May 10, 2011) and the Feb. 12, 2014, publication of our revised proposed rule to designate critical habitat for slickspot peppergrass (79 FR 8402, Feb. 12, 2014).

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better

accommodate public concerns and comments. We particularly seek comments regarding the appropriateness of our use of an updated critical habitat mapping methodology that replaces use of Quarter-Quarter sections based on the Public Land Survey System.

(9) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. In particular, we are interested in areas proposed for designation on non-Federal lands covered by a conservation agreement or plan that specifically addresses threats to slickspot peppergrass. We are asking for information related to whether the specific nonFederal lands covered under the 2006 Candidate Conservation Agreement (CCA) signed by the State of Idaho Governor's Office of Species Conservation, the BLM, IDFG, Idaho Department of Lands, Idaho National Guard, and several nongovernmental cooperators should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding these areas outweigh the benefits of including these areas under section 4(b)(2) of the Act.

(10) Although we are not aware of any current habitat conservation plans (HCP), safe harbor agreements (SHA), or conservation agreements or plans covering municipal or private lands with proposed critical habitat, we request information from the public concerning interest in developing these agreements to memorialize ongoing conservation programs or partnerships that benefit slickspot peppergrass, including renewing expired memoranda of agreement (MOAs) associated with the 2006 CCA that were previously signed by private landowners, which overlap with proposed critical habitat. Municipal or private lands covered by ongoing or new agreements that include ongoing activities that have been demonstrated to effectively benefit slickspot peppergrass may be appropriate for exclusion under section 4(b)(2) of the Act.

(11) We also request information from local governments concerning interest in renewing or revising the following expired municipal conservation agreements and information regarding ongoing implementation of conservation measures associated with these plans that benefit slickspot peppergrass, and the appropriateness of considering lands covered by these agreements, if renewed or revised, for exclusion under section 4(b)(2) of the Act:

(a) The Conservation Agreement for Slickspot Peppergrass at the Boise Airport, Ada County, Idaho, between the Service and the City of Boise Airport that expired in December 2015 (City of Boise and U.S. Fish and Wildlife Service 2003, *in litt.*).

(b) The Conservation Agreement by, and between, Boise City and the Service for *Allium aasea* (Aase's onion), *Astragalus mulfordiae* (Mulford's milkvetch), and slickspot peppergrass (Hull's Gulch Agreement) that expired in 2006 (U.S. Fish and Wildlife Service 1996, *in litt.*).

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

You may submit your comments and materials concerning this revised proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. We will consider all comments and information received during the comment period on this revised proposed rule, as well those received during the previous comment periods associated with the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014), in the preparation of a final designation. Therefore, it is not necessary to resubmit comments previously provided during the comment periods on those proposed rules.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this revised proposed rule, will be available for public inspection on *http://www.regulations.gov*.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Previous Federal Actions

In this revised proposed rule, we primarily discuss those topics directly relevant to updating the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014). For more information on previous Federal actions concerning slickspot peppergrass, refer to those documents and the 2016 final rule reinstating threatened status for the species under the Act (81 FR 55058, Aug. 17, 2016).

Changes from the Previous Proposed Rules

Summary of Changes

There are three primary changes from our previous proposed critical habitat rules (76 FR 27184, May 11, 2011; and 79 FR 8402, February 12, 2014) that we quickly summarize here and discuss in further detail in later sections of this document. First, since the publication of our May 10, 2011, proposed rule (76 FR 27184) and our February 12, 2014, revised proposed rule (79 FR 8402), we received information from IDFG regarding some additional areas that meet our definition of critical habitat for slickspot peppergrass, and some areas previously proposed as critical habitat that no longer meet our definition. We incorporated this new information and revised our designation accordingly. In addition, we changed our critical habitat mapping methodology to use geographic information system (GIS)-generated polygons, replacing our use of Quarter-Quarter sections based on the Public Land Survey System.

Finally, the regulations concerning critical habitat have been revised and updated (81 FR 7414, Feb. 11, 2016; 84 FR 45020, August 27, 2019). The original 2011 proposed rule (76 FR 27184, May 10, 2011) identified primary constituent elements (PCEs) for the critical habitat designation, and our 2014 revision did not change those (79 FR 8402, Feb. 12, 2014). In accordance

with the revisions to our critical habitat regulations, this revised proposed rule includes specific descriptions of the physical and biological features (PBFs) that are essential to the conservation of the species and which may require special management considerations or protection. We also revised the language describing PBF 1(b) to clarify the intent of the original language used in the 2011 proposed critical habitat rule (76 FR 27190, May 10, 2011) as follows: Sparse vegetation, with introduced, invasive, nonnative plant species cover absent or limited to low to moderate levels. The 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) described PBF 1(b) as: ''Sparse vegetation with low to moderate introduced, invasive, nonnative plant species cover'' (76 FR 27190). The intent of this updated language is to clarify that introduced, invasive, nonnative plant species are absent from slick spot microsites or are limited to low or moderate levels.

Summary of New Information

As described in our 2014 revised critical habitat proposal (79 FR 8402, Feb. 12, 2014), we based our criteria for the identification of critical habitat for slickspot peppergrass on the Element Occurrence (EO) rankings of the Idaho Natural Heritage Program (INHP). An EO is the distinct geographic location where a species occurs. In the case of slickspot peppergrass, EOs are groups of slickspot peppergrass plants that all occur within 1 kilometer (km) (0.6 mile (mi)) of each other; that is, all slickspot peppergrass plants within a 1-km (0.6-mi) distance of one another are aggregated into a single EO (Colket and Robertson 2006, *in litt.,* pp. 1–2; Kinter and Miller 2016, p. 1). In 2016, new information became available on slickspot peppergrass EO rankings when IDFG completed a systematic assessment based on field data collected from summer 2012 through spring 2016. IDFG used NatureServe guidance to rank EOs based on three factors: Size, condition, and landscape context (Kinter and Miller 2016, p. 3). We believe that the IDFG's 2016 report now constitutes the best available information regarding the size and quality of slickspot peppergrass occurrences. Incorporating this new information led to the removal of critical habitat areas associated with ten EOs that, based on a ranking in the 2016 assessment study by IDFG, no longer meet critical habitat criteria, as well as the addition of critical habitat areas associated with 24 EOs and two sub-EOs that, based on their 2016 IDFG ranking, meet critical habitat criteria.

We also used a more biologically-based GIS method for mapping critical habitat in our revised proposal. This GIS-based method involved mapping slickspot peppergrass EOs surrounded by 820-foot (ft) pollinator buffers, creating polygons that include only those areas that meet the definition of critical habitat for the species (see Physical and Biological Features Essential to the Conservation of the Species below). The new mapping methodology led to a reduction of acreage proposed for critical habitat from 61,301 ac in the 2014 proposal to 42,129 ac, a 31 percent decrease.

This reopened comment period provides all interested parties with an additional opportunity to submit written comments on this revised proposed rule, specifically regarding the new proposed EOs that have been included or EOs that have been removed from critical habitat based on the best scientific data that has become available since the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to

support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed in our 2009 listing determination (74 FR 52014, Oct. 8, 2009), there is currently no imminent threat of take attributed to collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. We determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to slickspot peppergrass and that those threats in some way can be addressed by section 7(a)(2) consultation measures. The species occurs wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) has been met and because there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for slickspot peppergrass.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for slickspot peppergrass is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to

identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for slickspot peppergrass.

Physical and Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

We derive the specific physical or biological features essential for slickspot peppergrass from studies of this species' habitat, ecology, and life history as described in the ''Critical Habitat'' section of the proposed rule published in the **Federal Register** on May 10, 2011 (76 FR 27184), on February 12, 2014 (79 FR 8402), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on October 8, 2009 (74 FR 52014), the listing reinstatement rule published August 17, 2016 (81 FR 55058), and our February 2020 slickspot peppergrass SSA report (USFWS 2020).

With rare exception, slickspot peppergrass is known only to occur in slick spot microsites scattered within the greater semiarid sagebrush-steppe ecosystem of southwestern Idaho. Slick spots provide habitats that are representative of the historical, geographical, and ecological distribution of slickspot peppergrass, and provide nutrients and water for reproduction, germination, and seed dispersal. The restricted distribution of slickspot peppergrass is likely due to its adaptation to the specific conditions within these slick spot habitats. Slick spots are distinguished from the surrounding sagebrush habitat as having the following characteristics: Microsites where water pools when rain falls (Fisher *et al.* 1996, pp. 2, 4); sparse native vegetation; distinct soil layers with a columnar or prismatic structure, higher alkalinity and clay content, and natric (sodic, high sodium) properties (Fisher *et al.* 1996, pp. 15–16; Meyer and Allen 2005, pp. 3–5, 8; Palazzo *et al.* 2008, p. 378); and reduced levels of organic matter and nutrients due to lower biomass production (Meyer and Quinney 1993, pp. 3, 6; Fisher *et al.* 1996, p. 4). Although the low permeability of slick spots appears to help hold moisture (Moseley 1994, p. 8), once the thin crust dries out, the survival of slickspot peppergrass seedlings depends on the ability of the plant to extend the taproot into the argillic horizon (soil layer with high clay content) to extract moisture from the deeper natric zone (Fisher *et al.* 1996, p. 13).

Ecologically functional slick spots have the following three primary layers: the surface silt layer, the middle restrictive layer, and an underlying moist clay layer. Although slick spots can appear homogeneous on the surface, the actual depth of the silt and restrictive layer can vary throughout the slick spot (Meyer and Allen 2005, Tables 9, 10, and 11). The top two layers (surface silt and restrictive) of slick spots are normally very thin; the surface silt layer varies in thickness from a 0.25 to 3 centimeters (cm) (0.1 to 1.2 inches (in)) in slick spots known to support slickspot peppergrass, and the restrictive layer varies in thickness from 1 to 3 cm (0.4 to 1.2 in) (Meyer and Allen 2005, p. 3). Fisher *et al.* (1996, p. 4) describe the smooth surface layer of slick spots as crustlike, with prominent vesicular pores. Below the surface layer, the soil clay content increases abruptly and creates a strongly structured, finely textured boundary (horizon) formed by the concentration of silicate clay materials, known as an argillic horizon.

Slick spot soil profiles are distinctive and distinguished from the surrounding soil matrix by very thin surface layers that form prominently vesicular crusts, natric-like argillic horizons that occur just below the soil surface, and by increasingly saline and sodic conditions with depth (Fisher *et al.* 1996, pp. 11, 16). Disturbances that alter the physical properties of slick spot soil layers, such as deep disturbance and the addition of organic matter, may lead to destruction and permanent loss of slick spots. Slick spot soils are especially susceptible to mechanical disturbances when wet (Rengasamy *et al.* 1984, p. 63; Seronko 2004, *in litt.,* entire). Such disturbances disrupt the soil layers important to slickspot peppergrass seed germination and seedling growth, and alter hydrological function.

The biological soil crust, also known as a microbiotic crust or cryptogamic crust, is another component of quality habitat for slickspot peppergrass. Such crusts are commonly found in semiarid and arid ecosystems, and are formed by living organisms, primarily bryophytes (mosses), lichens, algae, and cyanobacteria (blue-green algae), that bind together surface soil particles (Moseley 1994, p. 9; Johnston 1997, p. 4). Microbiotic crusts play an important

role in stabilizing the soil and preventing erosion, increasing the availability of nitrogen and other nutrients in the soil, and regulating water infiltration and evaporation levels (Johnston 1997, pp. 8–10). In addition, an intact crust appears to aid in preventing the establishment of invasive plants (Brooks and Pyke 2001, p. 4, and references therein; see also Serpe *et al.* 2006, pp. 174, 176). These crusts are sensitive to disturbances that disrupt crust integrity, such as compression due to livestock trampling or off-road vehicle (ORV) use, and are also vulnerable to damage by fire. Recovery from disturbance is possible but occurs very slowly (Johnston 1997, pp. 10–11).

The native, semiarid sagebrush-steppe habitat of southwestern Idaho where slickspot peppergrass is found can be divided into two plant associations, each dominated by the shrub Wyoming big sagebrush (*Artemisia tridentata* ssp. *wyomingensis*): (1) Wyoming big sagebrush—Thurber's needlegrass (*Achnatherum thurberianum* (formerly *Stipa thurberiana*)); and (2) Wyoming big sagebrush—bluebunch wheatgrass (*Agropyron spicatum*) habitat types. The perennial bunchgrasses Sandberg's bluegrass (*Poa secunda*) and bottlebrush squirreltail (*Sitanion hysrix*) are commonly found in the understory of these habitats, and the species basin big sagebrush (*Artemisia tridentata* ssp. *tridentata*), grey rabbitbrush (*Chrysothamnus nauseosus*), green rabbitbrush (*Chrysothamnus viridiflorus*), strict buckwheat (*Eriogonum strictum*), bitterbrush (*Purshia tridentata*), and little-leafed horsebrush (*Tetradymium glabrata*) form a lesser component of the shrub community. Under relatively undisturbed conditions, the understory is populated by a diversity of perennial bunchgrasses and forbs, including species such as Indian ricegrass (*Achnatherum* (formerly *Oryzopsis*) *hymenoides*), common yarrow (*Achillea millefolium*), varileaf phacelia (*Phacelia heterophylla*), Pursh's milkvetch (*Astragalus purshii*), longleaf phlox (*Phlox longifolia*), and purple threeawn (*Aristida purpurea* var. *longiseta*).

Slickspot peppergrass is primarily an outcrossing species requiring pollen from separate plants for more successful fruit production; it exhibits low seed set in the absence of insect pollinators (Robertson 2003, p. 9; Robertson and Klemash 2003, p. 339; Robertson and Ulappa 2004, p. 1707; Billinge and Robertson 2008, pp. 1005–1006). Slickspot peppergrass is capable of self-pollinating, however, with a selfing rate (rate of self-pollination) of 12 to 18 percent (Billinge 2006, p. 40; Robertson *et al.* 2006, p. 40). Known slickspot peppergrass insect pollinators include several families of bees (Hymenoptera), including Apidae, Halictidae, Sphecidae, and Vespidae; beetles (Coleoptera), including Dermestidae, Meloidae, and Melyridae; flies (Diptera), including Bombyliidae, Syrphidae, and Tachinidae; and others (Robertson and Klemash 2003, p. 336; Robertson and Leavitt 2011, p. 383). Seed set does not appear to be limited by the abundance of pollinators (Robertson *et al.* 2004, p. 14). However, studies have shown a strong positive correlation between insect diversity and the number of slickspot peppergrass flowering at a site (Robertson and Hannon 2003, p. 8). Measurement of fruit set per visit revealed considerable variability in the effectiveness of pollination by different types of insects.

Since slickspot peppergrass has a wide array of insect pollinators, general pollinator management practices for conservation of pollinators should be practiced at sites designated as critical habitat. These practices include maintaining ''a diversity of native plants whose blooming times overlap to provide flowers for foraging throughout the seasons; nesting and egg-laying sites, with appropriate nesting materials; sheltered, undisturbed places for hibernation and overwintering; and a landscape free of poisonous chemicals'' (Shepherd *et al.* 2003, pp. 49–50). An intact native sagebrush community, as opposed to a monoculture of nonnative annual grasslands such as cheatgrass, is more likely to support a wider array of pollinators. Many pollinators depend on native plants and may be unable to access resources from introduced species; many bees, for example, not only require large numbers of flowers to provide nectar and pollen, but also need a variety of flowering plants to sustain them throughout the growing season (Kearns and Inouye 1997, p. 298).

To ensure that sufficient habitat and a diversity of native flowering plants are available to support the pollinator community required for the viability of slickspot peppergrass populations, we determined that each EO should be surrounded by a minimum pollinator use area extending 250 meters (m) (820 feet (ft)) from the periphery. We chose this extent as a reasonable estimate of the area needed to sustain an active pollinator community for slickspot peppergrass. Although the species is served by a variety of pollinators, we delineated this pollinator-use area based on one of slickspot peppergrass's important pollinators with a relatively limited flight distance, the solitary bee, assuming that potential pollinators with long-range flight capabilities would be capable of using this habitat as well. Research suggests that solitary bees have fairly small foraging distances (Steffan-Dewenter *et al.* 2002, pp. 1427–1429; Gathmann and Tscharntke 2002, p. 762); a study by Gathmann and Tscharntke suggested a maximum foraging range between 150 and 600 m (495 and 1,970 ft). Based on this data, we chose 250 m (820 ft) as a reasonable mid-range estimate of the distance needed to provide sufficient habitat for the pollinator community.

The areas proposed as critical habitat will ensure maintenance and continuity of foraging habitats for insect pollinators adjacent to occupied slick spots, which helps to increase seed viability and production and is essential for maintaining genetic diversity in the species over the long term. Additionally, the provision of sufficient native sagebrush-steppe habitat protects slickspot peppergrass from wildfire, nonnative plant invasions, and colonization by harvester ants, and it helps to maintain local ecosystem characteristics within the larger landscape, which are crucial for protecting the species and its persistent seed bank. The seed bank is an essential feature of slickspot peppergrass's biology because it provides the species with resilience in the face of stochastic impacts and variation in environmental conditions.

Summary of Essential Physical and Biological Features

Based on our current knowledge of habitat characteristics required to sustain the species' life-history processes, we determine that the physical or biological features of critical habitat specific to slickspot peppergrass are:

(1) Ecologically functional microsites or ''slick spots'' that are characterized by:

(a) High sodium and clay content, and a three-layer soil horizonation sequence, for successful seed germination, seedling growth, and maintenance of the seed bank. The surface horizon consists of a thin, silty, vesicular, pored (small cavity) layer that forms a physical crust (the silt layer). The subsoil horizon is a restrictive clay layer with an abruptic (referring to an abrupt change in texture) boundary with the surface layer, that is natric or natric-like in properties (a type of argillic (clay-based) horizon with distinct structural and chemical features) (the restrictive layer). The second argillic subsoil layer (that is less distinct than the upper argillic horizon) retains moisture through part of the year (the moist clay layer); and

(b) Sparse vegetation, with introduced, invasive, nonnative plant species cover absent or limited to low to moderate levels.

(2) Relatively intact, native Wyoming big sagebrush (*Artemisia tridentata* ssp. *wyomingensis*) vegetation assemblages, represented by native bunchgrasses, shrubs, and forbs, within 250 m (820 ft) of slickspot peppergrass element occurrences to protect slick spots and slickspot peppergrass from disturbance from wildfire, slow the invasion of slick spots by nonnative species and native harvester ants, and provide the habitats needed by slickspot peppergrass' pollinators.

(3) A diversity of native plants whose blooming times overlap to provide pollinator species with flowers for foraging throughout the seasons and to provide nesting and egg-laying sites; appropriate nesting materials; and sheltered, undisturbed places for hibernation and overwintering of pollinator species. In order for genetic exchange of slickspot peppergrass to occur, pollinators must be able to move freely between slick spots. Alternative pollen and nectar sources (other plant species within the surrounding sagebrush vegetation) are needed to support pollinators during times when slickspot peppergrass is not flowering, when distances between slick spots are large, and in years when slickspot peppergrass is not a prolific flowerer.

(4) Sufficient pollinators for successful fruit and seed production, particularly pollinator species of the sphecid and vespid wasp families, species of the bombyliid and tachnid fly families, honeybees, and halictid bee species, most of which are solitary insects that nest outside of slick spots in the surrounding sagebrush-steppe vegetation, both in the ground and within the vegetation.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

A detailed discussion of the threats affecting the physical and biological features essential to the conservation of slickspot peppergrass, and that may require special management consideration or protection, can be found in the final listing rule published in the **Federal Register** on October 8, 2009 (74 FR 52014), the 2016 final rule reinstating threatened status for the species under the Act (81 FR 55058, Aug. 17, 2016), and in the recently completed SSA report (USFWS 2020, pp. 59–83, 85–103). The primary threats to the physical and biological features for slickspot peppergrass include the following direct and indirect effects: the current wildfire regime (*i.e.,* increasing frequency, size, and duration), invasive, nonnative plant species (for example, cheatgrass), and habitat loss and fragmentation due to agricultural and urban development. One of the indirect threats experienced by slickspot peppergrass is the negative impact on insect pollinators caused by conversion and fragmentation of native habitats due to invasive, nonnative plant species and various forms of development. Another indirect threat is the potential increase in seed predation by harvester ants resulting from the conversion of sagebrush-steppe to grasslands. Livestock pose a threat to slickspot peppergrass, primarily through mechanical damage to individual plants and slick spot habitats; however, current livestock management conditions and associated conservation measures address this potential threat such that it does not pose a significant risk to the viability of the species as a whole. Other, less significant factors that have the potential to impact the species include the effects from rangeland revegetation projects, wildfire management practices, recreation, and military use.

Special management to protect the proposed critical habitat areas and the features essential to the conservation of slickspot peppergrass from the effects of the current wildfire regime may include preventing or restricting the establishment of invasive, nonnative plant species, post-wildfire restoration with native plant species, and reducing the likelihood of wildfires affecting the nearby plant community components. Local fire agencies can achieve the latter by providing a rapid response or mutual support agreement for wildfire control.

Special management to protect the features essential to the conservation of slickspot peppergrass in the areas proposed as critical habitat from the effects of invasive, nonnative unseeded plant species and seeded nonnative plants (also referred to as ''highly competitive nonnative seeded plants'' (USFWS 2020, p. 68)) may include the following: (1) Protecting remnant blocks of native vegetation, (2) educating the public about invasive, nonnative species, (3) supporting research and funding for nonnative plant species control and native species restoration, (4) preventing or restricting the establishment of nonnative plant species, (5) washing vehicles prior to travel into areas containing slickspot peppergrass, and (6) reducing the likelihood of wildfires.

Special management to protect the features essential to the conservation of slickspot peppergrass from the effects of livestock use in the areas proposed as critical habitat may include conservation measures and actions to minimize the effects of livestock use on these lands. Existing conservation plans and land use plans contain numerous measures to avoid, mitigate, and monitor the effects of livestock use on slickspot peppergrass. Livestock-grazing conservation measures implemented through the State of Idaho CCA; State of Idaho *et al.* 2006, *in litt.,* pp. 31–61) and the Mountain Home Air Force Base Integrated Natural Resources Management Plan (INRMP; Air Force 2017, p. 192) apply to all Federal and State-managed lands within the occupied range of slickspot peppergrass (approximately 96 percent of the total occupied area). Existing conservation measures include prescribing a minimum distance for the placement of salt and water troughs, identifying livestock use restrictions to reduce trampling of slick spots during wet periods, constructing fences, or potentially modifying current livestock use. We recognize the potential for negative impacts to slickspot peppergrass populations and slick spots that may result from seasonal, localized trampling events. However, under current management conditions, we do not consider livestock use to pose a significant threat to slickspot peppergrass. We encourage the continued implementation of conservation measures and associated monitoring to ensure potential impacts of livestock trampling to slickspot peppergrass are avoided or minimized.

Special management to protect the features essential to the conservation of slickspot peppergrass from the effects of residential and agricultural development in the areas proposed may include creating managed plant reserves and open spaces; limiting disturbances to and within suitable habitats; increasing compliance inspections with permit holders; requiring project fencing with adjacent construction activities; disallowing new roads; and evaluating the need for and conducting restoration or revegetation of native plants in open spaces, plant preserves, or disturbed areas, such as cuts for powerlines.

Special management to protect the features essential to the conservation of slickspot peppergrass in the areas proposed as critical habitat from the effects of Owyhee harvester ant seed

predation may include the following: (1) Protecting remnant blocks of native vegetation that include shrubs, (2) educating the public about wildfire, (3) supporting research and funding for nonnative plant species control and native shrub restoration, and (4) reducing the likelihood of wildfires.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of slickspot peppergrass. Activities with a Federal nexus that may affect those areas outside of critical habitat, such as development, agricultural, or road construction activities, are still subject to review under section 7 of the Act if they may affect slickspot peppergrass. The prohibitions of section 9 of the Act include the import or export of listed species, and the removal to possession or malicious damage or destruction of a species under Federal jurisdiction (16 U.S.C. 1538(a)(2)).

Criteria and Methodology Used to Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat.

We based our criteria for the identification of critical habitat units on IDFG's systematic assessment of on field data collected from summer 2012 through spring 2016. In the case of slickspot peppergrass, EOs are groups of slickspot peppergrass plants that all occur within 1 km (0.6 mi) of each other; that is, all slickspot peppergrass plants within a 1-km (0.6-mi) distance of one another are aggregated into a single EO (Colket and Robertson 2006, *in litt.,* pp. 1–2; Kinter and Miller 2016, p. 1). The IDFG used NatureServe guidance to rank EOs based on three factors: size, condition, and landscape context (Kinter and Miller 2016, p. 3). Each EO for slickspot peppergrass is given a ranking of A, B, C, D, E, F, H, or X by the INHP; higher rankings (the highest rank is A) indicate sites with greater habitat quality and larger population sizes, which we infer are more likely to persist and sustain the species. Rankings of B, BC, C, CD, and D refer to states of decreased abundance and quality of detectable plants, native plant community, habitat condition, and overall landscape context within 1 km (0.6 mi) of occupied slick spots. Plant abundance and habitat quality decrease as the rankings move from B to D, with a B ranking signifying a greater number of plants and better habitat conditions and a D ranking signifying few plants and poor conditions. Areas ranked E are those records with confirmed slickspot peppergrass presence but for which no additional habitat information is available. F rankings indicate areas where slickspot peppergrass was previously found, but no individuals were found when last visited by a qualified surveyor. Areas ranked H indicate historical occurrences where old location information is too vague to allow the EO to be found again. X rankings connote extirpated occurrences due to habitat destruction associated with development or agricultural conversion. See our 2011 proposed critical habitat rule (76 FR 27193, May 10, 2011) for further explanation of the ranking system.

For this rule, we included all slickspot peppergrass EOs with INHP rankings of B, BC, C, and CD in the proposed critical habitat except for 2 EOs that lack the PBFs essential to the conservation of the species (see below for further discussion of these 2 EOs). Since 2006, there have been no A- or AB-ranked EOs of slickspot peppergrass (Kinter and Miller 2016, p. 8; Colket *et al.* 2006, p. 11; IDFG's Idaho Fish and Wildlife Information System database (IDFG Database 2019)). We considered areas with rankings of B, BC, C, and CD to provide the PBFs essential to the conservation of the species, as they are the EOs most likely to provide for viable populations of slickspot peppergrass that will contribute to the conservation and recovery of the species. Each EO provides one or more of the PBFs as described in the proposed rule. Seventy-five EOs (24 B-ranked, 4 BC-ranked, 39 C-ranked, and 8 CD-ranked) met our criteria for critical habitat designation as they were identified as CD-ranked or better. We did not include sites ranked D or lower in the critical habitat designation due to the poor condition of the habitat within these sites, the lower viability of the small slickspot peppergrass populations remaining at such sites, and the fragmented nature of the surrounding landscape.

Two CD-ranked EOs (EO 23 and EO 57) are not considered for critical habitat designation as the PBFs essential to the conservation of the species are not present in these two EOs. The most recent IDFG assessment surveys found that these two EOs are dominated by invasive nonnative plants, and associated IDFG survey maps showed no slick spot microsites located within these EOs. Furthermore, slick spot microsites observed in the vicinity of EO 57 were described as essentially invisible due to high cheatgrass or forage kochia (*Kochia prostrata*) cover (IDFG 2016, EO 57 Rare Plant Observation Form). Increased cover of cheatgrass, an invasive nonnative annual grass species, is associated with reduced abundance of slickspot peppergrass (Sullivan and Nations 2009, pp. 109–112; Bond 2017, p, 12). Forage kochia, a highly competitive nonnative seeded species, can dominate slick spot microsites and has been documented to displace slickspot peppergrass (Debolt 2002, *in litt.,* entire; Colket 2009, pp. 16, 22, 130; Gray 2011, pp. 67–68; Kinter *et al.* 2014, p. 13). Therefore, we dropped these two CD-ranked EOs from consideration for critical habitat designation.

The total number of EOs (75 EOs) included in this revision reflects the merging of two C-ranked EOs (EOs 19 and 41) into B-ranked EO 18. Note that EOs 19 and 41 were distinct when IDFG began their EO assessment study, and have since been merged with EO 18 (Kinter and Miller 2016, p. 49). IDFG retained these two EOs as distinct throughout their study for consistency across their field notes, data, photos, maps, and tables. Thus, IDFG's EO assessment report shows a total of 41 C-ranked EOs (Kinter and Miller 2016, pp. 62–65), in contrast to the 39 C-ranked EOs described here.

Since our 2014 revised critical habitat proposal (79 FR 8402, Feb. 12, 2014), ten EOs decreased in ranking (now ranked D), so they no longer meet our critical habitat criteria; these EOs have been removed from this revised critical habitat proposal. Twenty-two EOs and two sub-EOs (sub-EOs are discrete patches or subpopulations within a larger EO as described by NatureServe 2002) had improved rankings (now ranked CD or higher) that resulted in their inclusion in this revised critical habitat proposal. Kinter and Miller (2016, p. 46) indicated that, while some of the improved ranks may be due to positive changes in the assigned values for EO size, condition, and/or landscape context, it should be noted that the previous assessment (Colket et al. 2006, entire) evaluated some EOs based on a field visit to only part of the EO, and other EOs were evaluated based on reports in the INHP database at that

time. For their 2016 EO assessment study, IDFG conducted intensive field assessments across entire EOs whenever possible to inform the EO-ranking assessment process. For example, searching a larger portion of the EO could result in additional plants being found and a larger value for the 'EO size' rank factor, which would result in an 'improved' EO rank (Kinter and Miller 2016, p. 49). In addition, 30 EOs that previously lacked sufficient information to be ranked as A through D in 2006 were assigned new rankings in 2016 (Kinter and Miller 2016, p. i); some of these newly ranked EOs meet our critical habitat designation criteria.

Table 1 identifies each EO we are proposing to remove from, or incorporate into, this critical habitat proposal; their rankings used in our 2014 revised critical habitat proposal (79 FR 8404, Feb. 12, 2014); and their current rankings as described in IDFG's 2016 EO assessment report (Kinter and Miller 2016, Table 5).

TABLE 1—PROPOSED ADDITION OR REMOVAL OF SLICKSPOT PEPPERGRASS CRITICAL HABITAT AREAS BASED ON 2016 ELEMENT OCCURRENCE ASSESSMENTS

Critical habitat unit or subunit name	EO No.	EO ranking used in 2014 revised critical habitat proposal	2016 EO ranking
Unit 1—Payette County			
Proposed Additions	EO 69	D	C
Proposed Removals			
Unit 2—Ada County—Subunit 2a			
Proposed Additions	EO 36	D	C
Proposed Removals	EO 108	BC	D
Unit 2—Ada County—Subunit 2b			
Proposed Additions	EO 43	D	CD
	EO 58	D?	CD
Proposed Removals			
Unit 2—Ada County—Subunit 2c			
Proposed Additions	EO 49	F	C
	EO 102	D	C
Proposed Removals	EO 22	C	D
Unit 2—Ada County—Subunit 2d			
Proposed Additions	EO 28	D	C
	EO 119	Not ranked	CD
Proposed Removals			
Unit 3—Elmore County—Subunit 3a			
Proposed Additions	EO 15	D	C
Proposed Removals	EO 31	C	D
	EO 112	C	D
Unit 3—Elmore County—Subunit 3b			
Proposed Additions	EO 121	(previously unknown EO discovered in August 2014).	C
Proposed Removals	EO 51	BC	D
	EO 62	C	D
	EO 113	C	D
	EO 117	C	D
Unit 3—Elmore County—Subunit 3c			
Proposed Additions	EO 63	D	C
	EO 106	Not ranked	CD
Proposed Removals			
Unit 4—Owyhee County			
Proposed Additions	EO 73	D	CD
	EO 75	F	B
	EO 78	F	C
	EO 79	F	C
	EO 81	E	BC
	EO 83	E	B
	EO 87	E	C
	EO 90	E	C
	EO 91	E	CD
	EO 94	E	C
	sub-EO 701	D	C
	sub-EO 703	D	C
Proposed Removals	EO 80	B	D
	EO 95	C	D

Note: The "?" qualifier is used with the most appropriate rank if there is incomplete information on the EO size, condition, and/or landscape context factors.

Critical habitat unit boundaries for Subunits 2a, 2b, 2c, 3a, 3b, and 3c and Unit 4 were revised to incorporate critical habitat areas associated with eight EOs (EOs 15, 36, 49, 58, 63, 73, 106, and 121). Critical habitat areas associated with these eight EOs are located wholly or partially outside of critical habitat unit boundaries

described in the 2011 proposed critical habitat rule (76 FR 27194–27198, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8404, Feb. 12, 2014). While the critical habitat unit boundaries for Subunits 2a, 2b, 2c, 3a, 3b, and 3c and Unit 4 have been revised, the area currently proposed as critical habitat within these unit boundaries has decreased from our 2014 revised critical habitat proposal (79 FR 8402, Feb. 12, 2014).

As in the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014), all lands we are proposing for designation as critical habitat are currently occupied by slickspot peppergrass and contain physical and biological features essential to the conservation of the species that may require special management considerations or protection. See the Proposed Critical Habitat Designation section of the 2011 proposed critical habitat rule (76 FR 27194–27198, May 10, 2011) for more information.

In the 2009 final listing rule (74 FR 52014, Oct. 8, 2009), we described the total area of known EOs (that is, area covered by the EOs themselves) as being approximately 6,500 ha (16,000 ac). This area reflects only the immediate known locations of individuals of the plant, as recognized in the IDFG Database as of 2009, and is a small portion of the overall geographic range of the species. In the 2011 proposed critical habitat rule, we described in detail the criteria used to identify critical habitat, including a 250-m (820-ft) buffer around EO polygons to provide sufficient area for pollinator support and to minimize disturbance to the plant's habitat (76 FR 27193–27194, May 10, 2011). With the proposed addition and removal of EOs associated with the 2016 EO rankings, the total area now proposed for designation as critical habitat is 17,049 ha (42,129 ac), which represents a 31 percent decrease from the total area (24,808 ha (61,301 ac)) of our 2014 revised critical habitat proposal (79 FR 8402, Feb. 12, 2014).

For this revision, we relied on GIS-based location information (polygons) that more precisely maps areas that meet the biological definition of critical habitat than did our previous mapping methodology, which used the Public Land Survey System Quarter-Quarter section method. This GIS-based method involves delineation of A- through CD-ranked slickspot peppergrass EOs surrounded by 250-m (820-ft) pollinator buffers, creating polygons that include only those areas that meet our definition of critical habitat for the species. In contrast, critical habitat maps in 2011 and 2014 were created by selecting all Quarter-Quarter sections that intersected with A- through CD-ranked EOs or their surrounding 250-m (820-ft) pollinator buffers. The use of Quarter-Quarter sections, which represent land survey boundaries rather than biologically based boundaries, resulted in large areas outside of the GIS-generated polygons being included as proposed critical habitat in the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014). Use of GIS-based information represents a more precise method of delineating critical habitat that does not include extraneous areas.

The use of A- through CD-ranked EO polygons and their surrounding 250-m (820-ft) pollinator buffers to create a more biologically sound critical habitat designation method is feasible, and is consistent with current Service regulations (77 FR 25611, May 1, 2012; 81 FR 7414, Feb. 11, 2016; 84 FR 45020, August 27, 2019) as well as with other recent Service critical habitat rules (*e.g.,* White Bluffs bladderpod (78 FR 76995, Dec. 20, 2013), Oregon spotted frog (81 FR 29336, May 11, 2016)). In addition, the State of Idaho provided comments in 2011 indicating that use of the Quarter-Quarter methodology for critical habitat designation resulted in more area than was biologically required for the species. One commenter also indicated that the maps based on the Quarter-Quarter critical habitat delineation methodology did not relate to the ''essential elements'' necessary to conserve slickspot peppergrass. We agree with these commenters, and because critical habitat regulations changed in 2012 to facilitate use of GIS-based polygons for critical habitat mapping (77 FR 25611, May 1, 2012), we used the GIS-based polygon method for our current proposed critical habitat revision as described herein.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features essential for slickspot peppergrass. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species. Four units and seven subunits are proposed for designation based on one or more of the physical or biological features being present to support slickspot peppergrass's life-history processes. All units and subunits contain all of the identified physical or biological features and support multiple life-history processes.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. These are new maps of the critical habitat units that have changed since the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014). We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based, as well as maps illustrating the changes from the previously proposed unit boundaries, available to the public on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2010–0071 or at *http://www.fws.gov/idaho.* As noted above, all four units and associated subunits contain additional areas we determined meet our definition of critical habitat. Similarly, critical habitat Units 2 (Subunits 2a and 2c), 3 (Subunits 3a and 3b), and 4 had some areas removed from consideration as critical habitat because, based on 2016 EO assessments, these areas no longer meet our criteria for critical habitat designation.

Revised Proposed Critical Habitat Designation

We are proposing four units as critical habitat for slickspot peppergrass. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for slickspot peppergrass. The

four areas we propose as critical habitat are the: (1) Payette County Unit, (2) Ada County Unit, (3) Elmore County Unit, and (4) Owyhee County Unit. The approximate areas and land ownership of each proposed critical habitat unit and associated subunits, if any, are shown in Table 2.

Because of our use of GIS-based critical habitat polygon methodology, rather than the Public Land Survey System Quarter-Quarter section method, the total area proposed for critical habitat designation is reduced by about 31 percent, from 24,808 ha (61,301 ac) in 2014 to the currently proposed 17,049 ha (42,129 ac). This reduction is directly related to focusing the areas proposed for designation to specific EOs and their surrounding pollinator buffers, rather than to the land survey boundaries associated with use of the Quarter-Quarter sections method for critical habitat mapping, which resulted in inclusion of large areas that do not necessarily meet our definition of critical habitat for the species. The current revised critical habitat extends across the known range of the species, and will continue to provide the PBFs essential to the conservation of the species. The reduced area of the current revised critical habitat proposal is the result of increased mapping precision and includes all occupied locations (A- through CD- ranked EOs and their surrounding 250-m pollinator buffers) where PBFs currently occur.

Based on the new EO assessment information and the use of a GIS-based methodology for critical habitat mapping, we have updated the previous proposed critical habitat maps. This update results in a proposal to designate a total of 17,049 ha (42,129 ac) of critical habitat for slickspot peppergrass in four units in Payette, Gem, Ada, Elmore, and Owyhee Counties in Idaho. We are proposing no new units; however, the boundaries of six subunits and one unit (subunits 2a, 2b, 2c, 3a, 3b, and 3c and Unit 4) have been revised to include additional areas that meet our critical habitat criteria. The areas currently proposed for critical habitat include 14,327 ha (35,403 ac) of U.S. Bureau of Land Management (BLM) lands; 119 ha (294 ac) of Bureau of Reclamation (BOR) lands; 1,200 ha (2,965 ac) of State lands; 281 ha (694 ac) of municipal lands; and 1,122 ha (2,773 ac) of private lands (areas do not add up to precisely 17,049 ha (42,129 ac) due to rounding). The approximate area totals for this revised critical habitat proposal by unit, subunit, and landownership category are shown in Table 2.

TABLE 2—REVISED PROPOSED CRITICAL HABITAT UNITS AND AREA (HECTARES (ACRES)) BY LAND OWNERSHIP FOR SLICKSPOT PEPPERGRASS

[Note: Area estimates reflect the total area of all proposed critical habitat polygons located within individual critical habitat unit or subunit boundaries. Area estimates for both the current revised critical habitat proposal and the 2014 revised proposed critical habitat rule (79 FR 8404–8405; Feb. 12, 2014) are shown for comparison. Area sizes may not sum due to rounding.]

Critical habitat unit or subunit	Federal ha (ac)		State ha (ac)		Municipal (county and city) ha (ac)		Private ha (ac)		Total ha (ac)	
	Current revision	2014 revision	Current revision	2014 revision	Current revision	2014 revision	Current revision	2014 revision	Current revision	2014 revision
Unit 1—Payette County Total	268 (664)	273 (675)	0 (0)	0 (0)	0 (0)	0 (0)	19 (46)	16 (40)	287 (710)	289 (715)
Unit 2—Ada County Total	4,669 (11,536)	5,984 (14,789)	847 (2,092)	1,182 (2,921)	281 (694)	414 (1,023)	529 (1,307)	674 (1,663)	6,325 (15,628)	8,254 (20,396)
Subunit 2a	335 (828)	660 (1,632)	0 (0)	0 (0)	215 (531)	338 (835)	329 (814)	291 (719)	879 (2,173)	1,289 (3,186)
Subunit 2b	3,075 (7,598)	3,802 (9,396)	69 (170)	114 (281)	0 (0)	0 (0)	0.2 (0.4)	115 (283)	3,144 (7,768)	4,031 (9,960)
Subunit 2c	438 (1,081)	512 (1,265)	49 (122)	98 (241)	66 (163)	76 (188)	144 (357)	235 (580)	697 (1,723)	921 (2,274)
Subunit 2d	821 (2,029)	1,010 (2,496)	728 (1,800)	970 (2,399)	0 (0)	0 (0)	55 (136)	33 (81)	1,604 (3,965)	2,013 (4,977)
Unit 3—Elmore County Total	2,899 (7,165)	3,933 (9,725)	75 (185)	97 (239)	0.1 (0.3)	0 (0)	575 (1,420)	419 (1,035)	3,549 (8,771)	4,449 (10,999)
Subunit 3a	725 (1,793)	760 (1,878)	0.6 (1)	0 (0)	0.1 (0.3)	0 (0)	280 (693)	241 (596)	1,007 (2,488)	1,001 (2,474)
Subunit 3b	449 (1,108)	1,044 (2,579)	74 (184)	97 (239)	0 (0)	0 (0)	66 (163)	49 (120)	589 (1,455)	1,190 (2,938)
Subunit 3c	1,725 (4,264)	2,132 (5,268)	0 (0)	0 (0)	0 (0)	0 (0)	228 (564)	129 (319)	1,954 (4,828)	2,261 (5,587)
Unit 4—Owyhee County Total	6,609 (16,332)	11,213 (27,709)	278 (688)	600 (1,482)	0 (0)	0 (0)	0 (0)	0 (0)	6,888 (17,020)	11,813 (29,191)
Critical Habitat Unit Totals	14,446 (35,697)	21,403 (52,898)	1,200 (2,965)	1,879 (4,642)	281 (694)	414 (1,023)	1,122 (2773)	1,109 (2,738)	17,049 (42,129)	24,808 (61,301)

All critical habitat units and subunits have been revised from our 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014) to include only those areas that currently meet our critical habitat criteria; addition and removal of critical habitat areas associated with 2016 EO assessments are shown in Table 1. This revised critical habitat proposal also varies from the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014) by including the expansion of EO 18 due to discovery of additional subpopulations and the subsequent merging of EOs 19 and 41 into EO 18 (IDFG Database 2016, EO 18) and a reduction in size of EO 64 associated with a mapping error (Kinter and Miller 2016, p. 9).

We present brief descriptions of all proposed critical habitat units, identify the EOs included in each, and provide the reasons why they meet the definition of critical habitat for slickspot peppergrass, below. Information regarding species abundance, vegetation community, conservation measures, and threats for each individual EO is

available in IDFG's 2016 EO Assessment report (Kinter and Miller 2016, entire).

Unit 1: Payette County

Unit 1 (Payette County Unit) consists of 287 ha (710 ac) located within portions of Payette and Gem counties. The northern boundary of Unit 1 is approximately 7.0 km (4.3 mi) south of New Plymouth, Idaho. Currently, 268 ha (664 ac) are federally managed by the BLM Four Rivers Field Office area, and 19 ha (46 ac) are privately owned. This unit is composed of five slickspot peppergrass EOs: 66, 68, 69, 70, and 114, all of which were occupied at the time of species listing. Unit 1 critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. Unit 1 is important to the conservation of the species because it contains the northernmost occurrences for slickspot peppergrass and potentially has the highest numbers of individual plants. This unit helps to maintain the geographical range of the species and provide opportunity for population growth. Unit 1 also provides a core population of the species. We consider a core population to be an EO or sub-EO that has been assessed as A- or B-ranked, which NatureServe describes as having excellent or good estimated viability (Kinter and Miller 2016, p. 7). In Unit 1, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, and residential and agricultural development. These threats are being addressed or coordinated with our partners and landowners, including BLM and BLM livestock permittees, to implement needed actions for species recovery.

Unit 2: Ada County

Unit 2 (Ada County Unit) consists of 6,325 ha (15,628 ac) divided into four subunits: 2a, 2b, 2c, and 2d. Approximately 4,669 ha (11,536 ac) of this unit are federally managed, of which 4,634 ha (11,450 ac) are managed by the BLM and 35 ha (86 ac) are managed by the BOR, 847 ha (2,092 ac) are managed by the State of Idaho, 210 ha (419 ac) are managed by Ada County, 66 ha (163 ac) are managed by the City of Boise, 5 ha (11 ac) are managed by the City of Eagle, and 529 ha (1,307 ac) are on private lands. This unit is composed of 24 slickspot peppergrass EOs split among the 4 subunits. All subunits contain the PBFs essential for the conservation of the species, as described in more detail below. This unit is important to the conservation of slickspot peppergrass because it contains a large remaining intact area of sagebrush-steppe habitat that has experienced little impact from wildfire.

Subunit 2a

Subunit 2a contains the city of Eagle, Idaho, and the southern boundary of the subunit is approximately 1.8 km (1.1 mi) northwest of Boise, Idaho. It is composed of seven EOs: 36, 38, 52, 65, 76, 107, and 118, all of which were occupied at the time of species listing. This subunit contains the Ada County Landfill Complex (Cole 2008, entire). Approximately 335 ha (828 ac) of subunit 2a are federally managed by BLM, 210 ha (419 ac) are municipal lands managed by Ada County, 5 ha (11 ac) are municipal lands managed by the City of Eagle, and 329 ha (814 ac) are privately owned. Subunit 2a is important to the conservation of the species because it contains several large populations of slickspot peppergrass in the Eagle and Boise Foothills area. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 2a also provides a core population of the species. Subunit 2a critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. In Subunit 2a, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, and residential and agricultural development. A portion of the subunit has also been impacted by human recreation associated with the construction of authorized and unauthorized trails for mountain biking and hiking (some slick spots have already been impacted).

Subunit 2b

The northern boundary of Subunit 2b is approximately 3.2 km (2.0 mi) south of Kuna, Idaho. Subunit 2b is composed of five EOs: 18, 24, 25, 43, and 58, all of which were occupied at the time of species listing. Approximately 3,075 ha (7,598 ac) of this subunit are federally managed by BLM, 69 ha (170 ac) are managed by the State of Idaho, and 0.2 ha (0.4 ac) are privately owned. BLM lands in Subunit 2b are within the Morley Nelson Snake River Birds of Prey National Conservation Area. Subunit 2b is important to the conservation of the species because it contains EO 18, which supports high numbers of individual plants. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 2b also provides a core population of the species. Although impacted by past fires, Subunit 2b critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. In Subunit 2b, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, and residential and agricultural development. These threats are being addressed or coordinated with our partners and landowners, including BLM and BLM livestock permittees, to implement needed actions for species recovery.

Subunit 2c

The northern boundary of Subunit 2c is approximately 6.0 km (3.7 mi) southwest of Boise, Idaho. It is composed of five EOs: 32, 48, 49, 64, and 102, all of which were occupied at the time of species listing. Subunit 2c comprises primarily BLM lands within the Four Rivers Field Office area, private lands, and municipal lands associated with the Boise Airport. Approximately 438 ha (1,081 ac) of this subunit are federally managed by BLM, 49 ha (122 ac) are managed by the State of Idaho, 66 ha (163 ac) are municipal lands managed by the City of Boise, and 144 ha (357 ac) are privately owned. Subunit 2c is important to the conservation of the species because it provides for connectivity between species populations at the eastern and western portions of the species' range. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 2c also provides a core population of the species. Subunit 2c critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. In Subunit 2c, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, and residential and agricultural development. These threats are being addressed or coordinated with our

partners and landowners, including BLM and BLM livestock permittees, to implement needed actions for species recovery.

Subunit 2d

The northern boundary of subunit 2d is approximately 23.0 km (14.3 mi) southeast of Boise, Idaho. Subunit 2d is composed of seven EOs: 27, 28, 67, 72, 77, 104, and 119, all of which were occupied at the time of species listing. Approximately 821 ha (2,029 ac) of this subunit are federally managed, of which 786 ha (1,943 ac) are managed by BLM and 35 ha (86 ac) are managed by BOR, 729 ha (1,800 ac) are managed by the State of Idaho, and 55 ha (136 ac) are privately owned. Proposed critical habitat within this subunit abuts that portion of EO 27 located within the Idaho Army National Guard-administered Orchard Combat Training Center (OCTC, formerly known as the Orchard Training Area). EO 27 supports some of the most intact sagebrush steppe habitat and some of the highest numbers of slickspot peppergrass plants rangewide; because of the implementation of an INRMP on OCTC, we determined in 2011 that the 4,644 ha (11,525 ac) of the OCTC that met our definition of critical habitat were exempt from designation of critical habitat under section 4(a)(3)(B)(i) of the Act (see Exemptions in the 2011 proposed critical habitat rule (76 FR 27200–27201, May 10, 2011)). Through use of GIS-based critical habitat designation methodology, we have determined that 3,455 ha (8,537 ac) within the OCTC currently meet our definition of critical habitat; however, these 3,455 ha (8,537 ac) are exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act (see Exemptions and *Consideration of National Security Impacts* sections below).

Subunit 2d is located in part within the boundary of the BLM Morley Nelson Snake River Birds of Prey National Conservation Area, which also contains the Idaho Army National Guard's OCTC. Subunit 2d is important to the conservation of the species due to its proximity to that portion of EO 27 located primarily within the OCTC boundary. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 2d also provides a core population of the species. Subunit 2d critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. In Subunit 2d, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, and residential and agricultural development. These threats are being addressed or coordinated with our partners and landowners, including BLM, Idaho Army National Guard, the State of Idaho, and BLM livestock permittees, to implement needed actions for species recovery.

Unit 3: Elmore County

Unit 3 (Elmore County Unit) consists of 3,549 ha (8,771 ac) divided into three subunits: 3a, 3b, and 3c. Approximately 2,900 ha (7,165 ac) of this unit are federally managed, of which 2,815 ha (6,957 ac) are managed by BLM and 64 ha (208 ac) are managed by BOR, 75 ha (185 ac) are managed by the State of Idaho, and 574 ha (1,420 ac) are privately owned. This unit is composed of 16 slickspot peppergrass EOs. All subunits contain the PBFs essential for the conservation of the species, as described in more detail below. Unit 3 is important to the conservation of the species because it contains EOs with higher quality habitat, represents a substantial portion of the species' range, and contains several EOs with high numbers of slickspot peppergrass individuals. Special management to address the threat posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, and residential and agricultural development is required in Unit 3.

Subunit 3a

The northern boundary of Subunit 3a is approximately 6.3 km (3.9 mi) south of Mayfield, Idaho, while the southern boundary is approximately 19.6 km (12.2 mi) northwest of Mountain Home, Idaho. Subunit 3a is composed of three EOs: 15, 20, and 30, all of which were occupied at the time of species listing. Approximately 726 ha (1,793 ac) of this subunit are federally managed, of which 702 ha (1,734 ac) are managed by BLM and 24 ha (59 ac) are managed by BOR, and 281 ha (693 ac) are privately owned. Subunit 3a is bisected by Interstate 84 and old Highway 30; past burns and associated drill-seeding of crested wheatgrass (*Agropyron cristatum*) are evident in portions of the subunit.

This subunit contains PBFs essential to the conservation of slickspot peppergrass. Subunit 3a is important to the conservation of the species because it contains some EOs supporting high numbers of slickspot peppergrass plants. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 3a also provides a core population of the species. Subunit 3a critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. Special management to address the threat posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, off-road vehicle use, and residential and agricultural development is required in Subunit 3a. These threats are being addressed or coordinated with our partners and landowners, including BLM, the State of Idaho, BLM livestock permittees, and private landowners, to implement needed actions for species recovery.

Subunit 3b

The boundaries of Subunit 3b include the city of Mountain Home, Idaho, while the northern boundary is approximately 55.7 km (34.6 mi) southeast of Boise, Idaho. Subunit 3b is composed of nine EOs: 2, 21, 29, 50, 61, 115, 116, 120, and 121, all of which were occupied at the time of species listing. Approximately 449 ha (1,109 ac) of this subunit are federally managed, of which 421 ha (1,040 ac) are managed by BLM and 28 ha (69 ac) are managed by BOR, 74 ha (184 ac) are managed by the State of Idaho, and 66 ha (163 ac) are privately owned. BLM lands within Subunit 3b are located within both the Four Rivers Field Office area and the Morley Nelson Birds of Prey National Conservation Area. Subunit 3b is important to the conservation of the species because it provides connectivity between other units across the range of the species. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 3b also provides a core population of the species. Subunit 3b critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. Subunit 3b contained substantial biological soil crust cover and relatively low cheatgrass cover; however, a wildfire that occurred in the area in 2012 (USFWS 2013, p. 3) likely reduced habitat quality in the subunit. In Subunit 3b, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible

livestock use, and residential and agricultural development. These threats are being addressed or coordinated with our partners and landowners, including BLM, the State of Idaho, BLM livestock permittees, and private landowners, to implement needed actions for species recovery.

Subunit 3c

The southern boundary of Subunit 3c is approximately 1.6 km (1.0 mi) northeast of Hammett, Idaho, while the western boundary is 19.6 km (12.2 mi) southeast of Mountain Home, Idaho. This subunit is composed of four EOs: 8, 26, 63, and 106, all of which were occupied at the time of species listing. Approximately 1,725 ha (4,264 ac) of this subunit are federally managed, of which 1,694 ha (4,184 ac) are managed by BLM and 32 ha (80 ac) are managed by BOR, and 228 ha (564 ac) are privately owned. BLM lands in Subunit 3c are primarily within the Four Rivers Field Office area. Subunit 3c is important to the conservation of the species because it contains the northeastern-most occurrences for slickspot peppergrass and has two EOs with large numbers of individual plants. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 3c also provides a core population of the species. Subunit 3c critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. Biological soil crust cover is high in some areas of the subunit. In Subunit 3c, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, recreational use, and residential and agricultural development. These threats are being addressed or coordinated with our partners and landowners, including BLM, the State of Idaho, BLM livestock permittees, and private landowners, to implement needed actions for species recovery.

Unit 4: Owyhee County

Unit 4 (Owyhee County Unit) consists of 6,888 ha (17,020 ac). The northern boundary of Unit 4 is approximately 83.8 km (52.1 mi) south of Mountain Home, Idaho, while the eastern boundary is 52.0 km (32.3 mi) west of Rogerson, Idaho. This unit is important to the conservation of slickspot peppergrass because it contains the largest amount of contiguous habitat with little fragmentation or development; it helps maintain the geographical range of the species and provide opportunity for population growth; and provides a core population of the species composed of 11 of the 19 sub-EOs within the EO 16 metapopulation, including sub-EO 704. This unit is composed of 19 EOs (EOs 73, 74, 75, 78, 79, 81, 83, 84, 85, 87, 90, 91, 92, 93, 94, 96, 97, 98, 99) and 11 sub-EOs (sub-EOs 700, 701, 702, 703, 704, 706, 712, 715, 716, 720, 725), which are components of the EO 16 metapopulation. The EO 16 metapopulation is a ''parent'' EO to all sub-EOs numbered 700 or greater. EO 16 contains a total of 19 sub-EOs, 11 of which meet our criteria for critical habitat designation. Each of these EOs and sub-EOs were occupied at the time of species listing. About 6,610 ha (16,332 ac) of this unit are federally managed by the BLM Jarbidge Field Office, while 278 ha (688 ac) are managed by the State of Idaho. The majority of sub-EO 704 is located within the Mountain Home Air Force Base's Juniper Butte Range (Juniper Butte Range). We determined in 2011 that 4,611 ha (11,393 ac) within Juniper Butte Range met our definition of critical habitat; however, these 4,611 ha (11,393 ac) were exempt from critical habitat designation under section 4(a)(3)(8)(i) of the Act (see Exemptions in the 2011 proposed critical habitat rule (76 FR 27201, May 10, 2011)). Using our current GIS-based critical habitat mapping methodology, 3,831 ha (9,466 ac) within the Juniper Butte Range currently meet our definition of critical habitat and are exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act (see Exemptions and *Consideration of National Security Impacts* sections below).

Unit 4 critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. In Unit 4, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, and incompatible livestock use. These threats are being addressed or coordinated with our partners and landowners, including BLM and BLM livestock permittees, to implement needed actions for species recovery (portions of Unit 4 contain past drill-seedings of crested wheatgrass (*Agropyron cristatum*) and other highly competitive nonnative species).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the Act's section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. The Bureau of Land Management has conducted section 7 compliance on slickspot peppergrass proposed critical habitat since it was initially proposed in 2011.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to

adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate formal consultation under the Act on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to: Actions that would remove a significant number of slick spot microsites, a significant portion of remnant native sagebrush steppe habitat, or a significant amount of pollen and nectar source plants, and actions that would result in significant ground disturbance. Such activities could include, but are not limited to, residential and commercial development, infrastructure projects, and conversion to agricultural fields. These activities could permanently eliminate or reduce the habitat necessary for the growth and reproduction of slickspot peppergrass.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws. The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for slickspot peppergrass to determine if they are exempt under section 4(a)(3)(B)(i) of the Act. The following areas are Department of Defense (DoD) lands with completed, Service-approved INRMPs within the proposed critical habitat designation.

Approved INRMPs

Military activities within the range of slickspot peppergrass include ordnance-impact areas, training activities, and military development. Military-training activities occur at, or near, four EOs: Three at the OCTC on the Snake River Plain, and a portion of one EO at the Juniper Butte Range on the Owyhee Plateau. INRMPs have been developed and implemented for both the Juniper Butte Range and the OCTC. The INRMPs provide management direction and conservation measures to address or eliminate the effects from military-training exercises on slickspot peppergrass and its habitat. Both the Idaho Army National Guard (Kinter et al. 2014, p. i) and the U.S. Air Force (Conley 2018, p. 3) conduct annual monitoring to ensure impacts to the species due to training activities are either avoided or minimized.

Idaho Army National Guard—Orchard Combat Training Center

The Idaho Army National Guard's OCTC on the Snake River Plain has an

INRMP in place that provides a conservation benefit for slickspot peppergrass. This INRMP has been in place for this military training facility since 1997. Because the 2013 INRMP is over 5 years old, the OCTC is currently managed under an Operational INRMP that includes continued implementation of all slickspot peppergrass conservation measures from the 2013 INRMP pending completion of the OCTC INRMP revision later in 2020 (Baun 2020, *in litt.,* entire). The OCTC contains 7,213 ac (2,919 ha) of occupied slickspot peppergrass habitat, 7,163 ac (2,899 ha) of which represents nearly 60 percent of the highest quality occupied slickspot peppergrass habitat in the Snake River Plain region. The continuing high quality of this habitat suggests the conservation measures are effective in maintaining generally-intact, native-plant vegetation and limiting anthropogenic disturbances on the OCTC (Sullivan and Nations 2009, p. 91).

The INRMP for the OCTC provides a framework for managing natural resources. Conservation measures included in the INRMP avoid or minimize impacts on slickspot peppergrass, slick spot microsites, and sagebrush-steppe habitat while allowing for the continued implementation of the Idaho Army National Guard's mission. These measures include management actions such as restricting off-road motorized vehicle use, intensive wildfire suppression efforts, and the restriction of ground-operated military training to areas where the plants are not found. For example, the INRMP includes objectives for maintaining and improving slickspot peppergrass habitat and restoring areas damaged by wildfire. The plan specifies that the OCTC will use native species and broadcast seeding, collecting, and planting small amounts of native seed not commercially available, and will monitor the success of seeding efforts (National Guard 2013, pp. 104, 107–108). Since 1991, the OCTC, using historical records, has restored several areas using native seed and vegetation that was present prior to past wildfires.

The Idaho Army National Guard continues to use restoration methods that avoid or minimize impacts to slickspot peppergrass or its habitat, with an emphasis on maintaining representation of species that were present in presettlement times (National Guard 2013, p. 34). Since 1987, the Idaho Army National Guard has demonstrated that efforts to suppress wildfire and the use of native species with minimal ground-disturbing activities are effective in reducing the wildfire threat, as well as in reducing rates of spread of nonnative, invasive species associated with wildfire management activities (National Guard 2013, p. 34). In 2008, the Idaho Army National Guard also initiated maintenance on a series of identified fuel breaks on the OCTC. These fuel breaks are designed to act as barriers to prevent fires that might be ignited by military training activities from spreading into adjacent slickspot peppergrass habitat (USBLM 2008, p. 20).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Idaho Army National Guard's OCTC INRMP and that conservation efforts identified in the INRMP are being actively implemented, are effective, and will provide a benefit to slickspot peppergrass occurring in habitats within or adjacent to the OCTC. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act. Through use of GIS-based critical habitat designation methodology, we have determined that 3,455 ha (8,537 ac) within the OCTC currently meet our definition of critical habitat; however, we are not including these 3,455 ha (8,537 ac) of habitat in this proposed critical habitat designation because of this exemption.

Mountain Home Air Force Base—Juniper Butte Range

The U.S. Air Force, Mountain Home Air Force Base, which includes the Juniper Butte Range in the Owyhee Plateau region, has an INRMP that has been in place for this military training facility since 2004. The Mountain Home Air Force Base 2017 INRMP remains active. The U.S. Air Force manages 818 ha (2,021 ac) of occupied slickspot peppergrass habitat within the Juniper Butte Range. Conservation measures and implementation actions for slickspot peppergrass include reseeding disturbed areas with native vegetation, eradicating noxious weeds prior to their spreading, cleaning vehicles and equipment to remove nonnative invasive plants, avoiding pesticide use within 8 m (25 ft) of slick spots, and delaying livestock turnout onto the range if slick spot microsites are saturated (Air Force 2017, pp. 183–185, 189, 191–192, 200). The INRMP contains specific measures developed to minimize the impacts from military training at the local level, or general measures designed to improve the ecological condition of native, sagebrush-steppe vegetation at a landscape scale, inclusive of areas supporting slickspot peppergrass, while allowing for the continued implementation of the Air Force mission. For example, the U.S. Air Force has a number of ongoing efforts to address wildfire prevention and suppression on the entire 4,913 ha (12,141 ac) Juniper Butte Range. Prevention measures that are implemented on the Juniper Butte Range include reducing standing fuels and weeds, planting fire-resistant vegetation in areas with a higher potential for ignition sources, such as along roads, and using wildfire indices to determine when to restrict military activities when the wildfire hazard rating is extreme (Air Force 2017, pp. 215–218). As a result of implementing these measures, the threat from wildfire to slickspot peppergrass associated with U.S. Air Force training activities has been effective in reducing fires within the Juniper Butte Range.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the U.S. Air Force INRMP for the Juniper Butte Range (Mountain Home Air Force Base) and that conservation efforts identified in the INRMP are being implemented, are effective, and will provide a conservation benefit to slickspot peppergrass occurring in habitats within or adjacent to the Juniper Butte Range. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act. Through use of our current GIS-based critical habitat mapping methodology, 3,831 ha (9,466 ac) within the Juniper Butte Range currently meet our definition of critical habitat and are exempt from critical habitat designation; however, we are not including these 3,831 ha (9,466 ac) of habitat in this proposed critical habitat designation because of this exemption.

We previously determined in 2011 that 4,664 ha (11,525 ac) of the Idaho Army National Guard's OCTC and 4,611 ha (11,393 ac) of the Mountain Home Air Force Base's Juniper Butte Range that met our critical habitat criteria were exempt from the critical habitat designation under section 4(a)(3)(B)(i) of the Act, based on their development and implementation of INRMPs (76 FR 27201, May 10, 2011). The areas determined to be exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act have been recalculated to incorporate our current GIS-based critical habitat mapping methodology. For this revised proposal, 3,455 ha (8,537 ac) of the Idaho Army National Guard's OCTC and 3,831 ha

(9,466 ac) of the Juniper Butte Range that met our critical habitat criteria are exempt from the critical habitat designation (Table 3). The acreage exempted within both INRMPs appears to be greater than the occupied habitat because the occupied habitat is based purely on EO acreage, and does not include the surrounding sagebrush-steppe habitat that would be included in critical habitat to provide for sufficient pollinator populations and protection of the slickspot peppergrass populations from other impacts, such as wildfire or recreational use.

TABLE 3—EXEMPTIONS BY CRITICAL HABITAT UNIT UNDER 4(a)(3)(B)(i)

[Areas described in our 2011 proposed critical habitat rule using the Quarter-Quarter critical habitat mapping methodology are also provided for comparison purposes]

Critical habitat unit	Specific area	Areas meeting the definition of critical habitat in hectares (acres)		Areas exempted in hectares (acres)	
		Current revised proposal	2011 proposal	Current revised proposal	2011 proposal
2	Orchard Combat Training Center	3,455 ha (8,537 ac)	4,664 ha 11,525 ac	3,455 ha (8,537 ac)	4,664 ha 11,525 ac
4	Juniper Butte Range	3,831 ha (9,466 ac)	4,611 ha (11,393 ac)	3,831 ha (9,466 ac)	4,611 ha (11,393 ac)

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless the Secretary determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

The first sentence in section 4(b)(2) of the Act requires that we take into consideration the economic, national security, or other relevant impacts of designating any particular area as critical habitat. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion will not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion we consider, among other things, whether exclusion of a specific area is likely to result in conservation or in the continuation, strengthening, or encouragement of partnerships. In the case of slickspot peppergrass, the benefits of critical habitat include public awareness of the presence of slickspot peppergrass and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the species due to the protection from destruction or adverse modification of critical habitat. Additionally, continued implementation of a management plan that provides equal to or more conservation than a critical habitat designation would reduce the benefits of including that specific area in the critical habitat designation.

When we evaluate a management plan or conservation agreement during our consideration of the benefits of inclusion, we assess a variety of factors, including but not limited to, whether the plan or agreement is finalized, how it provides for the conservation of the essential physical or biological features, whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or conservation agreement will be implemented into the future, whether the conservation strategies in the plan or agreement are likely to be effective, and whether the plan or agreement contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we will evaluate whether certain lands in the proposed critical habitat units are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

We are considering whether to exclude private, State, and municipal lands under section 4(b)(2) of the Act from the final critical habitat designation for slickspot peppergrass. To inform our decision, we specifically

solicit comments on the inclusion or exclusion of such areas. In the paragraphs below, we provide information related to our consideration of these lands for exclusion under section 4(b)(2) of the Act.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we previously prepared an analysis of the economic impacts of the proposed critical habitat designation and related factors. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an economic analysis. The draft economic analysis, dated July 22, 2011, was made available for public review and comment from October 26, 2011, through December 12, 2011 (76 FR 66250, Oct. 26, 2011). Following the close of the comment period, the final analysis (dated March 12, 2012) of the potential economic effects of the designation took into consideration the public comments and any new information (IEC 2012). The final economic analysis is available at *http://www.regulations.gov* under the docket number for this rulemaking, which is FWS–R1–ES–2010–0071.

The final economic analysis concluded that critical habitat designation would not likely affect levels of economic activity or conservation measures being implemented within the proposed critical habitat area. The analysis stated that the primary reason critical habitat is unlikely to generate economic impacts beyond administrative costs of consultation is that approximately 85.8 percent of the proposed critical habitat is Federal land managed by the BLM, which is a party to a binding conservation agreement established for the purpose of slickspot peppergrass conservation; all projects and activities occurring on these public lands within the proposed critical habitat, including livestock management, wildfire and invasive species management, and determining the placement of utility and transportation rights-of-way, are already subject to section 7 consultation for slickspot peppergrass (IEC 2012, p. ES–5). Following the application of our revised mapping methodology, BLM administers Federal lands that encompass approximately 84.7 percent of the current critical habitat proposal. We consider this 1.1 percent decrease in the current percentage of proposed critical habitat administered by BLM to be inconsequential relative to the conclusions of the 2012 economic analysis. Unless unforeseen changes occur to existing conservation measures or the management of land use activities, the incremental impacts of critical habitat designation described in the 2012 final economic analysis would continue to be limited to additional administrative costs of section 7 consultations for Federal agencies (primarily BLM), associated with considering the potential for adverse modification of critical habitat.

These costs were estimated to be $14,200 annually or $161,000 over a 20-year period (IEC 2012, pp. ES–5, ES–6). Though costs for consultations may have incrementally increased since 2012 (due to inflation and other economic factors), we do not expect the revised critical habitat to have any meaningful practical effect on consultation costs because BLM, as the primary Federal agency that conducts section 7 consultation on the potential effects of their actions on the species, continues to simultaneously enter into section 7 conference regarding Federal actions that may also affect proposed critical habitat. The BLM has indicated that any increase in cost associated with critical habitat section 7 compliance would be limited to increases in BLM staff costs, which have been minimal since 2012 when the economic analysis was completed, but not an increase in time needed to conduct section 7 compliance (Kershaw 2020, pers. comm.). Reduction in the 2020 proposed critical habitat acreage and addition of some new critical habitat areas are not expected to increase or decrease the number of section 7 consultations and associated costs. The majority of critical habitat acreage reductions associated with updated mapping methodology as well as the majority of critical habitat expansions associated with new EOs and subEOs are located in the BLM Jarbidge Field Office area. Most new projects in the Jarbidge Field Office area are BLM livestock grazing permit renewals for large, landscape-scale allotments that encompass from almost 2,833 to over 48,157 ha (7,000 to over 119,000 ac). While total critical habitat acreage would be reduced within these large allotments, costs are not anticipated to increase as consultation for both the species and its critical habitat would still be completed for these upcoming BLM permit renewals. Thus, there has been no significant increase or decrease in BLM administrative costs for slickspot peppergrass critical habitat section 7 compliance relative to the 2012 economic analysis, we conclude that the 2012 economic analysis remains valid for slickspot peppergrass proposed critical habitat.

Similarly, it remains unlikely that activities on private lands will result in additional section 7 consultations. In our final economic analysis, we did not anticipate additional consultation under section 7 on non-Federal lands; however, in the case that Federal permitting or funding is required for future projects on private lands, consultation considering effects of the project on slickspot peppergrass will occur and critical habitat designation will not likely affect the outcome of these consultations (IEC 2012, p. 4–4). In the eight years since the 2012 economic analysis, there has been a single section 7 consultation associated with Federal permitting on private lands

occupied by slickspot peppergrass. Should additional consultations occur after the final critical habitat designation, we anticipate that critical habitat will not likely affect the outcome of these future consultations IEC 2012, (pp. 4–4) for the following reasons. As the final economic analysis stated, within the non-Federal portion (14.2 percent) of the proposed critical habitat area, project proponents and land managers are already aware of the presence of the listed slickspot peppergrass and the need to consult for projects with a Federal nexus (IEC 2012, pp. 4–2). We do not foresee a circumstance in which critical habitat designation will change the outcome of future consultations, because activities with a Federal nexus are already undertaking section 7 consultation considering impacts on slickspot peppergrass and it is ''not possible for us to differentiate any measures implemented solely to minimize impacts to individual [plant]s from those implemented to minimize impacts to the critical habitat'' (IEC 2012, p. 4–2). The changes in the area designated as critical habitat between the 2011 proposed rule (76 FR 27184, May 10, 2011) and this revised proposed rule are not anticipated to lead to an outcome different than what was anticipated in our 2012 analysis. Therefore, the conclusions of the 2012 final economic analysis apply to this revision of our critical habitat proposal.

Our current proposal includes a net increase of 13 ha (35 ac) of additional private lands proposed for critical habitat designation relative to our 2014 proposal (79 FR 8402, Feb. 12, 2014). We believe that the relatively small amount of occupied area on private lands proposed here (1,122 ha (2,773 ac)) is not likely to alter the results of the existing economic analysis of the designation because section 7 consultation for activities on private lands will continue to be unlikely. The current overall total area of this revised proposed critical habitat on Federal lands has been reduced by about 31 percent from the total acreage in the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014); the majority of this reduced Federal land area is located in Unit 4.

All projects and activities occurring on public lands within proposed critical habitat are already subject to section 7 consultation for the species. However, due to the relatively large areas encompassed by BLM actions within Unit 4 (livestock management, wildfire and invasive species management, and placement of utility and transportation rights-of-way), a similar number of BLM projects will continue to require section 7 consultation on effects to both critical habitat and the species despite the reduction of BLM proposed critical habitat acres in Unit 4. We conclude that the incremental impacts of our current revised proposed designation of critical habitat for slickspot peppergrass will similarly be limited to the additional administrative costs of section 7 consultations associated with considering the potential for adverse modification of critical habitat, and that administrative costs of section 7 consultations will not change from levels described in the 2012 final economic analysis.

The final economic analysis is available at *http://www.regulations.gov* under the docket number for this rulemaking, which is FWS–R1–ES–2010–0071. We encourage submission of additional economic impact information through the public comment period, as such information may identify areas that may be considered for exclusion from the final critical habitat designation under section 4(b)(2) of the Act (see **ADDRESSES**). During the development of a final designation, we will consider the information presented in the DEA and an additional information on economic impacts received during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

Consideration of National Security Impacts

Under section 4(b)(2) of the Act, we consider the impact to national security that may result from a designation of critical habitat. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for slickspot peppergrass are not owned, managed, or utilized by the DoD or the Department of Homeland Security, except for those exempted above under section 4(a)(3) of the Act. Therefore, we anticipate no impact on national security or homeland security. However, during the development of a final designation, we will consider any additional information received through the public comment period on the impacts of the proposed designation on national security or homeland security to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, SHAs, or CCAAs, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities; in this instance, the proposed designation does not include tribal lands or trust resources. We also consider any social impacts that might occur because of the designation.

We have determined that there are currently no HCPs, SHAs, or CCAAs in the proposed critical habitat area. Therefore, we are not proposing the exclusion of any areas in the proposed critical habitat for slickspot peppergrass on the basis of permitted plans. However, during the development of a final designation, we will consider any additional information received through the public comment period on the whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19 on the basis of permitted plans.

Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service.

We evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant

partnerships when we undertake a discretionary section 4(b)(2) exclusion analysis. A non-exhaustive list of factors that we will consider for non-permitted plans or agreements is shown below. These factors are not required elements of plans or agreements, and all items may not apply to every plan or agreement.

(1) The degree to which the plan or agreement provides for the conservation of the species or the essential physical or biological features (if present) for the species;

(2) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented;

(3) The demonstrated implementation and success of the chosen conservation measures;

(4) The degree to which the record of the plan supports a conclusion that a critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership;

(5) The extent of public participation in the development of the conservation plan;

(6) The degree to which there has been agency review and required determinations (*e.g.,* State regulatory requirements), as necessary and appropriate;

(7) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance was required; and

(8) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

2006 Candidate Conservation Agreement (2006 CCA)—In response to our 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011), we received a request from the State of Idaho to exclude State lands covered by their CCA. The BLM, State of Idaho Governor's Office of Species Conservation, IDFG, Idaho Department of Lands, Idaho National Guard, and several nongovernmental cooperators signed a CCA in 2003 (State of Idaho *et al.* 2006, *in litt.*) and renewed the plan in 2006 (State of Idaho *et al.* 2006, *in litt.*). The CCA as signed in 2006 included rangewide efforts that were intended to address the need to maintain and enhance slickspot peppergrass habitat; reduce intensity, frequency, and size of natural- and human-caused wildfires; minimize loss of habitat associated with wildfire-suppression activities; reduce the potential of nonnative plant species invasion from wildfire; minimize habitat loss associated with rehabilitation and restoration techniques; minimize the establishment of invasive nonnative species; minimize habitat loss or degradation from off-highway vehicle use; mitigate the negative effects of military training and other associated activities on the OCTC; and minimize the impact of ground disturbances caused by livestock penetrating trampling when soils are saturated (State of Idaho *et al.* 2006, *in litt.,* p. 3).

We receive annual reports from the BLM regarding their implementation of CCA conservation measures. In addition, annual IDFG Habitat Integrity and Population monitoring includes collection of habitat condition and management threshold data, which are used to inform potential adaptive management actions within EOs. We will consider the most recent information regarding implementation and effectiveness of the 2006 CCA conservation measures from BLM, IDFG, and other sources, including whether any new measures have been added. Therefore, we request information with respect to the ongoing implementation of the CCA and the performance or completion of any additional activities that provide for the conservation of slickspot peppergrass under the CCA. Based on current information and any information submitted during the comment period, we will consider whether to exclude State lands that are covered by the CCA under section 4(b)(2).

Private Lands and Memoranda of Agreements (MOAs)—In our 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011), we also considered applying section 4(b)(2) of the Act to currently occupied private lands, which represented only about 5 percent of the overall 2011 proposed designation (76 FR 27202, May 10, 2011) (currently, private lands constitute about 7 percent of our revised total proposed designation). In our 2011 proposal, we requested specific information concerning any current signed conservation or management plans on private lands that we should consider for exclusion from the designation under section 4(b)(2). We received comments from the State of Idaho and private landowners in response, requesting exclusion of private lands. However, to date, we have not received any information pertaining to current plans covering private lands that we could use in the mandatory weighing and balancing analysis of the benefits of inclusion versus the benefits of exclusion we must perform in an exclusion analysis.

Certain private landowners previously signed MOAs committing to implementing a subset of conservation measures identified in the CCA described above. Six MOAs between nongovernmental cooperators and the State of Idaho for conservation of slickspot peppergrass covering approximately 17,045 acres of private lands were in place from 2004 through December 2007. We are not aware that these MOAs have been reissued or renewed. A GIS analysis that examined the locations of the MOA lands relative to this proposed critical habitat revision found that MOA lands that overlap with the current revised proposed critical habitat were limited to a single 40-acre parcel located within one of the six MOAs. We request information from private landowners on any additional acreages, updates to, or renewals of these MOAs under the 2006 CCA, or any other conservation efforts currently being undertaken or implemented. This information will be used in any consideration of exclusion of private lands under section 4(b)(2) of the Act.

Summary of Exclusions

We are not considering any exclusions at this time from the proposed revised designation under section 4(b)(2) of the Act based on economic impacts, national security impacts, or other relevant impacts such as partnerships, management, or protection afforded by cooperative management efforts. Some areas within the proposed revised designation are included in management plans such as the 2006 CCA. Our final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species. In this revised proposed rule we are seeking input from the public as to whether or not the Secretary should exclude State or private lands covered under applicable conservation plans from the final critical habitat designation (see **ADDRESSES** for instructions on how to submit comments and Information Requested for the types of input we seek).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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. OIRA determined that the 2011 proposed rule was not significant (76 FR 27203, May 10, 2011). This revised proposed rule is substantively similar to the 2011 proposed rule and proposes to designate less acreage as critical habitat. Thus, we determine that this revised proposed rule is not significant under the Executive Order 12866 criteria.

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. E.O. 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. We have developed this revised proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated if we adopt this revised proposed critical habitat designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13771

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

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the designation of this proposed critical habitat would significantly affect energy supplies, distribution, or use. Furthermore, although it does include areas where powerlines and power facility construction and maintenance may occur in the future, it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a 'significant regulatory action' under the Unfunded Mandates Reform Act. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This proposed rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would increase the stringency of conditions of assistance or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for slickspot peppergrass in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that, if adopted, this designation of critical habitat for slickspot peppergrass does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this revised proposed rule does not have significant federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Idaho. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the revised proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the revised proposed rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the revised proposed rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This revised proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We 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 (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit *(Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have determined that no tribal lands fall within the boundaries of the proposed critical habitat for slickspot peppergrass, so no tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* in Docket No. FWS–R1–ES–2010–0071 and upon request from the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rulemaking are the staff members of the Idaho Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. In § 17.96, as proposed to be added in alphabetical order under Family Brassicaceae on May 10, 2011, at 76 FR 27184, the critical habitat for ''*Lepidium papilliferum* (Slickspot Peppergrass)'', is revised to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Brassicaceae: *Lepidium papilliferum* (Slickspot Peppergrass)

(1) Critical habitat units are depicted for Payette, Gem, Ada, Elmore, and Owyhee Counties, Idaho, on the maps in this entry.

(2) Within these areas, the specific physical or biological features essential to the conservation of slickspot peppergrass consist of four components:

(i) Ecologically functional microsites or ''slick spots'' that are characterized by:

(A) A high sodium and clay content, and a three-layer soil horizonation sequence, which allows for successful seed germination, seedling growth, and maintenance of the seed bank. The surface horizon consists of a thin, silty vesicular, pored (small cavity) layer that forms a physical crust (the silt layer). The subsoil horizon is a restrictive clay layer, with an abruptic (referring to an abrupt change in texture) boundary with the surface layer, that is natric or natric-like in properties (a type of argillic (clay-based) horizon with distinct structural and chemical features); this is the restrictive layer. The second argillic subsoil layer (that is less distinct than the upper argillic horizon) retains moisture through part of the year (the moist clay layer); and

(B) Sparse vegetation, with introduced, invasive, nonnative plant species cover absent or limited to low to moderate levels.

(ii) Relatively intact, native Wyoming big sagebrush (*Artemisia tridentata* ssp. *wyomingensis*) vegetation assemblages, represented by native bunchgrasses, shrubs, and forbs, within 250 m (820 ft) of slickspot peppergrass element occurrences to protect slick spots and slickspot peppergrass from disturbance from wildfire, slow the invasion of slick spots by nonnative species and native harvester ants, and provide the habitats needed by slickspot peppergrass' pollinators.

(iii) A diversity of native plants whose blooming times overlap to provide pollinator species with flowers for foraging throughout the seasons and to provide nesting and egg-laying sites; appropriate nesting materials; and sheltered, undisturbed places for hibernation and overwintering of pollinator species. In order for genetic exchange of slickspot peppergrass to occur, pollinators must be able to move freely between slick spots. Alternative pollen and nectar sources (other plant species within the surrounding sagebrush vegetation) are needed to support pollinators during times when slickspot peppergrass is not flowering, when distances between slick spots are large, and in years when slickspot peppergrass is not a prolific flowerer.

(iv) Sufficient pollinators for successful fruit and seed production, particularly pollinator species of the sphecid and vespid wasp families, species of the bombyliid and tachnid fly families, honeybees, and halictid bee species, most of which are solitary insects that nest outside of slick spots in the surrounding sagebrush-steppe vegetation, both in the ground and within the vegetation.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas), cultivated agricultural fields, areas dominated by turf grass such as parks, and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

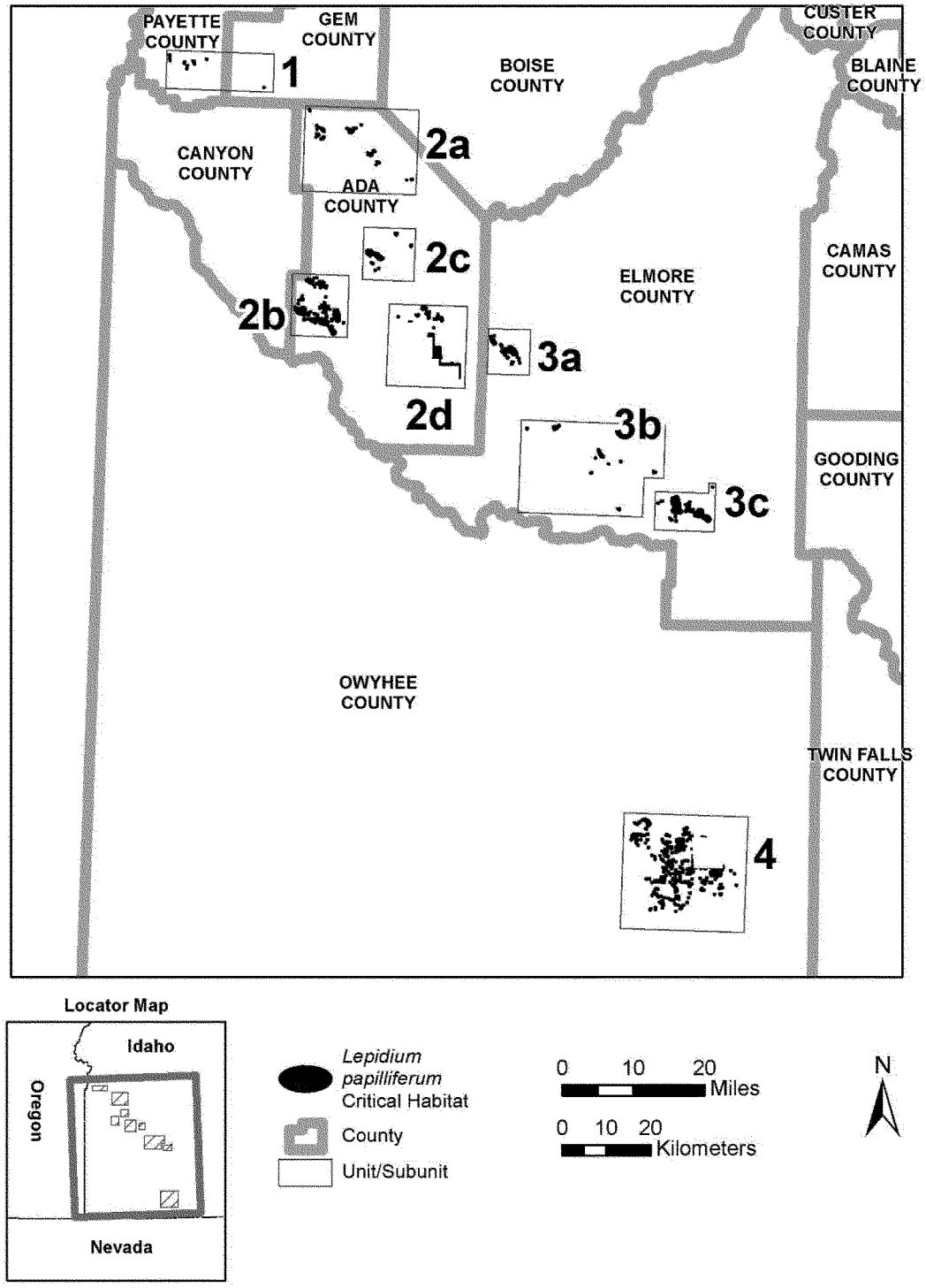
(4) *Critical habitat map units.* Data layers defining map units were created using Geographic Information Systems feature classes of Element Occurrences (EOs). These EO data were provided by the IDFG Database. For GIS analyses, we

dissolved a 250-meter exterior insect pollinator buffer on the EO polygon base, and calculated acreages based on these dissolved, buffered polygons. Critical habitat polygon outlines are exaggerated (using 1 or 2 point size, depending on map scale) to allow viewers to better see them. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site *http://www.fws.gov/idaho,* at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2010–0071, and at the Idaho Fish and Wildlife Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

BILLING CODE 4333–15–P

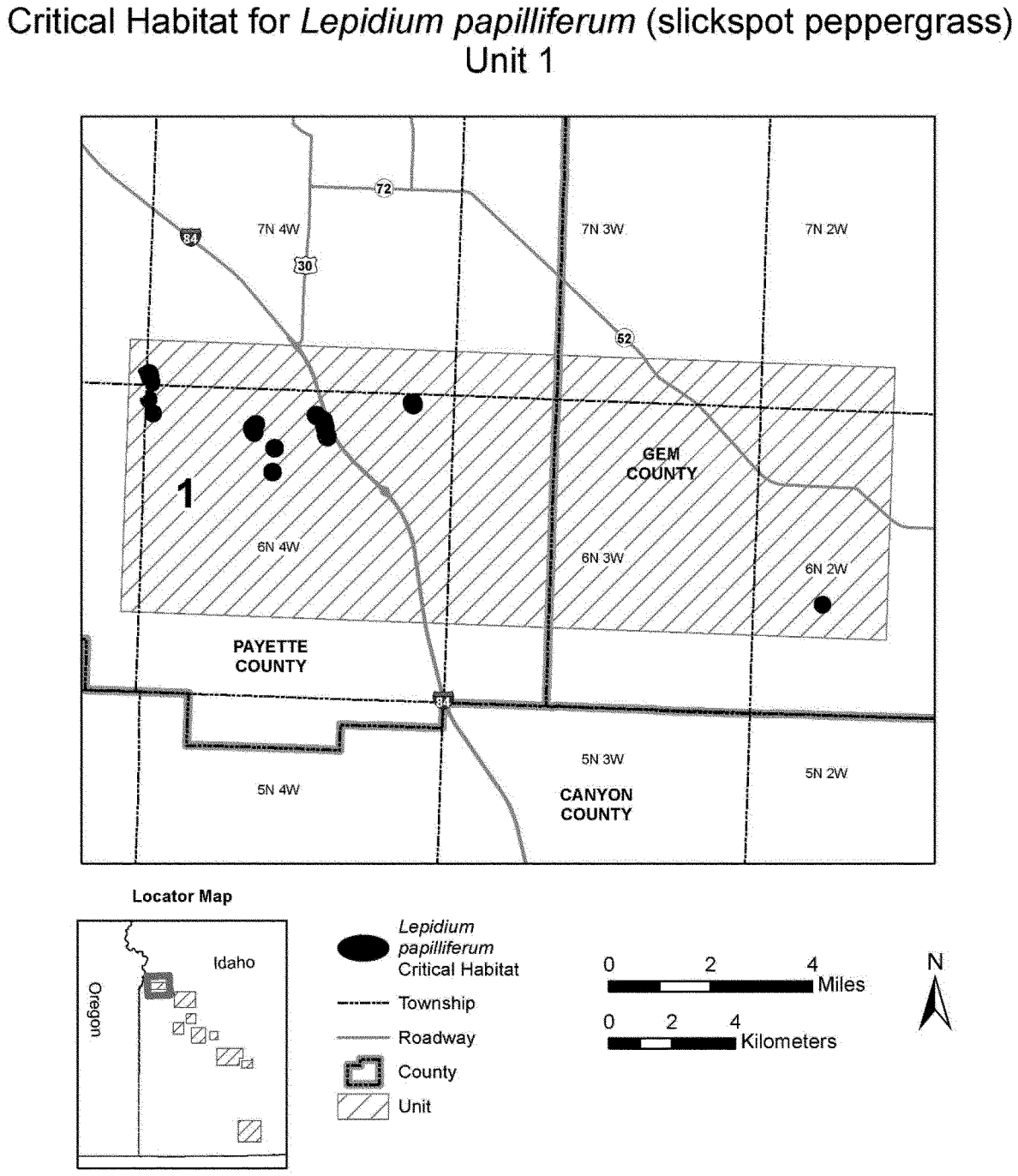
Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)



(6) Unit 1: Payette County, Idaho.

(i) *General Description:* Unit 1 consists of 287 ha (710 ac) in Payette and Gem Counties, Idaho, and is composed of lands in Federal (268 ha (664 ac)) and private ownership (19 ha (46 ac)). Federal lands within Unit 1 are in the Bureau of Land Management (BLM) Four Rivers Field Office area.

(ii) Map of Unit 1 follows:

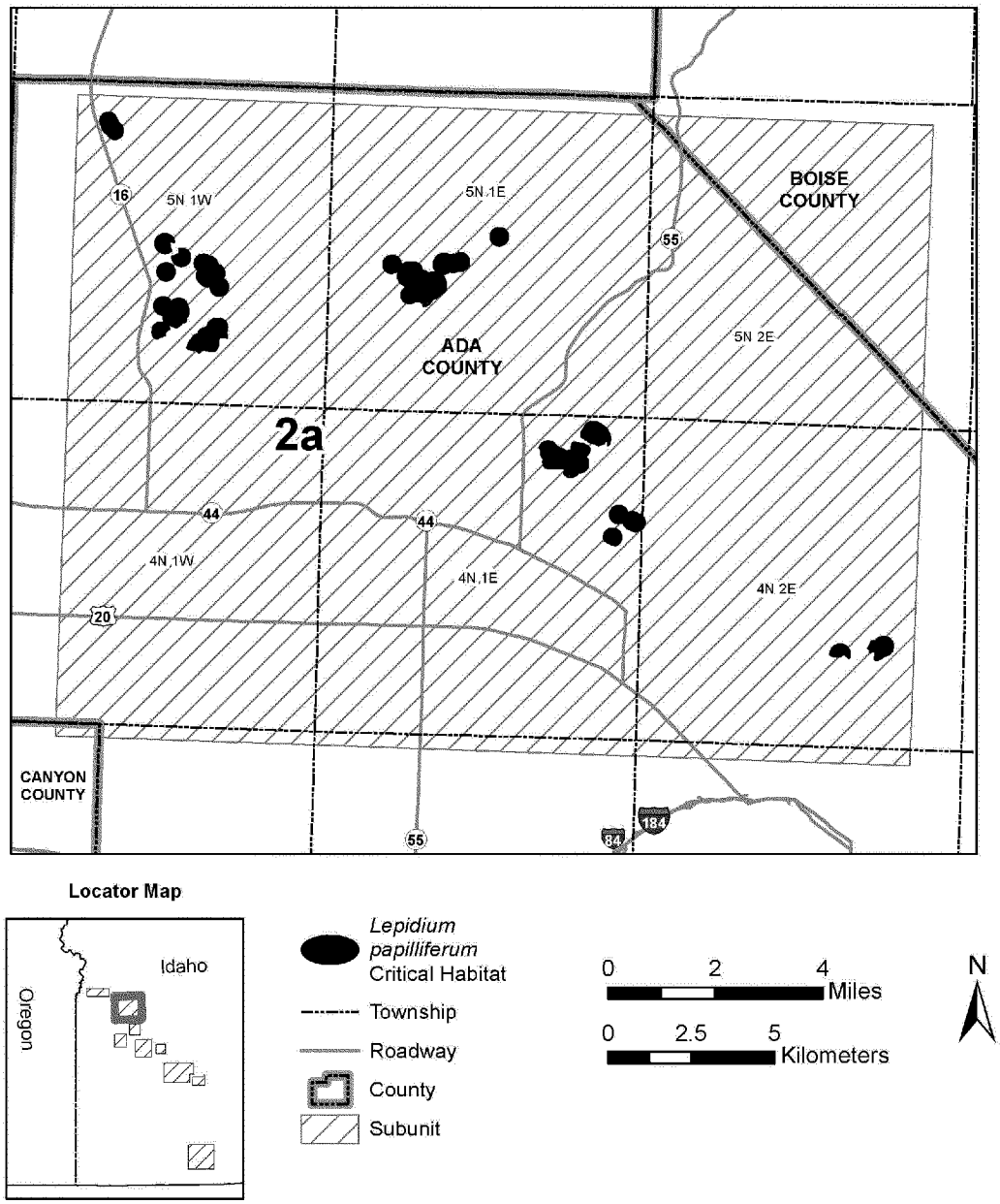


(7) Unit 2: Ada County, Idaho.

(i) *Subunit 2a General Description:* Subunit 2a consists of 879 ha (2,175 ac) in Ada County, Idaho, and is composed of lands in Federal (335 ha (828 ac)), municipal (215 ha (531 ac)), and private ownership (329 ha (814 ac)). Subunit 2a includes the Ada County Landfill Complex area.

(ii) Map of Unit 2, Subunit 2a follows:

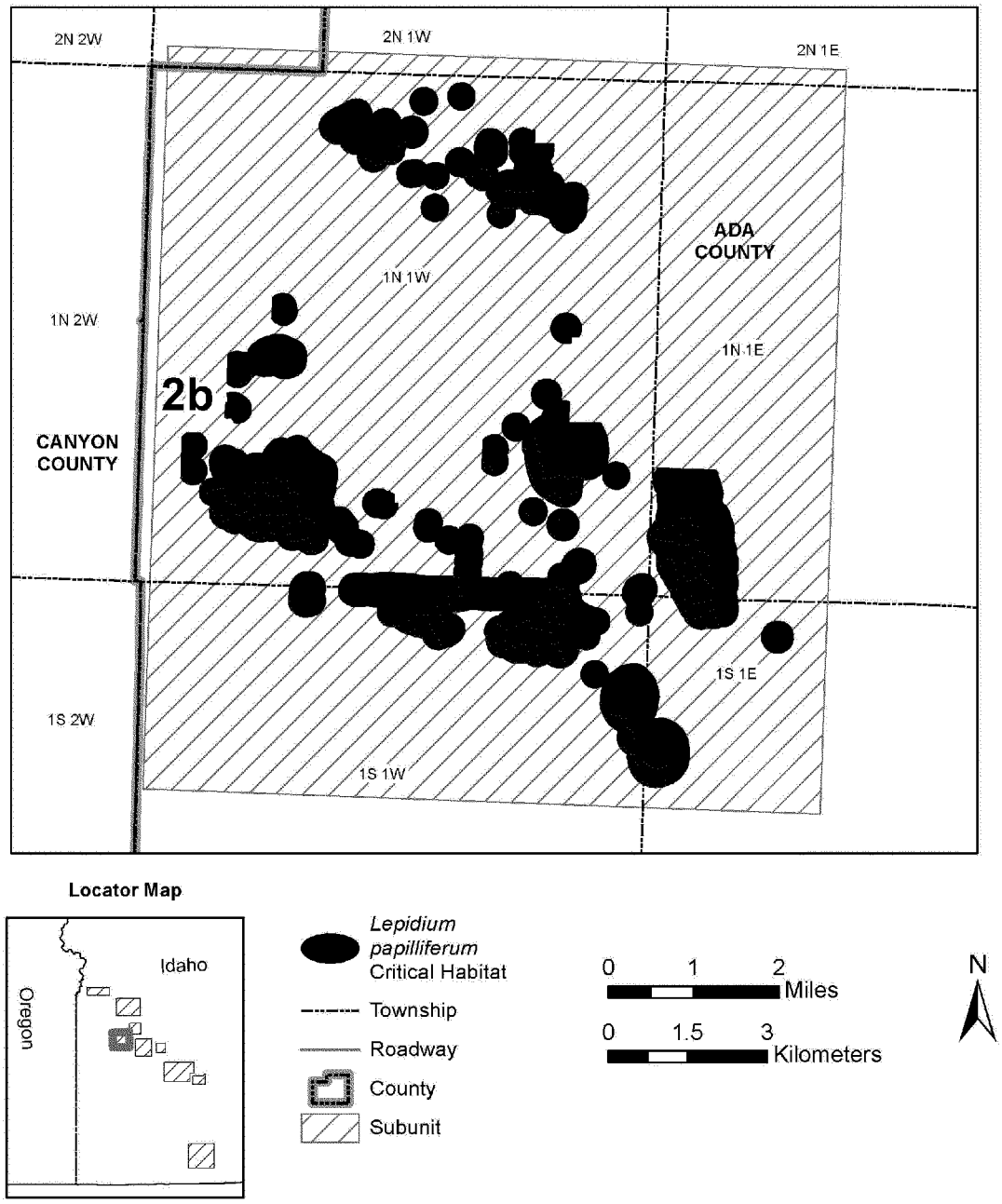
Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 2 - Subunit a



(iii) *Subunit 2b General Description:* Subunit 2b consists of 3,144 ha (7,768 ac) in Ada County, Idaho, and is composed of lands in Federal (3,075 ha (7,598 ac)), State (69 ha (170 ac)), and private ownership (0.2 ha (0.4 ac)). Subunit 2b includes lands within the Bureau of Land Management (BLM) Morley Nelson Snake River Birds of Prey National Conservation Area south of Kuna, Idaho.

(iv) Map of Unit 2, Subunit 2b follows:

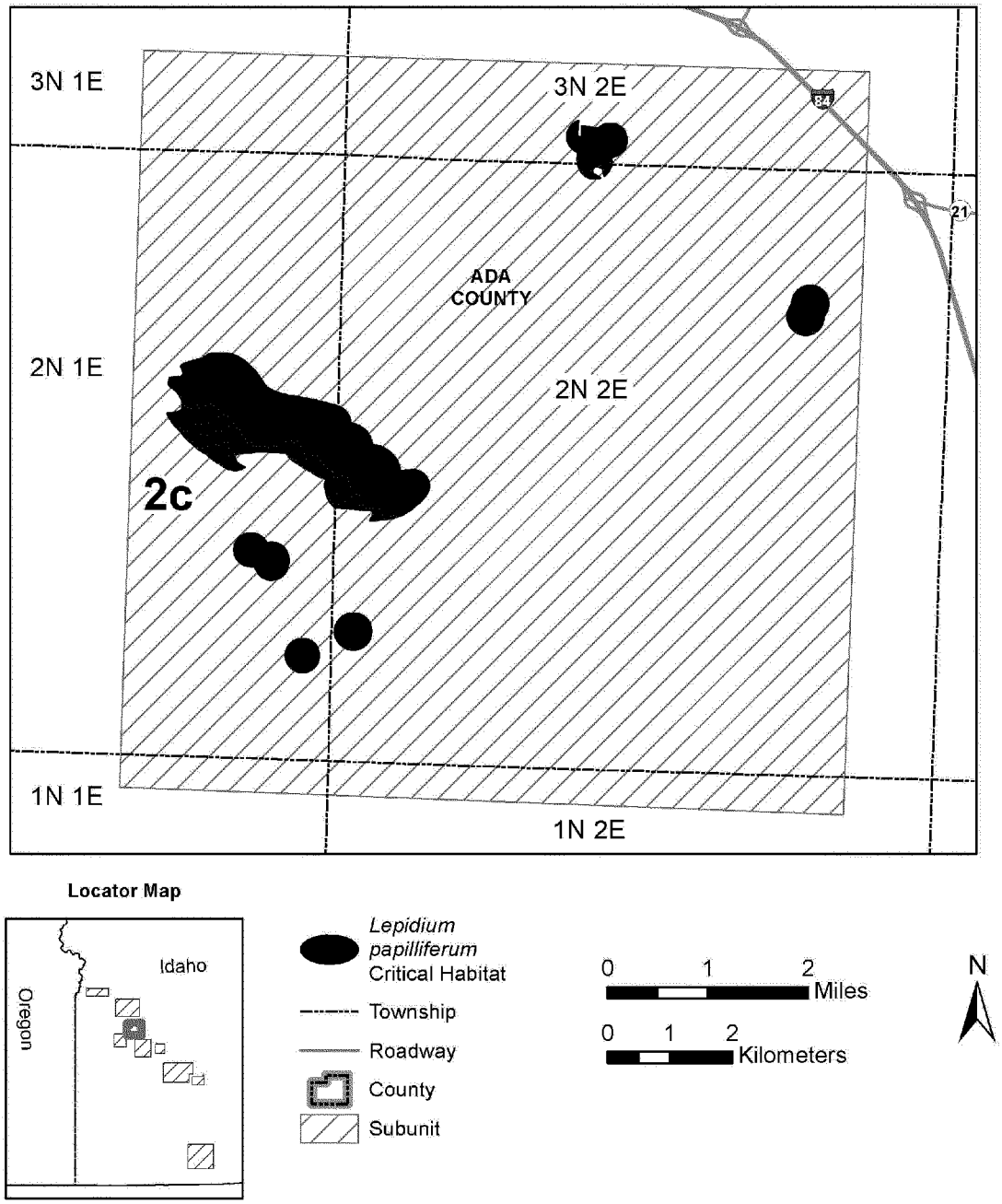
Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 2 - Subunit b



(v) *Subunit 2c General Description:* Subunit 2c consists of 697 ha (1,722 ac) in Ada County, Idaho, and is composed of lands in Federal (438 ha (1,081 ac)), State (49 ha (122 ac)), municipal (66 ha (163 ac)), and private ownership (144 ha (357 ac)). Subunit 2c includes BLM lands within the Four Rivers Field Office area, and municipal lands associated with the Boise Airport.

(vi) Map of Unit 2, Subunit 2c follows:

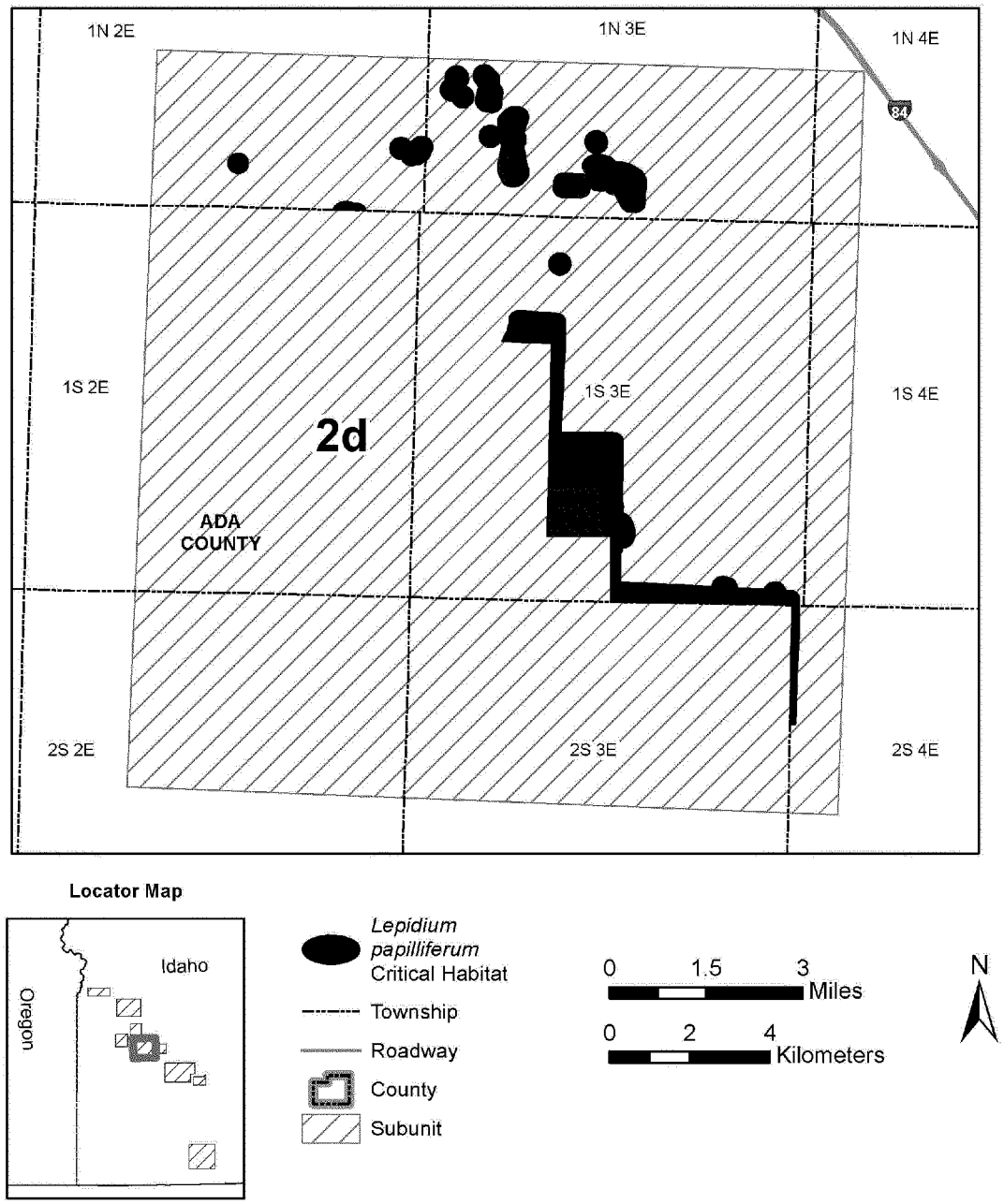
Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 2 - Subunit c



(vii) *Subunit 2d General Description:* Subunit 2d consists of 1,605 ha (3,965 ac) in Ada County, Idaho, and is composed of lands in Federal (821 ha (2,029 ac)), State (728 ha (1,800 ac)), and private ownership (55 ha (136 ac)). Proposed critical habitat within subunit 2d is adjacent to the Idaho Army National Guard-administered Orchard Combat Training Center (formerly known as the Orchard Training Area).

(viii) Map of Unit 2, Subunit 2d follows:

Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 2 - Subunit d

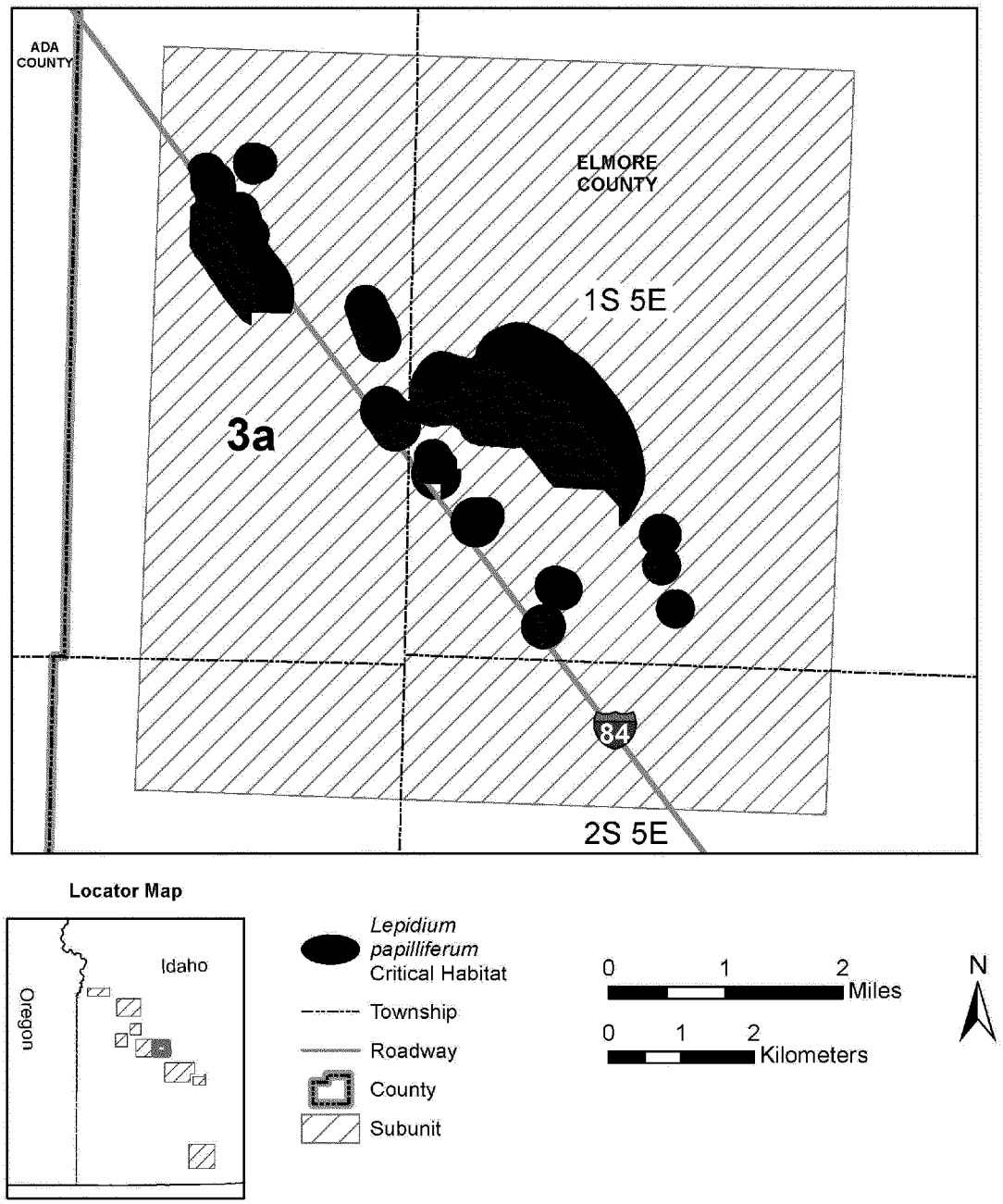


(8) Unit 3: Elmore County, Idaho.

(i) *Subunit 3a General Description:* Subunit 3a consists of 1,007 ha (2,488 ac) in Elmore County, Idaho, and is composed of lands in Federal (726 ha (1,793 ac)) and private ownership (228 ha (564 ac)), including lands within the BLM Four Rivers Field Office area.

(ii) Map of Unit 3, Subunit 3a follows:

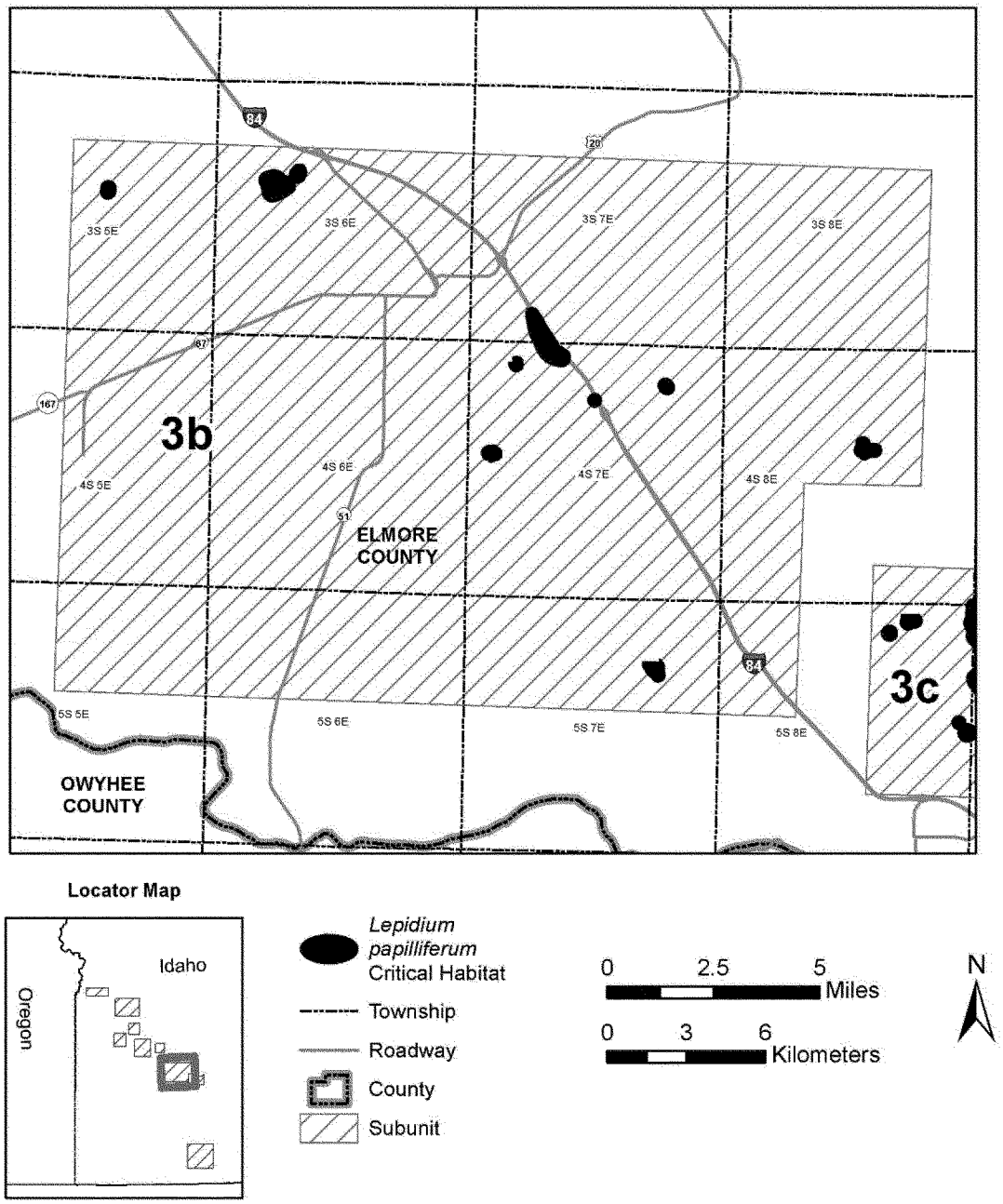
Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 3 - Subunit a



(iii) *Subunit 3b General Description:* Subunit 3b consists of 589 ha (1,455 ac) in Elmore County, Idaho, and is composed of lands in Federal (449 ha (1,108 ac)), State (74 ha (184 ac)), and private ownership (66 ha (163 ac)), including lands within the BLM Four Rivers Field Office area and the BLM Morley Nelson Birds of Prey National Conservation Area.

(iv) Map of Unit 3, Subunit 3b follows:

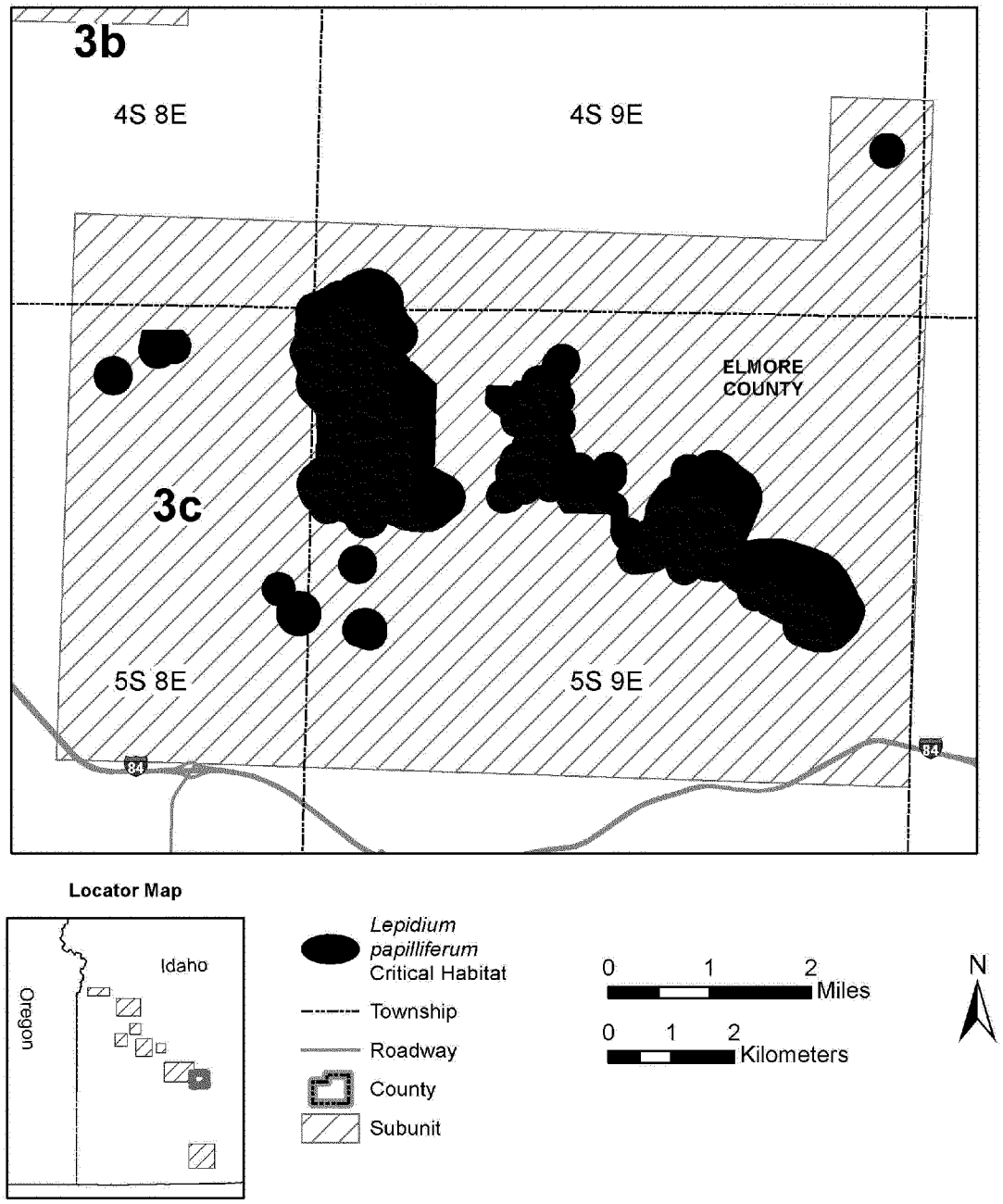
Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 3 - Subunit b



(v) *Subunit 3c General Description:* Subunit 3c consists of 1,954 ha (4,828 ac) in Elmore County, Idaho, and is composed of lands in Federal (1,725 ha (4,264 ac)) and private ownership (228 ha (564 ac)), including lands within both the BLM Four Rivers Field Office and the Morley Nelson Birds of Prey National Conservation Area.

(vi) Map of Unit 3, Subunit 3c follows:

Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 3 - Subunit c

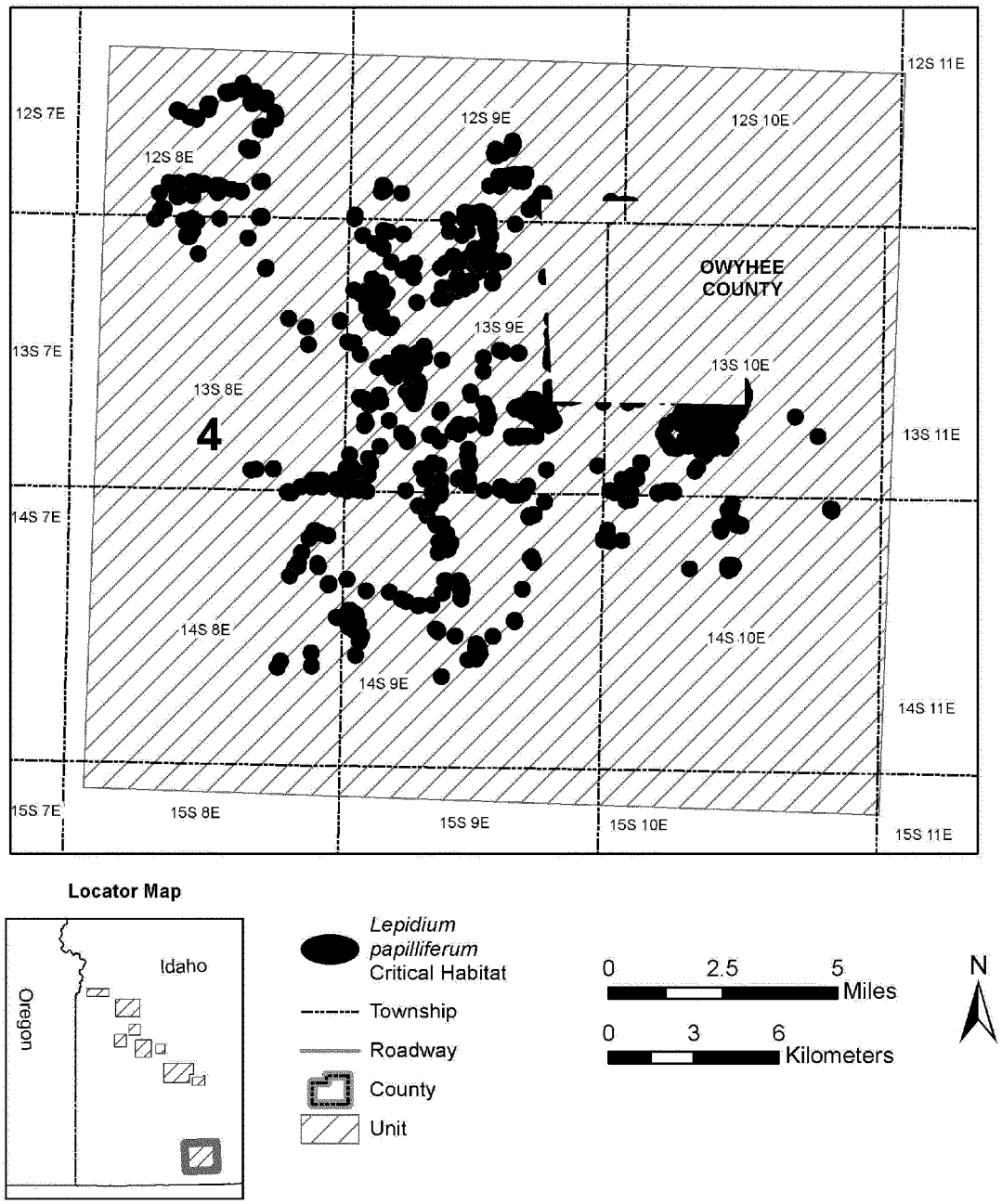


(9) Unit 4: Owyhee County, Idaho.

(i) *General Description:* Unit 4 consists of 6,888 ha (17,020 ac) in Owyhee County, Idaho, and is composed of lands in Federal (6,609 ha (16,332 ac)) and State (278 ha (688 ac)) ownership, including lands within the BLM Jarbidge Field Office area.

(ii) Map of Unit 4 follows:

Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 4



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Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–14449 Filed 7–22–20; 8:45 am]

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FEDERAL REGISTER

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No. 142 July 23, 2020

Part III

Department of the Treasury

Internal Revenue Service

12 CFR Parts 1206, 1225 and 1240

Guidance Under Sections 951A and 954 Regarding Income Subject to a High Rate of Foreign Tax; Final Rule

26 CFR Part 1

Guidance Under Section 954(b)(4) Regarding Income Subject to a High Rate of Foreign Tax; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9902]

RIN 1545–BP15

Guidance Under Sections 951A and 954 Regarding Income Subject to a High Rate of Foreign Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under the global intangible low-taxed income and subpart F income provisions of the Internal Revenue Code regarding the treatment of income that is subject to a high rate of foreign tax. The final regulations affect United States shareholders of foreign corporations. This guidance relates to changes made to the applicable law by the Tax Cuts and Jobs Act, which was enacted on December 22, 2017.

DATES:

Effective date: These regulations are effective on September 21, 2020.

Applicability dates: For dates of applicability, see §§ 1.951A–7(b) and 1.954–1(h)(1) and (3).

FOR FURTHER INFORMATION CONTACT: Jorge M. Oben or Larry R. Pounders at (202) 317–6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 951A, which contains the global intangible low-taxed income (''GILTI'') rules, was added to the Internal Revenue Code (the ''Code'') by the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054, 2208 (December 22, 2017) (the ''Act''). On October 10, 2018, the Department of the Treasury (''Treasury Department'') and the IRS published proposed regulations (REG–104390–18) under sections 951, 951A, 1502, and 6038 in the **Federal Register** (83 FR 51072). On June 21, 2019, the Treasury Department and the IRS published final regulations (T.D. 9866) in the **Federal Register** (84 FR 29288, as corrected at 84 FR 44693) under sections 951, 951A, 1502, and 6038, and proposed regulations (REG–101828–19) under sections 951, 951A, 954, 956, 958, and 1502 in the **Federal Register** (84 FR 29114, as corrected at 84 FR 37807) (''2019 proposed regulations''). Terms used but not defined in this preamble have the meaning provided in these final regulations.

The Treasury Department and the IRS received written comments with respect to the 2019 proposed regulations. A public hearing on the 2019 proposed regulations was not held because there were no requests to speak.

This rulemaking finalizes the portion of the 2019 proposed regulations under sections 951A and 954 regarding the treatment of income subject to a high rate of foreign tax but does not finalize the portions of the 2019 proposed regulations under sections 951, 956, 958, and 1502 regarding the treatment of domestic partnerships. The Treasury Department and the IRS plan to finalize those regulations separately.

Comments outside the scope of this rulemaking are generally not addressed but may be considered in connection with future guidance projects. All written comments received in response to the 2019 proposed regulations are available at *www.regulations.gov* or upon request.

Summary of Comments and Explanation of Revisions

I. Overview

The 2019 proposed regulations apply the high-tax exclusion set forth in section 951A(c)(2)(A)(i)(III) (the ''GILTI high-tax exclusion''), on an elective basis, to certain high-taxed income of a controlled foreign corporation (as defined in section 957) (''CFC'') regardless of whether the income would otherwise be foreign base company income (as defined in section 954) (''FBCI'') or insurance income (as defined in section 953). *See* proposed § 1.951A–2(c)(6). The final regulations retain the basic approach and structure of the 2019 proposed regulations, with certain revisions. This Summary of Comments and Explanation of Revisions discusses those revisions as well as comments received.

As discussed in part IV of this Summary of Comments and Explanation of Revisions, numerous comments recommended that the application of the GILTI high-tax exclusion be conformed with the high-tax exception of section 954(b)(4) and § 1.954–1(d)(5) (the ''subpart F high-tax exception''). The Treasury Department and the IRS agree that the GILTI high-tax exclusion and the subpart F high-tax exception should be conformed but have determined that the rules implementing the GILTI high-tax exclusion better reflect the policies underlying section 954(b)(4) in light of the changes made by the Act. As a result, a separate notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register** (REG–127732–19) (the ''2020 proposed regulations'') proposes to generally conform the rules implementing the subpart F high-tax exception to the rules implementing the GILTI high-tax exclusion set forth in these final regulations, and provides for a single election under section 954(b)(4) for purposes of both subpart F income and tested income.

II. Calculation of Effective Foreign Tax Rate

A. QBU-by-QBU Determination

The 2019 proposed regulations apply based on the effective foreign tax rate imposed on the aggregate of all items of tentative net tested income of a CFC attributable to a single qualified business unit (as defined in section 989(a)) (''QBU'') of the CFC that would be in a single tested income group. *See* proposed § 1.951A–2(c)(6)(i)(B) and (c)(6)(ii)(A). The 2019 proposed regulations apply on a QBU-by-QBU basis to minimize the ''blending'' of income subject to different foreign tax rates and, as a result, more accurately identify income subject to a high rate of foreign tax such that low-taxed income continues to be subject to the GILTI regime in a manner consistent with its underlying policies.

The Treasury Department and the IRS received several comments regarding the determination of the effective foreign tax rate on a QBU-by-QBU basis. One comment supported the QBU-by-QBU determination. Other comments requested that the effective foreign tax rate test apply on a CFC-by-CFC basis and asserted that this approach would better align the GILTI high-tax exclusion with the subpart F high-tax exception. The comments also stated that a CFC-by-CFC approach would be consistent with the principles used to determine foreign income taxes deemed paid under proposed regulations under section 960 and would reduce complexity and compliance burdens. One comment noted that taxpayers are not required to conduct this type of QBU-level analysis for any other U.S. tax purpose and, thus, they may lack the systems, data, or personnel to do so. Other comments stated that nonconformity with the subpart F high-tax exception would encourage taxpayers to structure into the subpart F high-tax exception and questioned the authority to adopt a QBU-by-QBU approach given the general mechanics of the GILTI regime, which compute certain items at the CFC level before aggregating such items at the United States shareholder (as defined in section 951(b)) (''U.S. shareholder'') level.

Some comments suggested that there is not a significant risk of blending foreign income subject to different tax

rates and asserted that such blending should not give rise to policy concerns. Other comments stated that applying the effective foreign tax rate test on a CFC-by-CFC basis would ameliorate issues caused by differences between U.S. and foreign tax accounting methods.

Consistent with the rules set forth in the 2019 proposed regulations, the Treasury Department and the IRS have determined that calculating the effective foreign tax rate on a CFC-by-CFC basis would inappropriately allow the blending of high-taxed and low-taxed income in a manner that is inconsistent with the purpose of section 951A, which is to limit potential base erosion incentives created by a participation exemption regime. Such blending would allow low-taxed income, which poses a significant base-erosion risk, to be excluded from the GILTI regime. While the legislative history indicates that high-taxed income does not present base erosion concerns, the policy rationale underlying that view does not extend to excluding low-taxed income from GILTI merely because it may be earned by an entity that also earns high-taxed income. *See* S. Comm. on the Budget, Reconciliation Recommendations Pursuant to H. Con. Res. 71, S. Print. No. 115–20, at 371 (2017) (''The Committee believes that certain items of income earned by CFCs should be excluded from the GILTI [regime], either because they should be exempt from U.S. tax—as they are generally not the type of income that is the source of the base erosion concerns—or are already taxed currently by the United States. Items of income excluded from GILTI because they are exempt from U.S. tax under the bill include foreign oil and gas extraction income (which is generally immobile) and income subject to high levels of foreign tax.'').

The QBU-by-QBU approach is also consistent with the legislative history to section 954(b)(4), which directs the Treasury Department and the IRS to allow reasonable groupings of items of income that are substantially taxed at the same rate in a single country. *See* H.R. Rep. No. 99–426, at 400–01 (1985) (''Although this rule applies separately with respect to each 'item of income' received by a [CFC], the committee expects that the Secretary will provide rules permitting reasonable groupings of items of income that bear substantially equal effective rates of tax in a given country. For example, all interest income received by a [CFC] from sources within its country of incorporation may reasonably be treated as a single item of income for purposes of this rule, if such interest is subject to uniform taxing rules in that country.''). Therefore, consistent with this legislative history, generally only high-taxed income, and not low- or zero-taxed income, should be excluded from gross tested income. The GILTI high-tax exclusion carries out this purpose by determining the effective rate of tax on an item of income at a granular enough level to preclude inappropriate blending without imposing undue compliance burdens on taxpayers.

Although greater blending of income subject to different rates of foreign tax may be permitted within a separate category under section 904, a section 904 separate category is not an appropriate standard for determining an item of income under section 954(b)(4) because section 904 applies, by its terms, to separate categories of income while section 954(b)(4) applies to items of income. Moreover, the purposes of sections 951A and 954(b)(4), which are primarily intended to address base erosion concerns, differ from the purposes of sections 901 and 904, which are tailored to the avoidance of double taxation of foreign source income. The ability to credit foreign taxes against a broader class of income at the U.S. shareholder level does not compel a CFC-by-CFC effective foreign tax rate computation for purposes of the GILTI high-tax exclusion. In addition, determining whether an item of income is high-taxed by grouping similar items at a QBU level has historically been required for certain passive income under §§ 1.904–4(c) and 1.954–1(c)(1)(iii)(B). Consistent with the 2019 proposed regulations, § 1.904–4(c) groups passive income items for purposes of determining whether they are subject to a high rate of tax on a QBU-by-QBU basis.

Finally, because the GILTI high-tax exclusion applies on an elective basis, taxpayers may choose not to make the election if the compliance burdens of the computation outweigh the benefits.

For these reasons, the final regulations do not adopt a CFC-by-CFC approach. However, the final regulations replace the QBU-by-QBU approach with a more targeted approach based on ''tested units'' (as discussed in part III.A of this Summary of Comments and Explanation of Revisions), permit some additional blending of income under the tested unit combination rule (as discussed in part III.B of this Summary of Comments and Explanation of Revisions), and allow taxpayers additional flexibility by permitting the GILTI high-tax exclusion election to be made on an annual basis (as discussed in part IV.C of this Summary of Comments and Explanation of Revisions). Further, as noted in part I of this Summary of Comments and Explanation of Revisions, the separate notice of proposed rulemaking published concurrently with these final regulations conforms the rules implementing the subpart F high-tax exception with the GILTI high-tax exclusion, thereby eliminating the disparity between the two elections and the incentive for taxpayers to structure into the subpart F high-tax exception.

B. CFC-Level Determination of Foreign Taxes

For purposes of the subpart F high-tax exception, the final regulations under § 1.954–1(d)(3) (before modification by this Treasury decision) determined, for each U.S. shareholder, the foreign income taxes paid or accrued with respect to an item of income based on the amount of foreign income taxes that would be deemed paid under section 960 if the item of income were included in the gross income of the U.S. shareholder under section 951(a)(1)(A). The 2019 proposed regulations modify this determination, for purposes of both the subpart F high-tax exception and the GILTI high-tax exclusion, by referencing the amounts of income and taxes at the CFC level, rather than the amount of taxes that would be deemed paid at the U.S. shareholder level. *See* proposed § 1.954–1(d)(3)(i) and proposed § 1.951A–2(c)(6)(iv). Specifically, foreign income taxes of the CFC for the current year are allocated and apportioned to the CFC's gross income based on the rules under § 1.960–1(d), which determine foreign income taxes ''properly attributable'' to income. The 2019 proposed regulations modify this calculation because the determination of income and taxes at the CFC level is more consistent with the text of section 954(b)(4), which refers to items of income (and tax imposed on such items) of the CFC. In addition, deemed paid credits for taxes properly attributable to tested income under section 960(d) are determined on an aggregate basis, which does not provide an accurate basis to determine the effective foreign tax rate on particular items of income of a CFC under the GILTI high-tax exclusion provided under section 954(b)(4).

A comment requested that the effective foreign tax rate test be based on the shareholder's deemed paid credit for taxes properly attributable to tested income, as defined in section 960(d), over the shareholder's net CFC tested income, as defined in section 951A(c). The comment asserted that such an aggregate determination, which would mirror the calculation of the GILTI

inclusion, would be consistent with the GILTI legislative history, would produce more equitable results than those provided under the 2019 proposed regulations, and would significantly reduce compliance and administrative burdens for taxpayers and the government.

The Treasury Department and the IRS have concluded that this approach for calculating the effective foreign tax rate would be inconsistent with section 954(b)(4). Unlike a GILTI inclusion, which is based on the aggregate amounts of a U.S. shareholder's pro rata shares of certain items from all the CFCs in which the shareholder is a U.S. shareholder, section 954(b)(4) applies by its terms to items of income of a single CFC. That is, section 954(b)(4) applies with respect to ''any item of income received by a CFC'' that is subject to a sufficiently high rate of foreign tax. Moreover, section 951A(c)(2)(A)(i), which provides exclusions from tested income including the high-tax exclusion, refers to ''the gross income of such corporation.'' Nothing in section 954(b)(4), or section 951A(c)(2)(A)(i)(III), suggests that the aggregate approach of the GILTI regime should or could apply for purposes of determining whether an item of income received by a CFC is subject to a sufficiently high level of foreign tax under section 954(b)(4). Thus, the final regulations do not adopt this comment.

C. Effective Foreign Tax Rate

1. Threshold Rate of Tax

Consistent with section 954(b)(4), the 2019 proposed regulations apply the GILTI high-tax exclusion by comparing the effective foreign tax rate with 90 percent of the rate that would apply if the income were subject to the maximum rate of tax specified in section 11 (currently 18.9 percent, based on a maximum rate of 21 percent). *See* proposed § 1.951A–2(c)(6)(i)(B).

Several comments requested that the GILTI high-tax exclusion instead be applied if the effective foreign tax rate is at least 13.125 percent. One comment requested that it be based on a tax rate of 13.125 percent for taxable years beginning on or before December 31, 2025, and 16.406 percent for taxable years beginning after such date. The comments asserted that using a 13.125 percent rate would be consistent with the legislative history indicating that no residual tax should be due on GILTI subject to an effective foreign tax rate in excess of 13.125 percent, which takes into account the 80 percent foreign tax credit allowance in section 960(d) and the 50 percent deduction under section 250, and that the rate should be adjusted for taxable years beginning after December 31, 2025, to correspond to the reduction in the amount of deduction allowed with respect to GILTI as provided in section 250(a)(3)(B).

The Treasury Department and the IRS disagree with these comments. The GILTI high-tax exclusion is based on section 954(b)(4), which refers to a tax rate that is greater than 90 percent of the rate that would apply if the income were subject to the maximum rate of tax specified in section 11. The rate set forth in section 954(b)(4) does not vary depending on whether it applies for purposes of determining FBCI, insurance income, or tested income. Furthermore, the legislative history describing a 13.125 percent foreign tax rate addresses situations in which income is included in tested income and, consequently, subject to GILTI and the associated foreign tax credit rules under section 960(d).[1] Those rules do not apply to income excluded from tested income by reason of the GILTI high-tax exclusion. Accordingly, the final regulations do not adopt these comments.

2. Safe Harbors

One comment asserted that the ''mechanical snapshot'' rule for determining the effective foreign tax rate under the 2019 proposed regulations can produce results that are unreasonable given timing differences between the U.S. and foreign tax bases. The comment stated that if an item is accounted for in one period for U.S. tax purposes, but in another period for foreign tax purposes, the CFC may appear to have a high effective foreign tax rate in one period, and a low effective foreign tax rate in the other period, when in fact it is simply subject to a rate of tax comparable to the U.S. rate on its foreign tax base over both periods. To address these timing differences, the comment suggested that the final regulations include two new methods, in addition to the method set forth in the 2019 proposed regulations, for calculating the effective foreign tax rate, each of which could be safe harbors applied at the discretion of the taxpayer.

Under the first suggested method, the GILTI high-tax exclusion would apply if the foreign statutory income tax rate to which a QBU's income is subject is sufficiently high and there is no special tax regime to which a material percentage of the QBU's income is subject. In such a case, the safe harbor would apply and all the income of the QBU would be eligible for the GILTI high-tax exclusion. The comment indicated that the foreign statutory rate could be determined by reference to publications maintained by the OECD and a special tax regime could be determined in a manner consistent with the 2016 U.S. Model Income Tax Treaty.

The second suggested method would allow taxpayers to determine a QBU's effective foreign tax rate by reference to the average effective foreign tax rate in the current and preceding four taxable years. The comment asserted that this approach would smooth out timing differences and more accurately determine whether the QBU's income was in fact subject to relatively high rates of tax. The comment also noted that although the GILTI regime generally operates on an annual basis, the determination of whether the income of a QBU is subject to a rate of foreign tax comparable to the U.S. rate may be better determined over a longer period based on the facts and circumstances.

The Treasury Department and the IRS have concluded that identifying special tax regimes, or determining the extent to which income would be subject to special tax regimes, would give rise to considerable complexity and administrative and compliance burdens for both taxpayers and the government. Similarly, the Treasury Department and the IRS have determined that using an average effective foreign tax rate over multiple taxable years would give rise to additional complexity and increase the burden on taxpayers and the government due, for example, to foreign tax redeterminations with respect to a QBU's income, such as an adjustment for a loss carryback. Such adjustments would not only affect the year of the redetermination, but also every other year that took the redetermination year into account in calculating the average effective foreign tax rate, potentially resulting in multiple amended returns attributable to a foreign tax redetermination for a single taxable year. A prior year averaging approach would also lead to distortive results, such as when the CFC had losses or volatile earnings. Accordingly, the final regulations do not adopt these safe harbors. As described in Part III.B. of this Summary of Comments, the tested unit combination rule should ameliorate some of the concerns raised by the comment.

[1] In addition, the assertion made by certain commenters that the law categorically provides that no residual U.S. tax is owed under GILTI at foreign effective tax rates of 13.125% is incorrect. *See* Joint Comm. on Tax'n, General Explanation of Public Law 115–97, at 381 & n.1753.

D. Base and Timing Differences

1. In General

The 2019 proposed regulations generally provide that the effective rate at which taxes are imposed for a taxable year is the U.S. dollar amount of foreign income taxes paid or accrued with respect to a tentative net tested income item,[2] over the sum of the U.S. dollar amount of the tentative net tested income item and the amount of foreign income taxes paid or accrued with respect to the tentative net tested income item. *See* proposed § 1.951A–2(c)(6)(iii). A tentative net tested income item is generally determined by taking into account certain items of gross income (determined under federal income tax principles) attributable to a QBU, less deductions (also determined under federal income tax principles) allocated and apportioned to such gross income. *See* 1.951A–2(c)(6)(ii)(A) and (B). Thus, the effective foreign tax rate is based on the amount of foreign income taxes paid or accrued on income attributable to the QBU as determined for federal income tax purposes, without regard to how the income is determined for foreign income tax purposes.

The preamble to the 2019 proposed regulations requested comments on whether additional rules are needed to properly account for cases (other than disregarded payments) in which the income base upon which foreign tax is imposed does not match the items of income reflected on the books and records of the QBU determined for federal income tax purposes. The preamble cites examples of possible adjustments to address circumstances in which QBUs are permitted to share losses or determine tax liability based on combined income for foreign tax purposes.

2. Disregarded Payments

The proposed regulations generally provide that gross income is attributable to a QBU if it is properly reflected on the books and records of the QBU, determined under federal income tax principles, except that such income is adjusted to account for certain disregarded payments. *See* proposed § 1.951A–2(c)(6)(ii)(A)(*2*). The adjustments for disregarded payments are made under the principles of § 1.904–4(f)(2)(vi) (rules attributing gross income to a foreign branch), without regard to the exclusion for interest described in § 1.904–4(f)(2)(vi)(C)(*1*). *See id.*

One comment suggested that a disregarded payment should not result in the reallocation of income between QBUs for purposes of computing the GILTI high-tax exclusion. The Treasury Department and IRS understand the comment's concern to be the potential inability to claim the GILTI high-tax exclusion in scenarios where a disregarded payment was made from a high-taxed CFC to a disregarded entity that paid no tax.

The Treasury Department and the IRS have determined that, if a tested unit[3] makes a disregarded payment to another tested unit, gross income should be reallocated among the tested units to appropriately associate the income with the tested unit in which it is subject to tax. This reallocation promotes conformity between the income attributed to a tested unit and the income of that tested unit that is subject to tax in the foreign country, and, therefore, this rule results in a more accurate grouping of items of income that are generally subject to the same or similar rates of foreign tax. In addition, treating disregarded payments in this manner is consistent with the treatment of regarded payments. For example, if a tested unit of a CFC were to make a regarded deductible payment that is taken into account by another tested unit of the CFC (such as a tested unit that is an interest in a partnership), the payment would be an item of gross income of the payee tested unit that may qualify for the GILTI high-tax exclusion based on the foreign taxes attributable to that tested unit. Moreover, the regarded deduction would be reflected in a reduced tentative net tested income item (relative to the result in the absence of adjustment for disregarded payments)—and, consequently, the denominator of the effective foreign tax rate fraction—with respect to the payor tested unit for purposes of assessing whether its gross income is subject to a high rate of foreign tax. For these reasons, the comment is not adopted.

The final regulations provide additional rules addressing disregarded payments, including providing additional detail on how the principles of § 1.904–4(f)(2)(vi) should be applied. *See* § 1.951A–2(c)(7)(ii)(B)(*2*). For example, the final regulations provide that a disregarded payment of interest is allocated and apportioned ratably to all of the gross income attributable to the tested unit that is making the disregarded payment. *See* § 1.951A–2(c)(7)(ii)(B)(*2*)(*iv*). The final regulations also provide special ordering rules for reallocations with respect to multiple disregarded payments. *See* § 1.951A–2(c)(7)(ii)(B)(*2*)(*iv*).

3. Foreign Net Operating Losses and Other Timing Differences

Some comments requested that the final regulations allow taxpayers to elect to adjust either the numerator or denominator of the effective foreign tax rate fraction to take into account foreign net operating loss (''NOL'') carryforwards and other similar items. One comment asserted that, while the effective foreign tax rate calculation generally serves as an appropriate test, CFCs with a foreign NOL carryover may fail the test even though the rate of tax in the foreign country exceeds 18.9 percent. Another comment indicated that a CFC could fail the mechanical test in a single year although the same income is subject to a foreign tax that is substantially higher than the U.S. corporate tax rate because of timing differences (that is, differences in when income or deductions are taken into account for U.S. and foreign tax purposes).

The Treasury Department and the IRS have determined that adjusting the numerator or denominator of the effective foreign tax rate fraction for foreign NOL carryforwards or other timing differences would result in considerable complexity and would impose a significant burden on both taxpayers and the government. It would require the application of foreign tax accounting rules, and complex coordination rules to reconcile their application with U.S. tax accounting rules, both in the current taxable year and other taxable years, to prevent an item of income, gain, deduction, loss, or credit from being duplicated or omitted. Accordingly, this comment is not adopted.

III. Adoption of Tested Unit Standard

A. In General

As discussed in part II.A of this Summary of Comments and Explanation of Revisions, the 2019 proposed regulations propose a QBU-by-QBU approach to identify the relevant items of income that may be eligible for the GILTI high-tax exclusion. For this purpose, the proposed regulations reference the definition of a QBU in section 989(a), which provides that a QBU is any separate and clearly identifiable unit of a trade or business of a taxpayer that maintains separate books and records. *See* proposed 1.951A–2(c)(6)(ii)(A). Regulations under

[2] The final regulations adopt the term ''tentative tested income item,'' instead of the term ''tentative net tested income item.'' *See* § 1.951A–2(c)(7)(iii).

[3] As discussed in part III of this Summary of Comments and Explanation of Revisions, the final regulations adopt a ''tested unit'' standard that replaces the QBU standard used in the 2019 proposed regulations.

section 989(a) provide guidance as to activities that constitute a trade or business (based on a facts-and-circumstances analysis) and the determination of separate books and records. *See* § 1.989(a)–1(c) and (d). The preamble to the 2019 proposed regulations requested comments on whether the definition of a QBU should be modified for purposes of the GILTI high-tax exclusion, including the requirements to carry on activities that constitute a trade or business and to maintain books and records.

One comment asserted that it is unclear whether certain activities constitute a trade or business under the facts-and-circumstances test set forth in the regulations under section 989(a) and that making such determinations would frequently be administratively burdensome. The comment indicated that in other cases it is also difficult to determine whether certain interrelated activities constitute a single QBU or multiple QBUs (for example, different functions performed by separate divisions operating within a single CFC). In addition, the comment suggested that taxpayers may engage in affirmative tax planning to avoid the QBU rule by, for example, breaking up the operations of a single large QBU of a CFC into smaller components that would not constitute trades or businesses, or by choosing to no longer maintain books and records for such sub-lines of business. Another comment criticized the QBU approach because some taxpayers may track business activities differently than other taxpayers, which may result in the inconsistent application of the QBU rules. Finally, a comment noted that not all companies have sufficient systems in place to accurately track items at the QBU level.

The 2019 proposed regulations propose the QBU standard as a proxy for determining the type of entity, or level of activities, that would likely be subject to tax in a particular foreign country either on an entity basis or as a taxable presence, and, as a result, would likely result in items of income attributable to the QBU being subject to a different rate of foreign tax than that imposed on other income of the CFC. In response to these comments, the Treasury Department and the IRS have concluded that a more targeted approach should be applied for identifying income that is likely to be subject to foreign tax rates different from those imposed on other income earned by the CFC. This approach will generally limit the scope of the factual analysis necessary to apply these rules—for example, it does not depend on whether activities constitute a trade or business, or whether books and records are maintained—and thereby addresses many of the concerns raised in these comments. Accordingly, in lieu of the QBU standard in the 2019 proposed regulations, the final regulations generally apply the GILTI high-tax exclusion based on the gross tested income of a CFC that is attributable to a ''tested unit.'' *See* § 1.951A–2(c)(7)(ii). Unlike the QBU standard that serves as a proxy for being subject to foreign tax, the tested unit approach generally applies to the extent an entity, or the activities of an entity, are actually subject to tax, as either a tax resident or a permanent establishment (or similar taxable presence), under the tax law of a foreign country.

The final regulations provide three categories of a tested unit. First, and consistent with the 2019 proposed regulations, a tested unit includes a CFC. *See* § 1.951A–2(c)(7)(iv)(A)(*1*). Thus, if a CFC, which itself is a tested unit, has no other tested units, the GILTI high-tax exclusion is applied with respect to all the tentative gross tested income items (determined under § 1.951A–2(c)(7)(ii)) of the CFC.

Second, and also consistent with the 2019 proposed regulations, a tested unit generally includes an interest in a pass-through entity held, directly or indirectly, by a CFC. *See* § 1.951A–2(c)(7)(iv)(A)(*2*). For this purpose, a pass-through entity is defined to include, for example, a partnership or a disregarded entity. *See* § 1.951A–2(c)(7)(ix)(B).

More specifically, a CFC's interest in a pass-through entity is a tested unit if the pass-through entity meets one of two requirements. First, the CFC's interest in the pass-through entity is a tested unit if the pass-through entity is a tax resident of a foreign country because, in these cases, income earned by the CFC indirectly through the pass-through entity may be subject to tax at a rate different than the rate at which income earned by the CFC directly is subject to tax. *See* § 1.951A–2(c)(7)(iv)(A)(*2*)(*i*). Second, the CFC's interest in the pass-through entity is a tested unit if the pass-through entity is not subject to tax as a resident, but is treated as a corporation (or as another entity that is not fiscally transparent) for purposes of the CFC's tax law, because in these cases income earned by the CFC indirectly through the pass-through entity may not be subject to tax in the foreign country of which the CFC is a tax resident; thus, for example, an interest in a domestic limited liability company that is a partnership for federal income tax purposes would typically be a tested unit. *See* § 1.951A–2(c)(7)(iv)(A)(*2*)(*ii*). A CFC's interest in a pass-through entity (or the activities of a branch) that is not a tested unit is a ''transparent interest.'' *See* § 1.951A–2(c)(7)(ix)(C); see also the discussion on transparent interests in part III.C.3 of this Summary of Comments and Explanation of Revisions.

This treatment of interests in pass-through entities in the final regulations is consistent with a comment suggesting that a pass-through entity should be treated as a tested unit if the entity is treated as a separate entity for purposes of a foreign tax law, but not if the entity is fiscally transparent (and thus not a tax resident) for purposes of the tax law of a foreign country.

An interest in an entity, rather than the entity itself, is treated as a tested unit (or a transparent interest) because the entity may have multiple owners and the characterization of the interest as a tested unit may depend on each holder's tax treatment with respect to the interest. As a result, less than the entire entity may be characterized as a tested unit or a transparent interest. In addition, different interests in an entity held directly or indirectly by the same CFC may be characterized differently. The final regulations include an example that illustrates the application of this rule. *See* § 1.951A–2(c)(8)(iii)(D) (Example 4).

Finally, a tested unit includes a branch, or a portion of a branch, the activities of which are carried on directly or indirectly by a CFC, provided that either (i) the branch gives rise to a taxable presence in the country in which the branch is located, or (ii) the branch gives rise to a taxable presence under the owner's tax law, and the owner's tax law provides an exclusion, exemption, or other similar relief (such as a preferential rate) for income attributable to the branch. *See* § 1.951A–2(c)(7)(iv)(A)(*3*). In these cases, the income indirectly earned by the owner through the branch is likely subject to tax at a rate different than the rate at which income directly earned by the owner is subject to tax. The Treasury Department and the IRS have determined that this branch tested unit rule addresses blending concerns related to an owner's taxable presence in another country in a more targeted manner than the ''activities'' QBU standard from the 2019 proposed regulations. In addition, the Treasury Department and the IRS have determined that the branch tested unit rule will likely reduce compliance burdens, as compared to the QBU standard from the 2019 proposed regulations, because the tested unit rule

depends on how activities are treated under foreign tax law, an analysis of which in most cases would be conducted independently of the final regulations (for example, to determine whether a tax return must be filed because activities in that country give rise to a taxable presence).

For purposes of the tested unit rules, references to the tax law of a foreign country include statutes, regulations, administrative or judicial rulings, and treaties of the country. *See* § 1.951A–2(c)(7)(iv)(A)(*2*) and (*3*) (cross-referencing definitions in regulations under section 267A that incorporate the definition of the tax law of a country in § 1.267A–5(a)(21)).

The final regulations make clear that tested units are determined independently of one another. For example, even though a CFC is itself a tested unit, the CFC may have other tested units, such as a permanent establishment or an interest in a disregarded entity that, subject to the application of the combination rule discussed in part III.B of this Summary of Comments and Explanation of Revisions, must be treated separately for purposes of the GILTI high-tax exclusion. *See* § 1.951A–2(c)(8)(iii)(D) (Example 4).

The final regulations also provide a rule that addresses cases where the same item is attributable to more than one tested unit in a tier of tested units. This may occur, for example, if an item is properly reflected both on the separate set of books and records of one tested unit, and on the separate set of books and records of a lower-tier tested that is owned (directly or indirectly) by the first tested unit, because the books and records of the two tested units were prepared under different accounting standards. In such a case, the final regulations provide that the item is considered to be attributable only to the lowest-tier tested unit. *See* § 1.951A–2(c)(7)(iv)(B).

B. Combined Tested Units

The 2019 proposed regulations apply separately to each QBU of a CFC. *See* proposed § 1.951A–2(c)(6)(ii)(A)(*1*). However, the preamble to the 2019 proposed regulations requested comments as to whether all of a CFC's QBUs located within a single foreign country should be combined.

Several comments recommended combining ''same-country'' QBUs, on an elective basis, noting it would reduce complexity and compliance burdens. Some comments asserted that a combined same-country QBU approach would be more consistent with congressional intent for the GILTI regime to target income in low- and zero-tax countries, would reduce certain variances (for example, due to business cycle fluctuations or differences between the U.S. and foreign tax bases), and would reduce incentives for tax-motivated restructuring. Another comment recommended that the final regulations include rules that would allow taxpayers to take into account a fiscal unity or similar grouping in determining the effective foreign tax rate.

The Treasury Department and the IRS generally agree that a combination rule would reduce compliance burdens and would be consistent with the policies underlying the GILTI high-tax exclusion. Moreover, a combination rule may minimize the effect of timing and other differences between the U.S. and foreign tax bases. Accordingly, the final regulations generally provide that tested units of a CFC (including the CFC tested unit), other than certain nontaxed branch tested units, are treated as a single tested unit if the tested units are tax residents of, or located in, the same foreign country. *See* § 1.951A–2(c)(7)(iv)(C)(*1*). In general, a nontaxed branch tested unit is a branch tested unit that does not give rise to a taxable presence under the tax law of the foreign country where the branch is located, but gives rise to a taxable presence under the tax law of the foreign country where the home office of the branch is a tax resident and such tax law provides an exclusion, exemption, or similar relief for purposes of taxing income attributable to the branch. *See* § 1.951A–2(c)(7)(iv)(A)(*3*). The tested unit combination rule does not apply to a nontaxed branch tested unit because such a tested unit typically would not be subject to tax (or to any meaningful level of tax) in any foreign country and thus combining it with other tested units (the income of which may be subject to a meaningful level of tax) could give rise to inappropriate blending. *See* § 1.951A–2(c)(7)(iv)(C)(*2*).

The combination rule applies without regard to whether the tested units are subject to the same foreign tax rate because it would be inconsistent with the purpose of the combination rule to require taxpayers to determine the effective foreign tax rate imposed on the tested units separately, and simply comparing the statutory foreign tax rates may not be meaningful. In addition, the combination rule is not conditioned on the tested units having the same functional currency because the effective foreign tax rate is calculated in U.S. dollars and any differences in functional currency are unlikely to have a material effect on whether income qualifies for the GILTI high-tax exclusion. Finally, the combination rule is mandatory, and not elective, because providing an election would give rise to additional complexity, and related administrative and compliance burdens.

C. Books and Records

1. In General

Under the 2019 proposed regulations, gross income is attributable to a QBU if it is properly reflected on the books and records of the QBU. *See* proposed § 1.951A–2(c)(6)(ii)(A)(*2*). For this purpose, gross income is determined under federal income tax principles with certain adjustments to reflect disregarded payments. *Id.*

As discussed in part III.A of this Summary of Comments and Explanation of Revisions, the final regulations adopt a tested unit standard, rather than a QBU standard, for purposes of determining a tentative gross tested income item. Nevertheless, the final regulations retain the general approach set forth under the 2019 proposed regulations of relying on a separate set of books and records (as modified to apply to tested units, rather than QBUs) as the starting point for determining gross income attributable to a tested unit. The Treasury Department and the IRS have concluded that applying the books-and-records approach for tested units is appropriate because it serves as a reasonable proxy for determining the amount of gross income that the foreign country of the tested unit is likely to subject to tax. In addition, relying on a separate set of books and records is consistent with the approach taken under other provisions and, therefore, should promote administrability for both taxpayers and the government. *See,* for example, §§ 1.904–4(f) (foreign branch category rules), 1.987–2(b) (rules for determining items attributable to a QBU branch), and 1.1503(d)–5(c) (dual consolidated loss rules).

The final regulations generally provide that items of gross income of a CFC are attributable to a tested unit of the CFC to the extent they are properly reflected on the separate set of books and records of the tested unit, or of the entity an interest in which is a tested unit (for example, in the case of certain partnerships). *See* § 1.951A–2(c)(7)(ii)(B). This rule starts with the items of gross income of the CFC for federal income tax purposes and then attributes those items to the CFC's tested units to the extent the items are properly reflected on the separate set of books and records of the tested units (with certain adjustments, such as to account for disregarded payments). For

example, if a CFC owns a partnership interest that is a tested unit, the items of gross income that the CFC derives through the partnership interest are attributed to the CFC's interest in the partnership to the extent that the items are properly reflected on the separate set of books and records of the partnership. Thus, this approach first gives effect to the rules that determine the items of gross income of the CFC, such as the rules under section 704 for purposes of determining a CFC partner's distributive share of items of a partnership, and then attributes those items to the tested units of the CFC depending on whether the items are properly reflected on the separate set of books and records. The final regulations include examples that illustrates the application of this rule. *See* § 1.951A–2(c)(8)(D) (Example 4).

2. Separate Set of Books and Records

The Treasury Department and the IRS have determined that a tested unit, or an entity an interest in which is a tested unit, generally will maintain a separate set of books and records that would be readily available for purposes of the final regulations. This is expected to be the case for a branch tested unit under § 1.951A–2(c)(7)(iv)(A)(*3*) (involving a taxable presence), for example, because a separate set of books and records would ordinarily be required to compute the foreign tax liability arising in the taxing country (or for not taking into account items attributable to the taxable presence if determined only under the owner's tax law). Accordingly, the final regulations retain the general approach taken in the 2019 proposed regulations by defining a ''separate set of books and records'' by reference to § 1.989(a)–1(d). *See* § 1.951A–2(c)(7)(v)(A).[4]

3. Booking Rule for Transparent Interests

The final regulations provide a special booking rule that applies to a transparent interest, which, as noted in part III.A of this Summary of Comments and Explanation of Revisions, is an interest in a pass-through entity (or the activities of a branch) that is not a tested unit. This rule, which is consistent with the rule in § 1.1503(d)–5(c)(3)(ii) (addressing similar interests for purposes of the dual consolidated loss rules), generally treats items properly reflected on the separate set of books and records of an entity an interest in which is a transparent interest as being properly reflected on the books and records of a tested unit that holds interests (directly or indirectly through other transparent interests) in the entity. *See* § 1.951A–2(c)(7)(v)(C). This treatment is appropriate because income earned by the tested unit directly, as well as income earned by the tested unit indirectly through the transparent interest, is expected to be subject to residence-based tax in only the tested unit's country of residence (or location) and, as a result, it is unlikely that blending of income subject to different foreign tax rates would occur by reason of the tested unit's ownership of the transparent interest.

4. Tested Units That Fail To Maintain a Set of Books and Records

The final regulations include a rule that applies if a separate set of books and records is not prepared for a tested unit or transparent interest. In such a case, items required to apply the GILTI high-tax exclusion that would be reflected on a separate set of books and records of the tested unit or transparent interest must be determined and treated as properly reflected on the separate set of books and records. *See* § 1.951A–2(c)(7)(v)(B). This rule is intended to address cases where a separate set of books and records is not maintained, and to prevent the avoidance of the rules by choosing to not maintain a separate set of books and records.

5. Items of Gross Income Not Taken Into Account for Financial Accounting Purposes

In some cases, items of gross income (determined under federal income tax principles) may not be properly reflected on a separate set of books and records because they are not taken into account for financial accounting purposes. This may occur when items are taken into account for federal income tax purposes and financial accounting purposes in different taxable years, or when items are taken into account for federal income tax purposes but are not taken into account for financial accounting purposes (for example, due to the mark-to-market method of accounting). To ensure that these items of gross income are attributable to a tested unit in a CFC inclusion year, the final regulations clarify that the items are treated as properly reflected on a separate set of books and records if they would be so reflected if they were taken into account for financial accounting purposes in the CFC inclusion year in which they are taken into account for federal income tax purposes. *See* § 1.951A–2(c)(7)(v)(D). No inference should be drawn from this clarification with respect to other similar rules that attribute items based on books and records, including under § 1.904–4(f), § 1.987–2(b), or § 1.1503(d)–5(c).

D. De Minimis Rules

A comment recommended that the final regulations adopt two de minimis rules to simplify the application of the QBU-by-QBU approach. First, the comment suggested that taxpayers should be permitted to elect to treat all CFCs with income below a specified threshold as a single QBU. The Treasury Department and the IRS have determined that aggregating CFCs for this purpose would be inconsistent with section 954(b)(4), which applies with respect to items of income of a single CFC. Accordingly, this recommendation is not adopted.

Second, the comment suggested that taxpayers should be permitted to elect to aggregate QBUs within the same CFC that have a small amount of tested income (measured either in absolute terms or based on a percentage of the CFC's income). However, it is uncertain whether aggregating QBUs with small amounts of tested income will result in a significant amount of simplification because, for example, gross income would still have to be attributed to each QBU (taking into account disregarded payments) to determine whether the de minimis rule applies. The final regulations do not adopt the recommendation, but a de minimis rule is included in the 2020 proposed regulations to allow an opportunity for additional notice and comment.

IV. Rules Regarding the Election

A. Consistency Requirement

The 2019 proposed regulations generally provide that if a CFC is a member of a controlling domestic shareholder group (''CFC group''),[5] a GILTI high-tax exclusion election (or revocation) is either made with respect to each member of the CFC group or is not made for any member of the CFC group. *See* proposed § 1.951A–2(c)(6)(v)(E)(*1*) and part IV.B of this Summary of Comments and Explanation of Revisions. The preamble to the 2019 proposed regulations requested comments on whether the consistency rule should be modified or removed, for example, by allowing the election to be made on an item-by-item or a CFC-by-CFC basis.

[4] The 2020 proposed regulations, however, replace the reference to ''books and records'' with a more specific standard based on items properly reflected on an ''applicable financial statement,'' and request comments.

[5] The final regulations adopt the shorter and more descriptive term ''CFC group,'' instead of the term ''controlling domestic shareholder group.'' *See* § 1.951A–2(c)(7)(viii)(E)(*2*).

Several comments requested that the final regulations eliminate the consistency requirement such that the GILTI high-tax exclusion election can be made on a CFC-by-CFC basis, which would conform the exclusion to the subpart F high-tax exception. Some comments asserted that the consistency requirement is too restrictive because the GILTI regime generally applies to both low- and high-taxed income and the consistency requirement has the effect of applying the GILTI regime only to low-taxed income since all high-taxed income is excluded. Comments further asserted that determining whether making the election for all CFCs is beneficial, especially when involving multiple foreign countries, is a complex and difficult task and would increase taxpayers' compliance burden. Some comments stated that the elimination of the consistency requirement would enable taxpayers to minimize the unfavorable interaction between the GILTI regime and the rules for allocating and apportioning deductions. Other comments asserted that the consistency requirement would encourage taxpayers to implement structures that would convert tested income into subpart F income, which is contrary to one of the purposes of the GILTI high-tax exclusion. Finally, comments suggested that if the consistency requirement is included in the final regulations, it is likely that many taxpayers will not make the GILTI high-tax exclusion election.

The Treasury Department and the IRS have determined that the consistency requirement is necessary due to the collateral effect that the GILTI high-tax exclusion has on the allocation and apportionment of deductions. Specifically, allowing CFC-by-CFC or tested unit-by-tested unit elections would encourage the selective use of the GILTI high-tax exclusion to inappropriately manipulate the section 904 foreign tax credit limitation. In this regard, deductions allocated and apportioned to income excluded under section 954(b)(4) will be subject to section 904(b)(4), as described in Part V.A of this Summary of Comments and Explanation of Revisions, and thereby disregarded for purposes of determining a taxpayer's foreign tax credit limitation under section 904. Without a consistency requirement, taxpayers may be able to include high-taxed income in GILTI to claim foreign tax credits up to the amount of their section 904 limitation, while electing to exclude the remainder of such income under the GILTI high-tax exclusion. Consequently, the taxpayer's section 904 limitation would not take into account all the deductions attributable to investments generating high-taxed income, resulting in a distortive application of the foreign tax credit limitation under section 904. A consistency requirement prevents this result by ensuring that a taxpayer that seeks to cross-credit the foreign tax imposed on high-taxed tentative tested income against low-taxed tentative tested income must take all of its high-taxed tentative tested income into account along with all of the deductions allocated and apportioned to that category of income. This concern does not arise with respect to other types of income that are excluded from tested income (for example, foreign oil and gas extraction income) because such items are always excluded (that is, there is no electivity as to whether they are included in tested income), and the foreign taxes attributable to that income can never be claimed as a credit against the U.S. tax imposed on section 951A inclusions.

The Treasury Department and the IRS agree that the GILTI high-tax exclusion election and the subpart F high-tax exception election should apply consistently and, as noted in part I of this Summary of Comments and Explanation of Revisions, have determined that the subpart F high-tax exception should be conformed to the GILTI high-tax exclusion, as discussed in the preamble to the 2020 proposed regulations. This is appropriate, in part, due to changes made by the Act. Before the Act, a consistency requirement would have had minimal effect because post-1986 earnings and profits (including income excluded from subpart F income under section 954(b)(4)) could be distributed and would be included in income of the U.S. shareholder, and foreign taxes would be deemed paid under section 902, subject to the limitations imposed by section 904, which is a result consistent with a subpart F inclusion. Further, before the Act, an amount excluded under section 954(b)(4) largely resulted only in the deferral of income and deemed paid foreign taxes, rather than an exclusion of those items from the U.S. tax base, and deductions allocated and apportioned to such income would limit a taxpayer's ability to claim foreign tax credits in the future. After the Act, an election under section 954(b)(4) will result in a permanent change in the treatment of high-taxed income and the associated foreign taxes and deductions, increasing the significance, from a policy perspective, of inconsistent treatment.

Thus, the Treasury Department and the IRS have determined that the policy underlying section 954(b)(4) is best furthered through a single election to exclude all high-taxed income from GILTI (and, subject to finalization of the 2020 proposed regulations, subpart F income) because that income does not pose a base erosion concern and is therefore not the type of income that Congress intended to include in tested income. However, because the application of section 954(b)(4), and the additional administrative burden associated with identifying high-taxed items of income, has always been elective, the Treasury Department and the IRS have determined that the exclusion of such income (and to the extent possible any additional burden associated with identifying such income) should continue to be limited to cases where a taxpayer elects the application of section 954(b)(4).

The Treasury Department and the IRS have determined that it would be inappropriate to allow a taxpayer to selectively exclude and include income, once it makes an election under section 954(b)(4). Section 951A generally does not permit electivity in the determination of tested income. For example, a taxpayer cannot choose to include in tested income amounts that would be subpart F income but for the application of section 954(b)(4) (regardless of whether the election is made), nor may a taxpayer choose to include foreign oil and gas extraction income in tested income. Further, contrary to some comments, the Treasury Department and the IRS anticipate that the additional electivity is more likely to increase, rather than reduce, compliance burden as a result of the need for more numerous calculations. As a result, the Treasury Department and the IRS have concluded that the consistency rule should be retained; accordingly, this recommendation is not adopted.

B. Definition of CFC Group

The 2019 proposed regulations define a CFC group based on two tests. Under the first test, a CFC group means two or more CFCs if more than 50 percent of the total combined voting power of the stock of each CFC is owned (within the meaning of section 958(a)) by the same controlling domestic shareholder (as defined in § 1.964–1(c)(5)). *See* proposed § 1.951A–2(c)(6)(v)(E)(*2*). The second test applies only if no single controlling domestic shareholder satisfies the first test. Under the second test, the 2019 proposed regulations provide that a CFC group means two or more CFCs if more than 50 percent of the total combined voting power of the stock of each CFC is owned (within the

meaning of section 958(a)) by the same controlling domestic shareholders and each such shareholder owns (within the meaning of section 958(a)) the same percentage of stock in each CFC. *See id.* For purposes of both tests, a controlling domestic corporate shareholder includes a related person (within the meaning of section 267(b) or 707(b)(1)) (the ''related party rule''). *See id.*

One comment raised several issues with the definition of a CFC group. For example, the comment stated that the application of the related party rule is circular because it requires the already-determined existence of a controlling domestic shareholder to apply the rule that a controlling domestic shareholder includes persons related to the controlling domestic shareholder. In addition, the comment requested clarification as to whether, for purposes of determining the CFC group, section 958(a) ownership is limited to ownership by U.S. persons. The comment also raised several issues related to changes in ownership of CFCs, including issues arising in connection with simultaneous acquisitions of CFCs and acquisitions of controlling domestic shareholders.

In response to these comments, the final regulations revise the definition of a CFC group. Under the final regulations, a CFC group is an affiliated group, as defined in section 1504(a), with certain modifications that broaden the definition. *See* § 1.951A–2(c)(7)(viii)(E)(*2*)(*i*). First, the affiliated group rules in section 1504(a) apply without regard to section 1504(b)(1) through (6) (which exclude certain corporations, such as foreign corporations, from the definition of an ''includible corporation''). *See id.* Second, for purposes of determining whether a CFC is a member of a CFC group, the final regulations incorporate a ''more than 50 percent'' threshold instead of the ''at least 80 percent'' threshold in section 1504(a). *See id.* Stock ownership for this purpose is determined by applying the constructive ownership rules of section 318(a), with certain modifications. *See id.* These constructive ownership rules would, for example, cause two corporations owned directly by the same U.S. individual to be part of a CFC group.

The final regulations provide that the determination of whether a CFC is included in a CFC group is made as of the close of the CFC inclusion year of the CFC that ends with or within the taxable years of the controlling domestic shareholders. *See* § 1.951A–2(c)(7)(viii)(E)(*2*)(*ii*). This rule is intended to address certain changes in ownership of CFCs, such as acquisitions and dispositions. The final regulations also provide that a CFC may be a member of only one CFC group and include a special tie-breaker rule for situations in which a CFC would be a member of more than one CFC group. *See* § 1.951A–2(c)(7)(viii)(E)(*2*)(*iii*).

The final regulations also clarify that if a CFC is not a member of a CFC group, a high-tax election is made (or revoked) only with respect to the CFC and the rules regarding the election apply by reference to the CFC. *See* § 1.951A–2(c)(7)(viii)(A). If, however, a CFC is a member of a CFC group, a high-tax election is made (or revoked) with respect to all members of the CFC group and the rules regarding the election apply by reference to the CFC group. *See* § 1.951A–2(c)(7)(viii)(E)(*1*).

C. Duration of Election

The 2019 proposed regulations generally provide that the GILTI high-tax exclusion election is effective for the CFC inclusion year for which it is made and all subsequent CFC inclusion years, unless the election is revoked. *See* proposed § 1.951A–2(c)(6)(v)(C). The 2019 proposed regulations further provide that, subject to a ''change of control'' exception, if an election is revoked, then the CFC cannot make a new election for any CFC inclusion year that begins within 60 months following the close of the CFC inclusion year for which the previous election was revoked (''60-month restriction''). *See* proposed § 1.951A–2(c)(6)(v)(D)(*2*). The preamble to the 2019 proposed regulations requested comments on whether the 60-month restriction should be modified or removed.

Several comments requested that the 60-month restriction be eliminated such that taxpayers would be permitted to make the GILTI high-tax exclusion election on an annual basis. Some comments reasoned that this change would be consistent with the subpart F high-tax exception, which is an annual election. Another comment asserted that taxpayers should be permitted to make the election annually to take into account significant fluctuations in foreign income that taxpayers generate from year to year, or the likely possibility that taxpayers may be subject to differing foreign tax rates from year to year as a result of economic factors and conditions beyond their control. Finally, a comment stated that taxpayers with a mix of high-taxed and low-taxed income attributable to their QBUs must evaluate various factors to determine whether an election should be made and, as those factors change from year to year, the 60-month restriction may force taxpayers to pay additional tax under the GILTI regime if future projections are incorrect.

The Treasury Department and the IRS agree with these comments and have determined that, given that the final regulations adopt a tested unit-by-tested unit approach (in lieu of the QBU-by-QBU approach) and retain the consistency requirement set forth in the 2019 proposed regulations, the 60-month restriction is not necessary to prevent abuse. Accordingly, the final regulations do not include the 60-month restriction and, subject to the consistency requirement, taxpayers may elect the GILTI high-tax exclusion on an annual basis.

Because the final regulations eliminate the 60-month restriction, comments requesting that the restriction be clarified in certain respects are moot and therefore not discussed.

D. Effect on Non-Controlling U.S. Shareholders

One comment requested that the final regulations include a notice of election and revocation requirement, which would require any U.S. shareholder that makes or revokes an election to notify the CFC of such action and require any CFC that receives an election or revocation notice from a U.S. shareholder for a taxable year to notify its other U.S. shareholders of the action taken by the U.S. shareholder and its ownership percentage.

The Treasury Department and the IRS agree that U.S. shareholders that are not controlling domestic shareholders of a CFC should be informed by the controlling domestic shareholders of the CFC if they make (or revoke) a GILTI high-tax exclusion election with respect to the CFC. Therefore, the final regulations clarify that the controlling domestic shareholders must provide notice of elections (or revocations), as required by § 1.964–1(c)(3)(iii), to each U.S. shareholder that is not a controlling domestic shareholder. *See* § 1.951A–2(c)(7)(viii)(A)(*1*)(*ii*), (C) and (D).

E. Treatment of Domestic Partnerships as Controlling Domestic Shareholders

The proposed regulations under section 958 in the 2019 proposed regulations provide, as a general rule, that for purposes of sections 951 and 951A (and certain related provisions) a domestic partnership is not treated as owning stock of a foreign corporation within the meaning of section 958(a). *See* proposed § 1.958–1(d)(1). Under an exception to this general rule, a domestic partnership is treated as owning stock of a foreign corporation within the meaning of section 958(a) for purposes of determining whether any

U.S. shareholder is a controlling domestic shareholder. *See* proposed § 1.958–1(d)(2). The preamble to the 2019 proposed regulations requested comments on this exception. The Treasury Department and the IRS intend to address comments received in response to this request in connection with finalizing the proposed regulations under sections 951, 956, 958, and 1502.[6]

F. Elections Made or Revoked on Amended Tax Returns

The 2019 proposed regulations generally allow a taxpayer to make (or revoke) the GILTI high-tax exclusion election with an amended income tax return. *See* proposed § 1.951A–2(c)(6)(v)(A)(*1*) and (c)(6)(v)(D)(*1*). One comment indicated that it was unclear how the binding effect of the election on all U.S. shareholders of a CFC operates when the controlling domestic shareholder makes (or revokes) the election on an amended return. In particular, the comment stated that it was unclear whether a U.S. shareholder, other than a controlling domestic shareholder, would be required to file an amended return reflecting the election (or revocation). The comment further raised concerns about the possibility that the assessment statute of limitations may limit the government's ability to assess any additional tax due as a result of such election (or revocation). The comment recommended that the final regulations clarify whether U.S. shareholders are required to file amended income tax returns when an election is made (or revoked) on an amended return.

In general, the Treasury Department and the IRS agree with the comment that allowing the controlling domestic shareholders to make (or revoke) the GILTI high-tax exclusion election on an amended income tax return may change the amount of U.S. tax due with respect to U.S. shareholders other than the controlling domestic shareholders. Further, the election or revocation may change the amount of U.S. tax due with respect to all U.S. shareholders in intervening tax years. If the election were made (or revoked) on an amended return after some or all of these taxable years are no longer open for assessment under section 6501, it may result in the issuance of refunds for certain taxable years of shareholders when corresponding deficiencies could not be assessed or collected. As a result, the final regulations provide that the election may be made (or revoked) on an amended federal income tax return only if all U.S. shareholders of the CFC file amended federal income tax returns (unless an original return has not yet been filed, in which case the original federal income tax return may be filed consistently with the election (or revocation)) for the taxable year (and for any other taxable year in which their U.S. tax liabilities would be increased by reason of that election (or revocation)) (or in the case of a partnership if any item reported by the partnership or any partnership-related item would change as a result of the election (or revocation)), within 24 months of the unextended due date of the original federal income tax return of the controlling domestic shareholder's inclusion year with or within which the CFC inclusion year, for which the election is made (or revoked), ends. *See* § 1.951A–2(c)(7)(viii)(A)(*2*) and (c)(7)(viii)(C). For administrative purposes, the final regulations also provide that amended federal income tax returns for all U.S. shareholders of the CFC for the CFC inclusion year must be filed within a single 6-month period (within the 24-month period). *See* § 1.951A–2(c)(7)(viii)(A)(*2*)(*ii*). The requirement that all amended federal income tax returns be filed within a 6-month period is to allow the IRS to timely evaluate refund claims or make additional assessments.

The final regulations also clarify how these rules operate in the case of a U.S. shareholder that is a domestic partnership. *See* § 1.951A–2(c)(7)(viii)(A)(*3*) and (*4*). For example, the final regulations provide that in the case of a U.S. shareholder that is a partnership, the election may be made (or revoked) with an amended Form 1065 or an administrative adjustment request (as described in § 301.6227–1), as applicable. See § 1.951A–2(c)(7)(viii)(A)(*3*). The final regulations further provide that if a partnership files an administrative adjustment request, a partner that is a U.S. shareholder in the CFC is treated as having complied with these requirements (with respect to the portion of the interest held through the partnership) if the partner and the partnership timely comply with their obligations under section 6227 with respect to that administrative adjustment request. See § 1.951A–2(c)(7)(viii)(A)(*4*).

V. Foreign Tax Credit Rules

A. Allocation and Apportionment of Deductions With Respect to CFC Stock

One comment requested that the final regulations confirm that U.S. shareholder deductions properly allocated and apportioned to income excluded under the GILTI high-tax exclusion should not be taken into account for purposes of section 904 per the application of section 904(b)(4)(B). Section 904(b)(4) applies with respect to deductions properly allocated and apportioned to income (other than amounts includible under section 951(a)(1) or 951A(a)) with respect to stock of a specified 10-percent owned foreign corporation (as defined in section 245A(b)) or to such stock to the extent income with respect to such stock is other than amounts includible under section 951(a)(1) or 951A(a). Accordingly, section 904(b)(4) applies to any deduction allocated and apportioned to dividend income for which a deduction is allowed under section 245A. *See* § 1.904(b)–3(a)(1)(ii). Similarly, section 904(b)(4) applies to any deduction allocated and apportioned to stock of specified 10-percent owned foreign corporations in the section 245A subgroup. *See* § 1.904(b)–3(a)(1)(iii). For purposes of characterizing stock of a CFC under § 1.861–13, income excluded under the GILTI high-tax exclusion should be treated as any other foreign or U.S. source gross income described in § 1.861–13(a)(1)(i)(A)(*9*) and (*10*). The portion of the value of the stock of the CFC relating to such income will be assigned to the section 245A subgroup under § 1.861–13(a)(5)(ii) through (iv). As a result, the Treasury Department and the IRS have determined that the regulations are clear regarding the interaction of U.S. shareholder deductions allocated and apportioned to income excluded under the GILTI high-tax exclusion and section 904(b)(4), and no further rules are necessary.

Another comment suggested that the final regulations turn off the application of section 904(b)(4) for deductions allocated and apportioned to income or stock that relates to earnings and profits arising from CFC income that is excluded by reason of the GILTI high-tax exclusion. This comment indicated that allowing the application of section 904(b)(4) could incentivize taxpayers to inappropriately locate deductions related to high-taxed income in the United States. The Treasury Department and the IRS do not agree that taxpayers will have a material incentive to relocate deductions relating to high-taxed income to the United States as a

[6] Under currently applicable § 1.951A–1(e)(2), a domestic partnership can be a controlling domestic shareholder—for example, for purposes of determining which party elects the GILTI high-tax exclusion under § 1.951A–7(c)(7)(viii)(A), including potentially for taxable years beginning after December 31, 2017, under § 1.951A–7(b), as discussed in part VIII of this Summary of Comments and Explanation of Revisions.

result of the application of section 904(b)(4) because the foreign tax rates required to qualify for the GILTI high-tax exclusion must generally be comparable to or higher than the U.S. corporate tax rate, and, thus, taxpayers will generally benefit from locating such deductions in the foreign country. In effect, the GILTI high-tax exclusion reduces the effect of federal income taxes on taxpayers' locational decisions with respect to investment and deductions, thereby increasing the likelihood that such decisions will be based on non-tax business considerations. Furthermore, section 904(b)(4) by its terms applies to income that is not includible under section 951(a)(1) or section 951A(a), and income excluded under the GILTI high-tax exclusion is not includible under either of those provisions. Accordingly, the comment is not adopted.

B. Determination of Taxes Paid or Accrued

One comment asserted that the 2019 proposed regulations are unclear as to the determination of the foreign taxes paid or accrued and requested that the final regulations clarify that foreign income taxes include taxes imposed by a country (or countries) on the net item, as provided under current § 1.954–1(d)(3)(i). The comment specifically notes, as an example, instances where two foreign countries tax the same income.

The rules provided in § 1.951A–2(c)(7)(iii) and (vii) are comparable to those provided in current § 1.954–1(d)(3)(i); both sets of rules generally apply § 1.904–6 to allocate and apportion foreign taxes to income. Although the GILTI high-tax exclusion requires that foreign taxes be associated with income on a narrower basis—the tested unit rather than the CFC—taxes imposed on the CFC that relate to income of the tested unit will generally be associated with the appropriate income under the rules in § 1.904–6, regardless of whether such tax is imposed by one or more countries. The 2020 proposed regulations propose further conformity of the rules applicable for the computation of the effective foreign tax rate for both subpart F income and tested income.

Further, in response to this comment, as well as similar comments received in response to the 2019 proposed regulations, the final regulations (T.D. 9882) relating to foreign tax credits published in the **Federal Register** (84 FR 69022) (''the 2019 Final FTC Regulations'') and these final regulations clarify the rules for associating foreign taxes with income. In particular, these final regulations clarify that the amount of foreign income taxes paid or accrued by a CFC with respect to a tentative tested income item is the U.S. dollar amount of the controlled foreign corporation's current year taxes that are allocated and apportioned to the related tentative gross tested income. *See* § 1.951A–2(c)(7)(vii). The final regulations provide that the deductions for current year taxes are allocated and apportioned to a tentative gross tested income item under the principles of § 1.960–1(d)(3), by treating each tentative gross tested income item as assigned to a separate tested income group. *See* § 1.951A–2(c)(7)(iii)(A). As a result, the principles of § 1.904–6(a)(1) generally apply to allocate and apportion foreign income taxes to a tentative gross tested income item. However, the principles of § 1.904–6(a)(2) are applied, in lieu of the principles of § 1.904–6(a)(1), to associate foreign taxes with income in the case of disregarded payments between tested units. *See* § 1.960–1(d)(3) and § 1.951A–2(c)(7)(iii)(B). The final regulations provide additional rules for how the principles of § 1.904–6(a)(2) should be applied for purposes of the high-tax exception. *See id.* In addition, a new example illustrates how foreign income taxes are associated with income in the case of disregarded payments. *See* § 1.951A–2(c)(8)(iii)(B) (Example 2). The Treasury Department and the IRS also published proposed regulations (REG–105495–19) relating to foreign tax credits in the **Federal Register** (84 FR 69124) that contain more detailed rules for associating foreign taxes with income, including in the case of disregarded payments.

C. Annual Accounting Periods and Foreign Tax Accruals

The proposed regulations generally provide that the amount of foreign income taxes paid or accrued with respect to a tentative net tested income item are the CFC's current year taxes (as defined in § 1.960–1(b)(4)) that would be allocated and apportioned under the principles of § 1.960–1(d)(3)(ii) to the tentative net tested income item by treating the item as in a separate tested income group. *See* proposed § 1.951A–2(c)(6)(iv). Taxes accrue, and are taken into account in determining foreign taxes deemed paid under section 960(d), when all the events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy. *See* § 1.960–1(b)(4). Therefore, withholding taxes accrue when the payment from which the tax is withheld is made, and net basis taxes on income recognized during a taxable period accrue on the last day of the taxable period. *Id.*

Comments suggested that the final regulations provide special rules to address distortions that can arise from a mismatch between the U.S. and foreign taxable years. One comment recommended a ''closing of the books election'' whereby a taxpayer could elect to allocate and apportion its foreign taxes accrued in one U.S. taxable year across multiple U.S. taxable years, in proportion to the income accrued in each U.S. taxable year. Other comments recommended that taxpayers be permitted to adopt various alternative methods of accounting, including the use of the foreign taxable year to determine whether income is subject to a high rate of tax, or methods of accounting required under foreign law, such as mark-to-market.

The Treasury Department and the IRS have determined that foreign taxes should be associated with U.S. income consistently for all federal income tax purposes, and that deviating from established principles for determining when income and foreign taxes are taken into account for purposes of the GILTI high-tax exclusion would be inappropriate. Allowing foreign taxes to be taken into account in applying the GILTI high-tax exclusion in a different year than the year in which the foreign taxes accrue could lead to double counting, or double-non-counting, of the foreign taxes. This could occur, for example, if a foreign tax that accrued in one year both caused a prior year tentative tested income item to be excluded as high-taxed and was creditable in the later year under section 960(d). While some comments also recommended changes to how foreign taxes are taken into account more generally, changes to the foreign tax credit regime are beyond the scope of this rulemaking. In addition, the Treasury Department and the IRS responded to similar comments in Part V of the Summary of Comments and Explanation of Revisions in the preamble to the 2019 Final FTC Regulations.

Similar considerations would apply with respect to the adoption of alternative methods of accounting for tentative tested income items, such as the adoption of a foreign fiscal year as the testing period or mark-to-market accounting. The use of these methods would lead to potential double counting of items of income, gain, deduction, or loss in different U.S. taxable years for different purposes, or would require complex coordination rules with material changes to established rules

relating to when such items accrue for federal income tax purposes. Such changes are beyond the scope of this rulemaking and, accordingly, are not adopted.

VI. Removal of Examples in § 1.954–1(d)(7)

Current § 1.954–1(d)(7) provides examples that illustrate the application of the rules set forth in § 1.954–1(c) and (d). The Treasury Department and the IRS have determined that these examples need to be updated to properly reflect changes to current § 1.954–1 made in the final regulations, and to other provisions referenced in the examples. Therefore, the final regulations remove the examples in current § 1.954–1(d)(7). No inference is intended as to the removal of these examples. Additional examples will be considered in connection with the Treasury decision adopting the 2020 proposed regulations as final regulations in the **Federal Register**.

VII. Authority

The Treasury Department and the IRS are aware that questions have been raised regarding the statutory authority for the GILTI high-tax exclusion. As described in detail in the preamble to the 2019 proposed regulations (*see* 84 FR 29114), the Treasury Department and the IRS have determined that the GILTI high-tax exclusion is a valid interpretation of ambiguous statutory text in section 951A(c)(2)(A)(i)(III) and, after considering assertions to the contrary, concluded that this rationale provides authority to finalize the GILTI high-tax exclusion. *See Michigan* v. *Environmental Protection Agency,* 135 S.Ct. 2699, 2707 (2015) (observing that a court must ''accept an agency's reasonable resolution of an ambiguity in a statute that the agency administers,'' provided that such interpretation ''operate[s] within the bounds of reasonable interpretation.''). Specifically, the regulation interprets the words ''by reason of'' in that provision as denoting independently sufficient causation. The assertion by some commenters to the contrary that the words ''by reason of'' unambiguously require ''but for'' causation is not supported by the case law. Terms such as ''by reason of'' have been equated with other causal terms, such as ''because of'' or ''as a result of,'' and have been interpreted flexibly based on the underlying context and purposes of the applicable provision. Several recent decisions have interpreted such terms as encompassing independently sufficient causation based on dicta in the Supreme Court's recent opinion in *Burrage* v. *United States,* 134 S.Ct. 881, 890 (2014). *See, e.g., United States* v. *Ewing,* 749 Fed.Appx. 317, 327–28 (6th Cir. 2018); *United States* v. *Seals,* 915 F.3d 1203, 1206–07 (8th Cir. 2019); *United States* v. *Feldman,* 936 F.3d 1288, 1317–18 (11th Cir. 2019).

In addition, commenters have suggested that, based on the statutory structure of sections 954(b)(4) and 951A(c)(2)(A)(i)(III), the provisions can only apply to income that would otherwise qualify as FBCI or insurance income. The Treasury Department and the IRS disagree with this assertion because it would require that income both qualify as FBCI or insurance income and be excluded from such categories of income for purposes of the same provision. Moreover, neither section 954(b)(4) nor 951A(c)(2)(A)(i)(III) contains any limitation on the category of income to which the provisions can apply, instead referring broadly to ''any item of income'' and ''any gross income,'' respectively.

Accordingly, the GILTI high-tax exclusion is a valid interpretation of section 951A(c)(2)(A)(i)(III) based on the statutory text and the legislative purposes and history underlying section 951A, each of which is described in detail in the preamble to the 2019 proposed regulations.

VIII. Applicability Dates

Consistent with the applicability date in the 2019 proposed regulations, the final regulations provide that the GILTI high-tax exclusion applies to taxable years of foreign corporations beginning on or after July 23, 2020, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end. *See* § 1.951A–7(b).[7]

Several comments requested that taxpayers be permitted to apply the GILTI high-tax exclusion earlier than the proposed regulations would have allowed (for example, to taxable years beginning after December 31, 2017). In response to the comments, the final regulations permit taxpayers to choose to apply the GILTI high-tax exclusion to taxable years of foreign corporations that begin after December 31, 2017, and before July 23, 2020, and to taxable years of U.S. shareholders in which or with which such taxable years of the foreign corporations end. *See* § 1.951A–7(b). Any taxpayer that applies the GILTI high-tax exclusion retroactively must consistently apply the rules in this Treasury decision to each taxable year in which the taxpayer applies the GILTI high-tax exclusion. *See id.*

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 final rule is regulatory.

The Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has designated these regulations as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs (OIRA) has designated the final rulemaking as significant under section 1(c) of the Memorandum of Agreement. Accordingly, OMB has reviewed the final regulations.

A. Background

The Tax Cuts and Jobs Act (the ''Act'') established a system under which certain earnings of a foreign corporation can be repatriated to a corporate U.S. shareholder without federal income tax. However, Congress recognized that, without any anti-base erosion measures, this system could incentivize taxpayers to allocate income—in particular, mobile income from intangible property that would otherwise be subject to U.S. tax—to controlled foreign corporations (''CFCs'') operating in low- or zero-tax

[7] Although this applicability date applies to § 1.954–1(c)(1)(iv) (clarifying the treatment of deductions and loss attributable to disqualified basis in determining a net item of foreign base company income or insurance income), the rules in § 1.951A–2(c)(5) (requiring deductions or loss attributable to disqualified basis to be allocated and apportioned solely to residual gross income) apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end. *See* § 1.951A–7(a). See also proposed § 1.951A–2(c)(6) (requiring deductions related to disqualified payments to be allocated and apportioned solely to residual CFC gross income), as proposed to be amended at 85 FR 19858 (April 8, 2020), which would apply to taxable years of foreign corporations ending on or after April 7, 2020, and to taxable years of U.S. shareholders in which or with which such taxable years end. *See* proposed § 1.951A–7(d).

jurisdictions. See Senate Committee on the Budget, 115th Cong., Reconciliation Recommendations Pursuant to H. Con. Res. 71, at 365 (the ''Senate Explanation''). Therefore, Congress enacted section 951A in order to subject intangible income earned by a CFC to U.S. tax on a current basis, similar to the treatment of a CFC's subpart F income under section 951(a)(1)(A). However, in order to protect the competitive position of U.S. corporations relative to their foreign peers, the global intangible low tax income (''GILTI'') of a corporate U.S. shareholder is effectively taxed at a reduced rate by reason of the deduction under section 250 (with the resulting federal income tax further reduced by a portion of foreign tax credits under section 960(d)). *Id.*

The Treasury Department and the IRS previously issued final and proposed regulations under section 951A on June 21, 2019 (''2019 proposed regulations'').

B. Need for Regulations

The final regulations are needed to provide a framework for taxpayers to elect to apply the statutory high-tax exception of section 954(b)(4) and exclude certain high-taxed income from taxation under section 951A.

C. Overview of Regulations

The final regulations provide that the GILTI high-tax exclusion in section 951A(c)(2)(A)(i)(III) applies to high-taxed income of a CFC that is excluded from foreign base company income (''FBCI'') or insurance income under section 954(b)(4) regardless if the income would otherwise be FBCI or insurance income.

The final regulations provide rules to determine the effective rate of tax on foreign items of income for the purposes of applying the GILTI high-tax exclusion. The final regulations provide that the effective foreign tax rate is determined on a tested unit basis. They also provide rules to determine the net amount of income (in other words, the tentative tested income item) and the foreign taxes paid or accrued with respect to such net amount of income that are used to compute the effective rate of tax. In addition, the final regulations indicate how to make a GILTI high-tax exclusion election. The final regulations provide that the election, if made, must be made consistently for certain related CFCs. The final regulations also provide that taxpayers can make the election annually.

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

The final regulations provide certainty and clarity to taxpayers in applying section 954(b)(4) to certain high-tax income. In the absence of this clarity, there is a higher likelihood that taxpayers will interpret the rules regarding the high-tax exclusion differently. For example, when taxpayers hold varying interpretations of statutory language, one taxpayer may undertake an investment in a particular country while another taxpayer may decline to make this investment with this difference based solely on different interpretations of how income from that investment will be treated under section 951A and related provisions. If the investment would have been more productive if undertaken by the second taxpayer, this difference in beliefs about tax treatment is economically costly. The final regulations help to minimize this outcome. Clarity and certainty over tax treatment also reduce compliance costs and the costs of tax administration.

The final regulations also work to apply the GILTI high-tax exclusion in a way that treats income similarly across all international business activity and without favoring one type of income over another. In general, such equitable treatment of income-generating activities can be expected to improve U.S. economic performance.

The Treasury Department and the IRS project that the final regulations will have annual economic effects greater than $100 million ($2020). This determination is based on the fact that many of the taxpayers potentially affected by these regulations are large multinational enterprises. Because of their substantial size, even modest changes in the treatment of their foreign-source income, relative to the no-action baseline, can lead to changes in patterns of economic activity that amount to at least $100 million per year.

The Treasury Department and the IRS project that the final regulations may increase U.S. taxpayers' foreign investment in high-tax jurisdictions, since the final regulations may decrease the effective tax rate on high-tax foreign-source income for some U.S. taxpayers relative to the no-action baseline. The Treasury Department and the IRS have not undertaken more precise estimates of the economic effects of the regulations. We do not have readily available data or models to predict with reasonable precision the business decisions that taxpayers would make under the final regulations, such as the amount and location of their foreign business activities, versus alternative regulatory approaches, including the no-action baseline.

In the absence of 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.

3. Economic Analysis of Specific Provisions

a. Scope of the GILTI High-Tax Exclusion

The GILTI high-tax exclusion in section 951A permits U.S. shareholders of CFCs to elect to exclude certain high-taxed income from gross tested income. The final regulations provide guidance on which types of high-taxed income are eligible for the high-tax exclusion.

The Treasury Department and the IRS considered a number of options for defining income that is eligible for the GILTI high-tax exclusion. The options were (i) to exclude from gross tested income only income that would be subpart F income solely but for the high-tax exception of section 954(b)(4) applying to such income; (ii) in addition to excluding the aforementioned income, to exclude from gross tested income on an elective basis an item of gross income that is excluded by reason of another exception to FBCI or insurance income, if such income is subject to an effective foreign tax rate above the statutory threshold;[8] or (iii) to exclude from gross tested income on an elective basis any item of gross income subject to an effective foreign tax rate above the statutory threshold.

The first option excludes from gross tested income only income that would be FBCI or insurance income but for the high-tax exception of section 954(b)(4), which is the interpretation of the scope of the GILTI high-tax exclusion in the final 951A regulations. This approach is consistent with current regulations under section 954, which permit an election under section 954(b)(4) only with respect to income that is not excluded from subpart F income by reason of another exception (for

[8] The statutory threshold is 90 percent of the maximum U.S. corporate tax rate (18.9 percent based on the current U.S. corporate tax rate of 21 percent).

example, section 954(c)(6) or 954(h)). However, under this approach, taxpayers with high-taxed gross tested income would have an incentive to structure their foreign operations in order to ensure that income that would otherwise qualify as gross tested income would instead qualify as subpart F income, to a greater degree than other regulatory approaches that provide a broader GILTI high-tax exclusion, such as the third option considered. For instance, under this option, a taxpayer could structure its operations to have a CFC purchase personal property from, or sell personal property to, a related person in order to generate foreign base company sales income described under section 954(d) (assuming certain other exceptions are not satisfied). The result would be that the CFC's income from the disposition of the property meets the definition of FBCI and hence is eligible for the high-tax exception. Because businesses are largely not currently structured in this way, such an organization would entail restructuring, which would potentially be costly and only available to certain taxpayers yet would not provide any general economic benefit. In other words, such reorganization to realize a specific tax treatment would suggest that tax instead of business considerations are determining business structures and operations. This outcome may lead to higher compliance costs and less efficient patterns of business activity relative to a regulatory approach that provides a broader GILTI high-tax exclusion.

The second option broadens the application of the GILTI high-tax exclusion, relative to the first option, to allow taxpayers to elect to exclude items of gross income that are subject to an effective foreign tax rate above the statutory threshold, if such income was also excluded from FBCI or insurance income by reason of another exception to subpart F. Under this interpretation, income such as active financing income that is excluded from subpart F income under section 954(h), active rents or royalties that are excluded from subpart F income under 954(c)(2)(A), and related party payments that are excluded from subpart F income under section 954(c)(6) could also be excluded from gross tested income under the GILTI high-tax exclusion if such items of income are high taxed within the meaning of section 954(b)(4).

Under this approach, however, taxpayers would have the ability to exclude their CFCs' high-taxed income that would be subpart F income but for an exception (for example, active financing income), while they would not be able to exclude their CFCs' high-taxed income that is not subpart F income in the first instance (for example, active business income). This may result in differential treatment of economically similar income, which generally leads to economically inefficient decision-making. Furthermore, taxpayers with items of high-taxed income that are not subpart F income would still be incentivized to restructure their foreign operations in order to convert their high-taxed gross tested income into subpart F income, which poses the same compliance costs and inefficiencies as the first option.

The third option, which was adopted in the proposed regulations and which these regulations finalize, provides an election to broaden the scope of the high-tax exception relative to the other two options considered. Under this option, the high-tax exception under section 954(b)(4) for purposes of the GILTI high-tax exclusion applies to any item of income that is subject to an effective foreign tax rate greater than 90 percent of the maximum corporate tax rate (currently, 18.9 percent based on a 21 percent corporate rate). The final regulations permit controlling domestic shareholders of CFCs to elect to apply the high-tax exception under section 954(b)(4) to items of gross income that would not otherwise be FBCI or insurance income. If this high-tax exception is elected, the GILTI high-tax exclusion will exclude the item of gross income from gross tested income. Under the election, an item of gross income is subject to a high rate of foreign tax if, after taking into account properly allocable expenses, the net item of income is subject to an effective foreign tax rate above the statutory threshold.

Contrary to the first two options, this approach permits similarly situated taxpayers with CFCs subject to a high rate of foreign tax to make the election to exclude such income from gross tested income and reduces the incentive for taxpayers to restructure their operations or structures to convert their high-taxed gross tested income into FBCI or insurance income for federal income tax purposes.

For taxpayers that make the election, this approach will lower U.S. tax on certain foreign income by reducing U.S. tax on a broader scope of the income of high-taxed tested units compared to the no-action baseline. If a taxpayer elects the high-tax exclusion, U.S. tax on other foreign income may increase due to complex interactions with other provisions in the corporate tax system, such as the expense allocation and foreign tax credit rules, although taxpayers will generally only make the election if this increase in tax on other foreign income is less than the decrease in tax on high-taxed income. Thus, this approach may reduce the taxpayers' cost of capital on high-taxed foreign investment, and at the margin, the lower cost of capital may increase foreign investment in high-tax jurisdictions by U.S.-parented firms relative to the baseline.

The Treasury Department and the IRS have not undertaken estimation of these effects, relative to the no-action baseline, because we do not have readily available data or models to estimate with any reasonable precision: (i) The number and attributes of the taxpayers that will find it advantageous to make the election; (ii) the relationship between the marginal effective foreign tax rate at the tested unit level and foreign investment by U.S. taxpayers; and (iii) the range of marginal effective foreign tax rates at the tested unit level that taxpayers are likely to have under the final regulations versus the baseline or other regulatory approaches.

b. Aggregation of Income for Determination of the Effective Foreign Tax Rate

The statute provides an exclusion from tested income for high-taxed income but does not provide sufficient detail for determining how income should be aggregated for determining the effective foreign tax rate that applies to that income, such that that income would be excluded. The Treasury Department and the IRS considered four options to address this issue: (i) Apply the determination of whether income is high-taxed on an item-by-item basis; (ii) apply the determination on a CFC-by-CFC basis; (iii) apply the determination on a qualified business unit (''QBU'')-by-QBU basis; and (iv) apply the determination on a tested unit-by-tested unit basis.

The first option is to determine whether income is high-taxed income on an item-by-item basis, based on the item-by-item determination that is generally applicable under the current regulations that implement the high-tax exception of section 954(b)(4) for purposes of subpart F income. However, this would entail high compliance costs for taxpayers and be difficult to administer because it would require taxpayers to analyze each item of income to determine whether, under federal tax principles, the item is subject to a sufficiently high effective foreign tax rate. The Treasury Department and the IRS have not estimated the higher compliance costs that might have been

incurred under this regulatory option, relative to the final regulations.

The second option, to apply the determination based on all the items of income of the CFC, would minimize complexity and would be relatively easy to administer. On the other hand, this approach could permit inappropriate tax planning, such as combining operations subject to different rates of tax into a single CFC. This would have the effect of ''blending'' the rates of foreign tax imposed on the income, which could result in low- or non-taxed income being excluded as high-taxed income by being blended with much higher-taxed income. The low-taxed income in this scenario is precisely the sort of base erosion-type income that the legislative history describes section 951A as intending to tax, and such tax motivated planning behavior is economically inefficient.

The third option, which was proposed in the proposed regulations, is to apply the high-tax exception based on the items of gross income of a QBU of the CFC. Under this approach, the net income that is taxed by the foreign jurisdiction in each QBU must be determined and the blending of different tax rates within a CFC would be minimized. While this approach would more accurately separate high-taxed and low-taxed income, compared to applying the high-tax exception on the basis of a CFC, there were several comments to the proposed regulations that noted the difficulties in compliance and administration that would arise if the QBU standard were used, such as the difficulty in determining whether a set of activities constituted a trade or business and hence a QBU.

The fourth option, which is adopted in the final regulations, is to apply the high-tax exception on the basis of the items of gross income of a tested unit of a CFC. The tested unit standard is a more targeted measure than the QBU standard and will be more easily applied to the GILTI high-tax exclusion than the QBU standard. Moreover, the tested unit standard, similarly to the QBU standard, will minimize the blending of different tax rates within a CFC. For example, if a CFC earned $100x of tested income through a tested unit in Country A and was taxed at a 30 percent rate and earned $100x of tested income through another tested unit in Country B and was taxed at 0 percent, the blended rate of tax on all of the CFC's tested income is 15 percent. However, if the high-tax exception applies to each of a CFC's tested units based on the income earned by that tested unit, then the two tax rates would not be blended together. Although applying the high-tax exception on the basis of a tested unit, rather than the CFC as a whole, may be more complex and administratively burdensome under certain circumstances and may entail somewhat higher compliance costs (although most of the data the taxpayer would use for this purpose will likely be readily available to the taxpayer and will often overlap with data necessary to meet other compliance requirements), it more accurately pinpoints income subject to a high rate of foreign tax and therefore continues to subject to tax the low-taxed base erosion-type income that the legislative history describes section 951A as intending to tax. Accordingly, the final regulations apply the high-tax exception of section 954(b)(4) based on the items of net income of each tested unit of the CFC.

The Treasury Department and the IRS have not estimated these effects, relative to the no-action baseline, because we do not have readily available data or models to estimate with any reasonable precision the compliance costs or restructuring costs affected by these provisions relative to the no-action baseline or other regulatory alternatives.

c. Grouping of Tested Units in Same Country

The statute does not specify how items of income in the same country should be treated for the purpose of applying the GILTI high-tax exclusion. To address this issue, the final regulations provide guidance on how a CFC's tested units in the same country should be treated in order to determine if income is high-taxed.

Under the proposed regulations, effective foreign tax rates are determined separately for each QBU, even if other QBUs of the same CFC are located in the same county. Testing each QBU separately would limit the blending of income taxed at different rates and thus limit the likelihood that that no-taxed or low-taxed income would qualify for the high-tax exclusion through aggregation with higher-taxed income. This approach is consistent with the intent to subject low-taxed base erosion-type income to tax under section 951A, as described in the legislative history. However, comments noted that separate testing for each QBU would result in high compliance burdens for taxpayers and could result in tax rate calculations that do not reflect the rate of foreign tax on QBU income, especially in circumstances in which separate QBUs are able to share tax attributes through a fiscal unity, consolidation or similar means. If tax rate calculations do not properly reflect the rate of foreign tax on QBU, taxpayers may undertake inefficient business decisions when evaluated against the intent and purpose of the statute.

In the final regulations, all tested units of a CFC in the same country are generally grouped together to determine the effective foreign tax rate for the purpose of applying the high-tax exclusion. Under this approach, low-taxed and high-taxed income are unlikely to be blended, since tested units in the same country are likely to be subject to the same statutory tax rate. Relative to the approach in the proposed regulations, this approach will lower compliance burdens for taxpayers because taxpayers will less frequently have to allocate and apportion taxes paid by one tested unit to another tested unit. In addition, this approach may also reduce the effect of fluctuations in effective foreign tax rates observed in individual tested units relative to the regulatory alternative in the proposed regulations. Since multiple tested units are grouped together, outlying effective foreign tax rates due to timing and base differences between the U.S. and foreign tax rules will counterbalance each other. Finally, this averaging of tax rates will decrease the incentives taxpayers face to undertake inefficient planning activities to achieve certain tax rates in individual tested units relative to a regulatory approach in which effective foreign tax rates were determined separately for tested units in the same country.

The Treasury Department and the IRS have not undertaken estimation of these effects, relative to the no-action baseline, because data or models are not readily available to estimate with any reasonable precision the compliance costs or patterns of business activity affected by these provisions relative to the no-action baseline or other regulatory alternatives.

d. Foreign Net Operating Losses

The statute provides an exclusion from tested income for income that is high-taxed but does not specify whether or how foreign net operating loss (''NOL'') carryovers should be accounted for in the computation of the effective foreign tax rate. To address this issue, the final regulations provide rules governing how foreign net operating loss carryforwards should be accounted for in the computation of the effective foreign tax rate.

The proposed regulations generally provided that the effective foreign tax rate that determines whether a tested unit's income is considered high-taxed is computed using the amount of income as determined for federal income tax purposes, without regard for how the income is determined for

foreign tax purposes. Thus, under this approach, foreign NOL carryforwards do not factor into the effective foreign tax rate calculation, since foreign NOL carryforwards are not accounted for in the federal tax base under federal tax accounting principles. Some comments suggested that taxpayers should be able to make adjustments to the effective foreign tax rate calculation to account for foreign NOL carryforwards. These comments noted that NOLs carried forward to subsequent profitable tax years of a tested unit could lead to income subject to a high statutory foreign tax rate not being classified as high-taxed for the purposes of the GILTI high-tax exclusion. The effective foreign tax rate—calculated using the federal tax base—could be lower than the statutory threshold, even if the smaller foreign base is taxed at a higher rate.

The Treasury Department and the IRS decided to maintain the approach of the proposed regulations and to not provide rules that account for the use of foreign NOL carryforwards. The Treasury and IRS determined that carried forward NOLs are an example of timing differences between foreign and federal tax bases. Since there may be differences between when certain items are recognized for federal and foreign tax purposes, the effective foreign tax rate of a given tested unit calculated for the purpose of applying the high-tax exclusion may change from year to year even if the tax rate on its foreign base remains constant. Accounting for these differences would require complex rules akin to the deferred tax asset and tax liability rules used in financial accounting. Taxpayers would need to apply rules that reconcile foreign and federal tax accounting rules over multiple years. The Treasury Department and the IRS determined that these rules would add undue complexity and impose a substantial compliance burden on taxpayers and administrative burden on the government relative to the regulatory approach of the final regulations. The Treasury Department and the IRS have not attempted to estimate the compliance burden under this alternative regulatory approach relative to the final regulations.

e. Election Period

The statute provides for an election to exclude high-taxed income from gross tested income but does not specify the length of the election period. To address this issue, proposed regulations provided that the election into the high-tax exclusion would be generally made or revoked for a five-year period. The five-year election period was intended to prevent taxpayers from manipulating the timing of income, expenses, and foreign income taxes in order to achieve inappropriate results. As a simple example, under a shorter election period, a taxpayer could accelerate certain expenses that are allocable to the income of a high-taxed tested unit into a year when the taxpayer elects into the high-tax exclusion. The following year, the taxpayer could revoke its election. Thereby, in the second year, the taxpayer would be able to use the foreign income taxes paid by the high-taxed tested unit as creditable taxes against income included under section 951A without the accelerated expenses reducing the amount of the foreign tax credit that could be claimed. In order to achieve tax savings through this manipulation, taxpayers would need to manipulate a large number of items annually, and the manipulation of these items would be costly without any corresponding increase in productive economic activity.

Comments noted that the extended election period would require taxpayers to make five-year projections of a large number of variables on a tested unit-by-tested unit basis in order to determine whether to elect into the high-tax exclusion. The complexity of these projections would result in a large burden on taxpayers. Moreover, even with a shorter election period, taxpayers would likely face difficulty in engaging in tax planning by changing their election status. Existing rules limit taxpayers' discretion over the timing of recognition of income and expenses. The complexity of manipulating the timing of different items across all of a taxpayer's tested units, which is necessary under the final regulations because the election into the high-tax exclusion must be made for all related CFCs, would also create obstacles to using frequent changes in election status as part of tax reduction strategies. Therefore, the Treasury Department and IRS determined that the reduction in taxpayer compliance burdens significantly outweighed concerns about potential tax planning, and the Treasury Department and IRS adopted a one-year election period in the final regulations.

The Treasury Department and the IRS have not undertaken estimation of these effects, relative to the no-action baseline, because data or models are not readily available to estimate with any reasonable precision the compliance costs or patterns of business activity affected by these provisions relative to the no-action baseline or other regulatory alternatives.

4. Profile of Affected Taxpayers

The proposed regulations potentially affect those taxpayers that have at least one CFC with at least one tested unit (including, potentially, the CFC itself) that has high-taxed income. Taxpayers with CFCs that have only low-taxed income are not eligible to apply the high-tax exception and hence are unaffected by the proposed regulations.

The Treasury Department and the IRS estimate that there are approximately 4,000 business entities (corporations, S corporations, and partnerships) with at least one CFC that pays an effective foreign tax rate above 18.9 percent, the current high-tax statutory threshold. The Treasury Department and the IRS further estimate that, for the partnerships with at least one CFC that pays an effective foreign tax rate greater than 18.9 percent, there are approximately 1,500 partners that have a large enough share to potentially qualify as a 10 percent U.S. shareholder of the CFC.[9] The 4,000 business entities and the 1,500 partners provide an estimate of the number of taxpayers that could potentially be affected by guidance governing the election into the high-tax exception. The figure is approximate because the tax rate at the CFC-level will not necessarily correspond to the tax rate at the tested unit-level if there are multiple tested units within a CFC.

The Treasury Department and the IRS do not have readily available data to determine how many of these taxpayers would elect the high-tax exception as provided in these proposed regulations. Under the proposed regulations, a taxpayer that has both high-taxed and low-taxed tested units will need to evaluate the benefit of eliminating any tax under section 951 and section 951A with respect to high-taxed income against the costs of forgoing the use of foreign tax credits and, with respect to section 951A, the use of tangible assets in the computation of qualified business asset investment (QBAI).

Tabulations from the IRS Statistics of Income 2014 Form 5471 file[10] further

[9] Data are from IRS's Research, Applied Analytics, and Statistics division based on E-file data available in the Compliance Data Warehouse for tax years 2015 and 2016. The counts include Category 4 and Category 5 IRS Form 5471 filers. Category 4 filers are U.S. persons who had control of a foreign corporation during the annual accounting period of the foreign corporation. Category 5 filers are U.S. shareholders who own stock in a foreign corporation that is a CFC and who owned that stock on the last day in the tax year of the foreign corporation in that year in which it was a CFC. For full definitions, see *https://www.irs.gov/pub/irs-pdf/i5471.pdf.*

[10] The IRS Statistics of Income Tax Stats report on Controlled Foreign Corporations can be accessed

Continued

indicate that approximately 85 percent of earnings and profits are reported by CFCs incorporated in jurisdictions where the average effective foreign tax rate is less than or equal to 18.9 percent. The data indicate several examples of jurisdictions where CFCs have average effective foreign tax rates above 18.9 percent, such as France, Italy, and Japan. However, information is not readily available to determine how many tested units are part of the same CFC and what the effective foreign tax rates are with respect to such tested units. Taxpayers potentially more likely to elect the high-tax exception are those taxpayers with CFCs that only operate in high-tax jurisdictions. Data on the number or types of CFCs that operate only in high-tax jurisdictions are not readily available.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (''PRA'') generally requires that a federal agency obtain the approval of the OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

The final regulations include collections of information in § 1.951A–2(c)(7)(viii)(A)(*1*) and (*2*), and § 1.951A–2(c)(7)(viii)(C). The collection of information in § 1.951A–2(c)(7)(viii)(A)(*1*) requires that each controlling domestic shareholder of a CFC file an election to exclude gross income of a CFC from tested income under the high-tax exception of section 954(b)(4), with a timely original federal income tax return or Form 1065, or, subject to certain time limitations and other requirements, with an amended federal income tax return, administrative adjustment request, or amended Form 1065, as applicable. This collection of information in the final regulations generally retains the collection of information in the proposed regulations. The final regulations clarify that a controlling domestic shareholder must make this election by filing the statement required under § 1.964–1(c)(3)(ii). The collection of information in § 1.951A–2(c)(7)(viii)(A)(*1*)(*ii*) requires that each controlling domestic shareholder of a CFC that files an election to exclude gross income of a CFC from tested income under the high-tax exception of section 954(b)(4) provide any notices required under § 1.964–1(c)(3)(iii). The collection of information in § 1.951A–2(c)(7)(viii)(C) requires each controlling domestic shareholder that revokes an election on an amended return to provide the statement and notice described in § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*), respectively.

As shown in Table 1, the Treasury Department and the IRS estimate that the number of persons potentially subject to the collections of information in § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*), and § 1.951A–2(c)(7)(viii)(C) is between 25,000 and 35,000. The estimate in Table 1 is based on the number of taxpayers that filed a tax return that included a Form 5471, ''Information Return of U.S. Persons With Respect to Certain Foreign Corporations.'' The collections of information in § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*), and § 1.951A–2(c)(7)(viii)(C) can only apply to taxpayers that are U.S. shareholders (as defined in section 951(b)) and U.S. shareholders are required to file a Form 5471.

TABLE 1—TABLE OF TAX FORMS IMPACTED

Tax Forms Impacted		
Collections of information	Number of respondents (estimated)	Forms to which the information may be attached
§ 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*), and § 1.951A–2(c)(7)(viii)(C).	25,000–35,000	Form 990 series, Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series

Source: MeF, DCS, and IRS's Compliance Data Warehouse.

The reporting burdens associated with the collections of information in § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C) will be reflected in the Form 14029, Paperwork Reduction Act Submission, that the Treasury Department and the IRS will submit to OMB for tax returns in the Form 990 series, Forms 1120, Forms 1040, Forms 1041, and Forms 1065. In particular, the reporting burden associated with the information collection in § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C) will be included in the burden estimates for OMB control numbers 1545–0123, 1545–0074, 1545–0092, and 1545–0047. OMB control number 1545–0123 represents a total estimated burden time for all forms and schedules for corporations of 3.344 billion hours and total estimated monetized costs of $61.558 billion ($2019). OMB control number 1545–0074 represents a total estimated burden time, including all other related forms and schedules for individuals, of 1.717 billion hours and total estimated monetized costs of $33.267 billion ($2019). OMB control number 1545–0092 represents a total estimated burden time, including all other related forms and schedules for trusts and estates, of 307,844,800 hours and total estimated monetized costs of $9.950 billion ($2016). OMB control number 1545–0047 represents a total estimated burden time, including all other related forms and schedules for tax-exempt organizations, of 52.450 million hours and total estimated monetized costs of $1,496,500,000 ($2020). Table 2 summarizes the status of the Paperwork Reduction Act submissions of the Treasury Department and the IRS related to forms in the Form 990 series, Forms 1120, Forms 1040, Forms 1041, and Forms 1065.

The overall burden estimates provided by the Treasury Department and the IRS to OMB in the Paperwork Reduction Act submissions for OMB control numbers 1545–0123, 1545–0074, 1545–0092, and 1545–0047 are aggregate amounts related to the U.S. Business Income Tax Return, the U.S. Individual Income Tax Return, and the U.S. Income Tax Return for Estates and Trusts, along with any associated forms. The burdens included in these Paperwork Reduction Act submissions, however, do not account for any burden imposed by § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C). The Treasury Department and the IRS have not

here: *https://www.irs.gov/statistics/soi-tax-stats-controlled-foreign-corporations.*

identified the estimated burdens for the collections of information in § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C) because there are no burden estimates specific to § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C) currently available. The burden estimates in the Paperwork Reduction Act submissions that the Treasury Department and the IRS will submit to the OMB will in the future include, but not isolate, the estimated burden related to the tax forms that will be revised for the collection of information in § 1.951A–2(c)(7)(viii)(A)(*1*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C).

The Treasury Department and the IRS have included the burdens related to the Paperwork Reduction Act submissions for OMB control numbers 1545–0123, 1545–0074, 1545–0092, and 1545–0047 in the PRA analysis for other regulations issued by the Treasury Department and the IRS related to the taxation of cross-border income. The Treasury Department and the IRS encourage users of this information to take measures to avoid overestimating the burden that the collections of information in § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C), together with other international tax provisions, impose. Moreover, the Treasury Department and the IRS also note that the Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis because an estimate based on the taxpayer-type most accurately reflects taxpayers' interactions with the forms.

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 § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C) 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.

TABLE 2—SUMMARY OF INFORMATION COLLECTION REQUEST SUBMISSIONS RELATED TO FORM 990 SERIES, FORMS 1120, FORMS 1040, FORMS 1041, AND FORMS 1065

Form	Type of filer	OMB No.(s)	Status
Forms 990	Tax exempt entities (NEW Model)	1545–0047	Approved by OIRA 2/12/2020 until 2/28/2021.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201912-1545-014.*		
Form 1040	Individual (NEW Model)	1545–0074	Approved by OIRA 1/30/2020 until 1/31/2021.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201909-1545-021.*		
Form 1041	Trusts and estates	1545–0092	Approved by OIRA 5/08/2019 until 5/31/2022.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201806-1545-014.*		
Form 1065 and 1120	Business (NEW Model)	1545–0123	Approved by OIRA 1/30/2020 until 1/31/2021.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201907-1545-001.*		

III. Regulatory Flexibility Act

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Section 951A generally affects U.S. shareholders of CFCs. The reporting burdens in § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C), affect controlling domestic shareholders of a CFC that elect to apply the high-tax exception of section 954(b)(4) to gross income of a CFC. Controlling domestic shareholders are generally U.S. shareholders who, in the aggregate, own more than 50 percent of the total combined voting power of all classes of stock of the foreign corporation entitled to vote. As an initial matter, foreign corporations are not considered small entities. Nor are U.S. taxpayers considered small entities to the extent the taxpayers are natural persons or entities other than small entities. Thus, § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C) generally only affect small entities if a U.S. taxpayer that is a U.S. shareholder of a CFC is a small entity.

Examining the gross receipts of the e-filed Forms 5471 that is the basis of the 25,000—35,000 respondent estimates, the Treasury Department and the IRS have determined that the tax revenue from section 951A estimated by the Joint Committee on Taxation for businesses of all sizes is less than 0.3 percent of gross receipts as shown in the table below. Based on data for 2015 and 2016, total gross receipts for all businesses with gross receipts under $25 million is $60 billion while those over $25 million is $49.1 trillion. Given that tax on GILTI inclusion amounts is correlated with gross receipts, this results in businesses with less than $25 million in gross receipts accounting for approximately 0.01 percent of the tax revenue. Data are not readily available to determine the sectoral breakdown of these entities. Based on this analysis, smaller businesses are not significantly impacted by these proposed regulations. The Small Business Administration's small business size standards (13 CFR part 121) identify as small entities several industries with annual revenues above $25 million or because of the number of employees.

	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
JCT tax revenue (billion $)	7.7	12.5	9.6	9.5	9.3	9.0	9.2	9.3	15.1	21.2

	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Total gross receipts (billion $)	30727	53870	566676	59644	62684	65865	69201	72710	76348	80094
Percent	0.03	0.02	0.02	0.02	0.01	0.01	0.01	0.01	0.02	0.03

Source: Research, Applied Analytics and Statistics division (IRS), Compliance Data Warehouse (IRS) (E-filed Form 5471, category 4 or 5, C and S corporations and partnerships); Conference Report, at 689.

The data to assess the number of small entities potentially affected by § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C) are not readily available. However, businesses that are U.S. shareholders of CFCs are generally not small businesses because the ownership of sufficient stock in a CFC in order to be a U.S. shareholder generally entails significant resources and investment. The Treasury Department and the IRS welcome comments on whether the proposed regulations would affect a substantial number of small entities in any particular industry.

Regardless of the number of small entities potentially affected by § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C), the Treasury Department and the IRS have concluded that there is no significant economic impact on such entities as a result of § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C). Furthermore, the requirements in § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C) apply only if a taxpayer chooses to make an election to apply a favorable rule. Consequently, the Treasury Department and the IRS have determined that § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C) will not have a significant economic impact on a substantial number of small entities. Accordingly, it is hereby certified that the collection of information requirements of § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C) would not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS invite comments from the public on the impact of § 1.951A–2(c)(7)(viii)(A)(*1*)(*i*) and (*ii*) and § 1.951A–2(c)(7)(viii)(C) on small entities.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

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

VI. Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs of the OMB has determined that this Treasury decision is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*) (''CRA''). Under section 801(3) of the CRA, a major rule generally takes effect 60 days after the rule is published in the **Federal Register**. Accordingly, the Treasury Department and IRS are adopting these final regulations with the delayed effective date generally prescribed under the Congressional Review Act.

Drafting Information

The principal authors of these regulations are Jorge M. Oben and Larry R. Pounders 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.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805.

§ 1.951A–0 [Removed]

■ **Par. 2.** Section 1.951A–0 is removed.

■ **Par. 3.** Section 1.951A–2 is amended by revising paragraph (c)(1)(iii), redesignating the text of paragraph (c)(3) as paragraph (c)(3)(i), adding a subject heading to newly redesignated (c)(3)(i), and adding paragraph (c)(3)(ii), a reserved paragraph (c)(6), and paragraphs (c)(7) and (8) to read as follows:

§ 1.951A–2 Tested income and tested loss.

* * * * *

(c) * * *

(1) * * *

(iii) Gross income excluded from the foreign base company income (as defined in section 954) or the insurance income (as defined in section 953) of the corporation by reason of the exception described in section 954(b)(4) pursuant to an election under § 1.954–1(d)(5), or a tentative gross tested income item of the corporation that qualifies for the exception described in section 954(b)(4) pursuant to an election under paragraph (c)(7) of this section,

* * * * *

(3) * * *

(i) *In general.* * * *

(ii) *Coordination with the high-tax exclusion*—(A) *In general.* In the case of a taxpayer that has made an election under paragraph (c)(7) of this section, in allocating and apportioning deductions under this paragraph (c)(3), the taxpayer must apply the rules of sections 861 through 865 and 904(d) (taking into account the rules of section 954(b)(5) and § 1.954–1(c)) in a manner that achieves results consistent with those under paragraph (c)(7) of this section.

(B) *Application of consistency rule to deductions allocated and apportioned to the residual grouping in applying the high-tax exclusion.* Deductions that are allocated and apportioned to the residual income group under paragraph (c)(7)(iii)(A) of this section for purposes of applying the high-tax exclusion to a controlled foreign corporation's tentative gross tested income items are

allocated and apportioned for purposes of determining the controlled foreign corporation's net income in each relevant statutory grouping using a method that provides for a consistent allocation and apportionment of deductions to gross income in the relevant groupings. See §§ 1.954–1(c) and 1.960–1(d)(3) for rules relating to the allocation and apportionment of expenses for purposes of determining subpart F income, which is included in the residual grouping for purposes of applying the high-tax exclusion of sections 951A(c)(2)(A)(i)(III) and 954(b)(4) and paragraph (c)(7) of this section. Therefore, for example, interest expense that is apportioned under the modified gross income method to a tentative gross tested income item of a lower-tier corporation under paragraph (c)(7)(iii)(A)(*1*) of this section may be allocated and apportioned to the tested income of the upper-tier corporation or to the residual grouping, depending on whether the lower-tier corporation's tentative gross tested income item is an item of gross tested income or is excluded from gross tested income under the high-tax exclusion. *See* paragraph (c)(8)(iii)(C) (Example 3) of this section for an example illustrating the rules of this paragraph (c)(3).

* * * * *

(6) [Reserved]

(7) *Election to apply high-tax exception of section 954(b)(4)*—(i) *In general.* For purposes of section 951A(c)(2)(A)(i)(III) and paragraph (c)(1)(iii) of this section, a tentative gross tested income item of a controlled foreign corporation for a CFC inclusion year qualifies for the exception described in section 954(b)(4) only if—

(A) An election made under paragraph (c)(7)(viii) of this section is effective with respect to the controlled foreign corporation for the CFC inclusion year; and

(B) The tentative tested income item with respect to the tentative gross tested income item was subject to an effective rate of foreign tax, as determined under paragraph (c)(7)(vi) of this section, that is greater than 90 percent of the maximum rate of tax specified in section 11.

(ii) *Calculation of tentative gross tested income item*—(A) *In general.* A tentative gross tested income item with respect to a controlled foreign corporation for a CFC inclusion year is the aggregate of all items of gross income of the controlled foreign corporation attributable to a tested unit (as defined in paragraph (c)(7)(iv) of this section) of the controlled foreign corporation in the CFC inclusion year that would be gross tested income without regard to this paragraph (c)(7) and would be in a single tested income group (as defined in § 1.960–1(d)(2)(ii)(C)). A controlled foreign corporation may have multiple tentative gross tested income items. See paragraphs (c)(8)(iii)(A)(*2*)(*i*) (Example 1) and (c)(8)(iii)(B)(*2*)(*i*) (Example 2) of this section for illustrations of the application of the rule set forth in this paragraph (c)(7)(ii)(A).

(B) *Gross income attributable to a tested unit*—(*1*) *Items properly reflected on separate set of books and records.* Items of gross income of a controlled foreign corporation are attributable to a tested unit of the controlled foreign corporation to the extent they are properly reflected on the separate set of books and records of the tested unit, as modified under paragraph (c)(7)(ii)(B)(*2*) of this section. Each item of gross income of a controlled foreign corporation is attributable to a tested unit (and not to more than one tested unit) of the controlled foreign corporation. See paragraphs (c)(8)(iii)(D)(*2*) and (c)(8)(iii)(D)(*5*) (Example 4) of this section for illustrations of the application of the rule set forth in this paragraph (c)(7)(ii)(B).

(*2*) *Gross income determined under federal income tax principles, as adjusted for disregarded payments.* For purposes of paragraph (c)(7)(ii)(B)(*1*) of this section, gross income must be determined under federal income tax principles, except that the principles of § 1.904–4(f)(2)(vi) apply to adjust gross income of the tested unit, to the extent thereof, to reflect disregarded payments. For purposes of this paragraph (c)(7)(ii)(B)(*2*), the principles of § 1.904–4(f)(2)(vi) are applied taking into account the rules in paragraphs (c)(7)(ii)(B)(*2*)(*i*) through (*v*) of this section.

(*i*) The controlled foreign corporation is treated as the foreign branch owner and any other tested units of the controlled foreign corporation are treated as foreign branches.

(*ii*) The principles of the rules in § 1.904–4(f)(2)(vi)(A) apply in the case of disregarded payments between a foreign branch and another foreign branch without regard to whether either foreign branch makes a disregarded payment to, or receives a disregarded payment from, the foreign branch owner.

(*iii*) The exclusion for interest and interest equivalents described in § 1.904–4(f)(2)(vi)(C)(*1*) does not apply to the extent of the amount of a disregarded payment that is deductible in the country of tax residence (or location, in the case of a branch) of the tested unit that is the payor.

(*iv*) In the case of an amount described in paragraph (c)(7)(ii)(B)(*2*)(*iii*) of this section, the rules for determining how a disregarded payment is allocated to gross income of a foreign branch or foreign branch owner in § 1.904–4(f)(2)(vi)(B) are applied by treating the disregarded payment as allocated and apportioned ratably to all of the gross income attributable to the tested unit that is making the disregarded payment. If a tested unit is both a payor and payee of an amount described in paragraph (c)(7)(ii)(B)(*2*)(*iii*) of this section, gross income to which the disregarded payments are allocable include gross income allocated to the payor tested unit as a result of the receipt of amounts described in paragraph (c)(7)(ii)(B)(*2*)(*iii*) of this section, to the extent thereof. If a tested unit makes and receives payments described in paragraph (c)(7)(ii)(B)(*2*)(*iii*) of this section to and from the same tested unit, the payments are netted so that paragraph (c)(7)(ii)(B)(*2*)(*iii*) of this section and the principles of § 1.904–4(f)(2)(vi) apply only to the net amount of such payments between the two tested units.

(*v*) In the case of multiple disregarded payments, in lieu of § 1.904–4(f)(2)(vi)(F), disregarded payments are taken into account under paragraph (c)(7)(ii)(B)(*2*) of this section and the principles of § 1.904–4(f)(2)(vi) under the rules provided in this paragraph (c)(7)(ii)(B)(*2*)(*v*). Adjustments are made with respect to a disregarded payment received by a tested unit before payments made by that tested unit. Except as provided in paragraph (c)(7)(ii)(B)(*2*)(*iv*) of this section, if a tested unit both makes and receives disregarded payments, adjustments are first made with respect to disregarded payments that would be definitely related to a single class of gross income under the principles of § 1.861–8; second, adjustments are made with respect to disregarded payments that would be definitely related to multiple classes of gross income under the principles of § 1.861–8, but that are not definitely related to all gross income of the tested unit; third, adjustments are made with respect to disregarded payments (other than interest described in paragraph (c)(7)(ii)(B)(*2*)(*iii*) of this section) that would be definitely related to all gross income under the principles of § 1.861–8; and fourth, adjustments are made with respect to interest described in paragraph (c)(7)(ii)(B)(*2*)(*iii*) and disregarded payments that would not be

definitely related to any gross income under the principles of § 1.861–8.

(iii) *Calculation of tentative tested income item*—(A) *In general.* A tentative tested income item with respect to the tentative gross tested income item described in paragraph (c)(7)(ii)(A) of this section is determined by allocating and apportioning deductions for the CFC inclusion year (including expense for current year taxes (as defined in § 1.960–1(b)(4)), and not including any items described in § 1.951A–2(c)(5) or (c)(6)) to the tentative gross tested income item under the principles of § 1.960–1(d)(3). For purposes of this paragraph (c)(7)(iii), each tentative gross tested income item (if any) is treated as assigned to a separate tested income group, as that term is described in § 1.960–1(d)(2)(ii)(C), and all other income is treated as assigned to a residual income group. For purposes of applying §§ 1.861–9 and 1.861–9T under the principles of § 1.960–1(d)(3), the amount of interest deductions that are allocated and apportioned to the assets (or gross income, in the case of a taxpayer that has elected the modified gross income method) of a lower-tier corporation, such as a corporation the stock of which is owned by the controlled foreign corporation indirectly through the tested unit, are allocated and apportioned to the residual income category and not to any tentative gross tested income item of the controlled foreign corporation. See paragraphs (c)(8)(iii)(A)(*2*)(*iii*) (Example 1), (c)(8)(iii)(B)(*2*)(*iv*) (Example 2), and (c)(8)(iii)(C)(*2*)(*iv*) (Example 3) of this section for illustrations of the application of the rules set forth in this paragraph (c)(7)(iii)(A).

(B) *Allocation and apportionment of current year taxes imposed by reason of disregarded payments.* The principles of § 1.904–6(a)(2) apply to allocate and apportion the expense for current year taxes imposed by reason of disregarded payments to a tentative gross tested income item. For purposes of this paragraph (c)(7)(iii)(B), the principles of § 1.904–6(a)(2) apply by—

(*1*) Treating the CFC as the foreign branch owner and any other tested unit as a foreign branch;

(*2*) In the case of payments to a tested unit that is treated as a foreign branch under paragraph (c)(7)(vi)(B)(*1*) of this section, applying the principles of § 1.904–6(a)(2)(ii) and (iii) as if the tested unit receiving the payment were a foreign branch owner; and

(*3*) Treating any portion of a disregarded payment between individual tested units that does not result in a reallocation of gross income under paragraph (c)(7)(ii)(B)(*2*) of this section (because the amount of the payment exceeds the gross income of the individual tested unit making the payment) as a payment that is described in § 1.904–4(f)(2)(vi)(C)(*4*) (to which § 1.904–6(a)(2)(iii) applies). See paragraph (c)(8)(iii)(B)(*2*)(*iii*) (Example 2) of this section for illustrations of the application of the rules set forth in this paragraph (c)(7)(iii)(B).

(C) *Effect of potential and actual changes in taxes paid or accrued.* Except as otherwise provided in this paragraph (c)(7)(iii)(C), the amount of current year taxes paid or accrued by a controlled foreign corporation for purposes of this paragraph (c)(7) does not take into account any potential reduction in foreign income taxes that may occur by reason of a future distribution to shareholders of all or part of such income. However, to the extent the foreign income taxes paid or accrued by the controlled foreign corporation are reasonably certain to be returned to a shareholder by the foreign country imposing such taxes, directly or indirectly, through any means (including, but not limited to, a refund, credit, payment, discharge of an obligation, or any other method) on a subsequent distribution to such shareholder, the foreign income taxes are not treated as paid or accrued for purposes of this paragraph (c)(7). In addition, foreign income taxes that have not been paid or accrued because they are contingent on a future distribution of earnings (or other similar transaction, such as a loan to a shareholder) are not taken into account for purposes of this paragraph (c)(7). If, pursuant to section 905(c) and § 1.905–3, a redetermination of U.S. tax liability is required to account for the effect of a foreign tax redetermination (as defined in § 1.905–3(a)), this paragraph (c)(7) is applied in the adjusted year taking into account the adjusted amount of the redetermined foreign tax.

(iv) *Tested unit rules*—(A) *In general.* Subject to the combination rule in paragraph (c)(7)(iv)(C) of this section, the term *tested unit* means any corporation, interest, or branch described in paragraphs (c)(7)(iv)(A)(*1*) through (*3*) of this section. See paragraph (c)(8)(iii)(D) (Example 4) of this section for an example that illustrates the application of the tested unit rules set forth in this paragraph (c)(7)(iv).

(*1*) A controlled foreign corporation (as defined in section 957(a)).

(*2*) An interest held directly or indirectly by a controlled foreign corporation in a pass-through entity that is—

(*i*) A tax resident (as described in § 1.267A–5(a)(23)(i)) of any foreign country; or

(*ii*) Not treated as fiscally transparent (as determined under the principles of § 1.267A–5(a)(8)) for purposes of the tax law of the foreign country of which the controlled foreign corporation is a tax resident or, in the case of an interest in a pass-through entity held by a controlled foreign corporation indirectly through one or more other tested units, for purposes of the tax law of the foreign country of which the tested unit that directly (or indirectly through the fewest number of transparent interests) owns the interest is a tax resident.

(*3*) A branch (as described in § 1.267A–5(a)(2)) the activities of which are carried on directly or indirectly (through one or more pass-through entities) by a controlled foreign corporation. However, in the case of a branch that does not give rise to a taxable presence under the tax law of the foreign country where the branch is located, the branch is a tested unit only if, under the tax law of the foreign country of which the controlled foreign corporation is a tax resident (or, if applicable, under the tax law of a foreign country of which the tested unit that directly (or indirectly, through the fewest number of transparent interests) carries on the activities of the branch is a tax resident), an exclusion, exemption, or other similar relief (such as a preferential rate) applies with respect to income attributable to the branch. For purposes of this paragraph (c)(7)(iv)(A)(*3*), similar relief does not include a credit (for example, a foreign tax credit) against the tax imposed under such tax law. If a controlled foreign corporation carries on directly or indirectly (through one or more pass-through entities) less than all of the activities of a branch (for example, if the activities are carried on indirectly through an interest in a partnership), then the rules in this paragraph apply separately with respect to the portion (or portions, if carried on indirectly through more than one chain of pass-through entities) of the activities carried on by the controlled foreign corporation. See paragraphs (c)(8)(iii)(D)(*3*) and (c)(8)(iii)(D)(*4*) (Example 4) of this section for illustrations of the application of the rules set forth in this paragraph (c)(7)(iv)(A)(*3*).

(B) *Items attributable to only one tested unit.* For purposes of paragraph (c)(7) of this section, if an item is attributable to more than one tested unit in a tier of tested units, the item is considered attributable only to the lowest-tier tested unit. Thus, for example, if a controlled foreign

corporation directly owns a branch tested unit described in paragraph (c)(7)(iv)(A)(*3*) of this section, and an item of gross income is (under the rules of paragraph (c)(7)(ii)(B) of this section) attributable to both the branch tested unit and the controlled foreign corporation tested unit, then the item is considered attributable only to the branch tested unit.

(C) *Combination rule*—(*1*) *In general.* Except as provided in paragraph (c)(7)(iv)(C)(*2*) of this section, tested units of a controlled foreign corporation (including the controlled foreign corporation tested unit) are treated as a single tested unit if the tested units are tax residents of, or located in (in the case of a tested unit that is a branch, or a portion of the activities of a branch, that gives rise to a taxable presence under the tax law of a foreign country), the same foreign country. For purposes of this paragraph (c)(7)(iv)(C)(*1*), in the case of a tested unit that is an interest in a pass-through entity or a portion of the activities of a branch, a reference to the tax residency or location of the tested unit means the tax residency of the entity the interest in which is the tested unit or the location of the branch, as applicable. See paragraphs (c)(8)(iii)(D)(*2*) and (c)(8)(iii)(D)(*5*) (Example 4) of this section for illustrations of the application of the rule set forth in this paragraph (c)(7)(iv)(C)(*1*).

(*2*) *Exception for nontaxed branches.* The rule in paragraph (c)(7)(iv)(C)(*1*) of this section does not apply to a tested unit that is described in paragraph (c)(7)(iv)(A)(*3*) of this section if the branch described in paragraph (c)(7)(iv)(A)(*3*) of this section does not give rise to a taxable presence under the tax law of the foreign country where the branch is located. See paragraph (c)(8)(iii)(D)(*4*) (Example 4) of this section for an illustration of the application of the rule set forth in this paragraph (c)(7)(v)(C)(*2*).

(*3*) *Effect of combination rule.* If, pursuant to paragraph (c)(7)(iv)(C)(*1*) of this section, tested units are treated as a single tested unit, then, solely for purposes of paragraph (c)(7) of this section, items of gross income attributable to such tested units, and items of deduction and foreign taxes allocated and apportioned to such gross income, are aggregated for purposes of determining the combined tested unit's tentative gross tested income item, tentative tested income item, and foreign income taxes paid or accrued with respect to such tentative tested income item.

(v) *Separate set of books and records*—(A) *In general.* For purposes of this paragraph (c)(7), the term *separate set of books and records* has the meaning set forth in § 1.989(a)–1(d). In addition, for purposes of this paragraph (c)(7), in the case of a tested unit or a transparent interest that is an interest in a pass-through entity or a portion of the activities of a branch, a reference to the separate set of books and records of the tested unit or the transparent interest means the separate set of books and records of the entity or the branch, as applicable.

(B) *Failure to maintain separate set of books and records.* If a separate set of books and records is not maintained for a tested unit or transparent interest, the items of gross income, disregarded payments, and any other items required to apply paragraph (c)(7) of this section that would be reflected on a separate set of books and records of the tested unit or transparent interest must be determined. Such items are treated as properly reflected on the separate set of books and records of the tested unit or transparent interest for purposes of applying paragraph (c)(7) of this section.

(C) *Transparent interests.* If a tested unit of a controlled foreign corporation or an entity an interest in which is a tested unit of a controlled foreign corporation holds a transparent interest, either directly or indirectly through one or more other transparent interests, then, for purposes of paragraph (c)(7) of this section (and subject to the rule of paragraph (c)(7)(iv)(C) of this section), items of the controlled foreign corporation properly reflected on the separate set of books and records of the transparent interest are treated as being properly reflected on the separate set of books and records of the tested unit, as modified under paragraph (c)(7)(ii)(B)(*2*) of this section. See paragraph (c)(8)(iii)(D)(*6*) (Example 4) of this section for an illustration of the application of the rule set forth in this paragraph (c)(7)(v)(C).

(D) *Items not taken into account for financial accounting purposes.* For purposes of this paragraph (c)(7), an item of gross income in a CFC inclusion year that is not taken into account in such year for financial accounting purposes, and therefore not properly reflected on a separate set of books and records of a tested unit or a transparent interest, or an entity an interest in which is a tested unit or a transparent interest, is treated as properly reflected on a separate set of books and records to the extent it would have been so reflected if the item were taken into account for financial accounting purposes in such CFC inclusion year.

(vi) *Effective rate at which foreign taxes are imposed.* For a CFC inclusion year of a controlled foreign corporation, the effective rate of foreign tax with respect to the tentative tested income items of the controlled foreign corporation is determined separately for each such item. See paragraphs (c)(8)(iii)(A)(*2*)(*v*) (Example 1), (c)(8)(iii)(B)(*2*)(*vi*) (Example 2), and (c)(8)(iii)(C)(*2*)(*vi*) (Example 3) of this section for illustrations of the application of the rules set forth in this paragraph (c)(7)(vi). The effective rate at which foreign income taxes are imposed on a tentative tested income item is—

(A) The U.S. dollar amount of foreign income taxes paid or accrued with respect to the tentative tested income item, determined by applying paragraph (c)(7)(vii) of this section; divided by

(B) The U.S. dollar amount of the tentative tested income item, increased by the amount of foreign income taxes referred to in paragraph (c)(7)(vi)(A) of this section.

(vii) *Foreign income taxes paid or accrued with respect to a tentative tested income item.* For a CFC inclusion year, the amount of foreign income taxes paid or accrued by a controlled foreign corporation with respect to a tentative tested income item of the controlled foreign corporation for purposes of this paragraph (c)(7) is the U.S. dollar amount of the controlled foreign corporation's current year taxes (as defined in § 1.960–1(b)(4)) that are allocated and apportioned to the related tentative gross tested income item under the rules of paragraph (c)(7)(iii) of this section. See paragraphs (c)(8)(iii)(A)(*2*)(*iv*) (Example 1), (c)(8)(iii)(B)(*2*)(*v*) (Example 2), and (c)(8)(iii)(C)(*2*)(*v*) (Example 3) of this section for illustrations of the application of the rule set forth in this paragraph (c)(7)(vii).

(viii) *Rules regarding the high-tax election*—(A) *Manner*—(*1*) An election is made under this paragraph (c)(7)(viii) by the controlling domestic shareholders (as defined in § 1.964–1(c)(5)) with respect to a controlled foreign corporation for a CFC inclusion year (a *high-tax election*) in accordance with the rules provided in forms or instructions and by—

(*i*) Filing the statement required under § 1.964–1(c)(3)(ii) with a timely filed original federal income tax return, or with an amended federal income tax return in accordance with paragraph (c)(7)(viii)(A)(*2*) of this section, for the U.S. shareholder inclusion year of each controlling domestic shareholder in which or with which such CFC inclusion year ends;

(*ii*) Providing any notices required under § 1.964–1(c)(3)(iii); and

(*iii*) Providing any additional information required by applicable administrative pronouncements.

(*2*) In the case of an election (or revocation) made with an amended federal income tax return—

(*i*) The election (or revocation) must be made on an amended federal income tax return duly filed within 24 months of the unextended due date of the original federal income tax return for the U.S. shareholder inclusion year with or within which the CFC inclusion year ends;

(*ii*) Each United States shareholder in the controlled foreign corporation as of the end of the CFC's taxable year to which the election relates must file amended federal income tax returns (or timely original federal income tax returns if a return has not yet been filed) reflecting the effect of such election (or revocation) for the U.S. shareholder inclusion year with or within which the CFC inclusion year ends as well as for any other taxable year in which the U.S. tax liability of the United States shareholder would be increased by reason of the election (or revocation) (or in the case of a partnership if any item reported by the partnership or any partnership-related item would change as a result of the election (or revocation)) within a single period no greater than six months within the 24-month period described in paragraph (c)(7)(viii)(A)(*2*)(*i*) of this section; and

(*iii*) Each United States shareholder in the controlled foreign corporation as of the end of the controlled foreign corporation's taxable year to which the election relates must pay any tax due as a result of such adjustments within a single period no greater than six months within the 24-month period described in paragraph (c)(7)(viii)(A)(*2*)(*i*) of this section.

(*3*) In the case of a United States shareholder that is a partnership, paragraphs (c)(7)(viii)(A)(*1*) and (*2*) and (c)(7)(viii)(C) of this section are applied by substituting ''Form 1065 (or successor form)'' for ''federal income tax return'' and by substituting ''amended Form 1065 (or successor form) or administrative adjustment request (as described in § 301.6227–1), as applicable,'' for ''amended federal income tax return'', each place that it appears.

(*4*) A United States shareholder that is a partner in a partnership that is also a United States shareholder in the controlled foreign corporation must generally file an amended return, as required under paragraph (c)(7)(viii)(B)(*2*) of this section, and must generally pay any additional tax owed as required under paragraph (c)(7)(viii)(B)(*3*). However, in the case of a United States shareholder that is a partner in a partnership that duly files an administrative adjustment request under paragraph (c)(7)(viii)(A)(*2*) of this section, the partner is treated as having satisfied the requirements of paragraphs (c)(7)(viii)(A)(*2*)(*ii*) and (*iii*) of this section with respect to the interest held through that partnership if:

(*i*) The partnership timely files an administrative adjustment request described in paragraph (c)(7)(viii)(A)(*1*)(*i*) or (*ii*) of this section, as applicable; and,

(ii) Both the partnership and its partners timely comply with the requirements of section 6227 with respect to the administrative adjustment request. See §§ 301.6227–1 through –3 for rules relating to administrative adjustment requests.

(B) *Scope.* A high-tax election applies with respect to each tentative gross tested income item of the controlled foreign corporation for the CFC inclusion year and is binding on all United States shareholders of the controlled foreign corporation.

(C) *Revocation.* A high-tax election may be revoked by the controlling domestic shareholders of the controlled foreign corporation in the same manner as prescribed for an election made on an amended return as described in paragraph (c)(7)(viii)(A) of this section.

(D) *Failure to satisfy election requirements.* A high-tax election (or revocation) is valid only if all of the requirements in paragraph (c)(7)(viii)(A) of this section, including the requirement to provide notice under paragraph (c)(7)(viii)(A)(*1*)(*ii*) of this section, are satisfied.

(E) *Rules applicable to CFC groups*—(*1*) *In general.* In the case of a controlled foreign corporation that is a member of a CFC group, a high-tax election is made under paragraph (c)(7)(viii)(A) of this section, or revoked under paragraph (c)(7)(viii)(C) of this section, with respect to all controlled foreign corporations that are members of the CFC group and the rules in paragraphs (c)(7)(viii)(A) through (D) of this section apply by reference to the CFC group.

(*2*) *Determination of the CFC group*—(*i*) *Definition.* Subject to the rules in paragraphs (c)(7)(viii)(E)(*2*)(*ii*) and (*iii*) of this section, the term *CFC group* means an affiliated group as defined in section 1504(a) without regard to section 1504(b)(1) through (6), except that section 1504(a) is applied by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears, and section 1504(a)(2)(A) is applied by substituting ''or'' for ''and.'' For purposes of this paragraph (c)(7)(viii)(E)(*2*)(*i*), stock ownership is determined by applying the constructive ownership rules of section 318(a), other than section 318(a)(3)(A) and (B), by applying section 318(a)(4) only to options (as defined in § 1.1504–4(d)) that are reasonably certain to be exercised as described in § 1.1504–4(g), and by substituting in section 318(a)(2)(C) ''5 percent'' for ''50 percent.

(*ii*) *Member of a CFC group.* The determination of whether a controlled foreign corporation is included in a CFC group is made as of the close of the CFC inclusion year of the controlled foreign corporation that ends with or within the taxable years of the controlling domestic shareholders. One or more controlled foreign corporations are members of a CFC group if the requirements of paragraph (c)(7)(viii)(E)(*2*) of this section are satisfied as of the end of the CFC inclusion year of at least one of the controlled foreign corporations, even if the requirements are not satisfied as of the end of the CFC inclusion year of all controlled foreign corporations. If the controlling domestic shareholders do not have the same taxable year, the determination of whether a controlled foreign corporation is a member of a CFC group is made with respect to the CFC inclusion year that ends with or within the taxable year of the majority of the controlling domestic shareholders (determined based on voting power) or, if no such majority taxable year exists, the calendar year. See paragraph (c)(8)(iii)(E) (Example 5) of this section for an example that illustrates the application of the rule set forth in this paragraph (c)(7)(viii)(E)(*2*)(*ii*).

(*iii*) *Controlled foreign corporations included in only one CFC group.* A controlled foreign corporation cannot be a member of more than one CFC group. If a controlled foreign corporation would be a member of more than one CFC group under paragraph (c)(7)(viii)(E)(*2*) of this section, then ownership of stock of the controlled foreign corporation is determined by applying paragraph (c)(7)(viii)(E)(*2*) of this section without regard to section 1504(a)(2)(B) or, if applicable, by reference to the ownership existing as of the end of the first CFC inclusion year of a controlled foreign corporations that would cause a CFC group to exist.

(ix) *Definitions.* The following definitions apply for purposes of this paragraph (c)(7).

(A) *Indirectly.* The term *indirectly,* when used in reference to ownership, means ownership through one or more pass-through entities.

(B) *Pass-through entity.* The term *pass-through entity* means a partnership, a disregarded entity, or any

other person (whether domestic or foreign) other than a corporation to the extent that income, gain, deduction or loss of the person is taken into account in determining the income or loss of a controlled foreign corporation that owns, directly or indirectly, interests in the person.

(C) *Transparent interest.* The term *transparent interest* means an interest in a pass-through entity (or the activities of a branch) that is not a tested unit.

(8) *Examples*—(i) *Scope.* This paragraph (c)(8) provides examples illustrating the application of the rules in paragraph (c)(7) of this section.

(ii) *Presumed facts.* For purposes of the examples in paragraph (c)(8)(iii) of this section, except as otherwise stated, the following facts are presumed:

(A) USP is a domestic corporation.

(B) CFC1X and CFC2X are controlled foreign corporations organized in, and tax residents of, Country X.

(C) CFC3Z is a controlled foreign corporation organized in, and tax resident of, Country Z.

(D) FDEX is a disregarded entity that is a tax resident of Country X.

(E) FDE1Y and FDE2Y are disregarded entities that are tax residents of Country Y.

(F) FPSY is an entity that is organized in, and a tax resident of, Country Y but is classified as a partnership for federal income tax purposes.

(G) CFC1X, CFC2X, CFC3Z, and the interests in FDEX, FDE1Y, FDE2Y, and FPSY are tested units (the CFC1X tested unit, CFC2X tested unit, CFC3Z tested unit, FDEX tested unit, FDE1Y tested unit, FDE2Y tested unit, and FPSY tested unit, respectively).

(H) CFC1X, CFC2X, CFC3Z, FDEX, FDE1Y, and FDE2Y conduct activities in the foreign country in which they are tax resident, and properly reflect items of income, gain, deduction, and loss on separate sets of books and records.

(I) All entities have calendar taxable years (for both federal income tax purposes and for purposes of the relevant foreign country) and use the Euro (€) as their functional currency. At all relevant times €1 = $1.

(J) The maximum rate of tax specified in section 11 for the CFC inclusion year is 21 percent.

(K) Neither CFC1X, CFC2X, nor CFC3Z directly or indirectly earns income described in section 952(b), has any items of income, gain, deduction, or loss, or makes or receives disregarded payments. In addition, no tested unit of CFC1X, CFC2X, or CFC3Z makes or receives disregarded payments.

(L) An election made under section 954(b)(4) and paragraph (c)(7)(viii) of this section is effective with respect to CFC1X and CFC2X, as applicable, for the CFC inclusion year.

(iii) *Examples*—(A) *Example 1: Effect of disregarded interest*—(*1*) *Facts*—(*i*) *Ownership.* USP owns all of the stock of CFC1X, and CFC1X owns all of the interests of FDE1Y.

(*ii*) *Gross income and deductions (other than for foreign income taxes).* In Year 1, CFC1X generates €100x of gross income from services to unrelated parties that would be gross tested income without regard to paragraph (c)(7) of this section and that is properly reflected on the books and records of FDE1Y. The €100x of services income is general category income under § 1.904–4(d). In Year 1, FDE1Y accrues and pays €20x of interest to CFC1X that is deductible for Country Y tax purposes but is disregarded for federal income tax purposes. The €20x of disregarded interest income received by CFC1X from FDE1Y is properly reflected on CFC1X's books and records, and the €20x of disregarded interest expense paid from FDE1Y to CFC1X is properly reflected on FDE1Y's books and records.

(*iii*) *Foreign income taxes.* Country X imposes no tax on net income, and Country Y imposes a 25% tax on net income. For Country Y tax purposes, FDE1Y (which is not disregarded under Country Y tax law) has €80x of taxable income (€100x of services income from the unrelated parties, less a €20x deduction for the interest paid to CFC1X). Accordingly, FDE1Y incurs a Country Y income tax liability with respect to Year 1 of €20x (€80x x 25%), the U.S. dollar amount of which is $20x.

(*2*) *Analysis*—(*i*) *Tentative gross tested income items.* Under paragraph (c)(7)(ii)(A) of this section, the tentative gross tested income item with respect to each of the CFC1X tested unit and the FDE1Y tested unit is the aggregate of the gross income of CFC1X that is attributable to the tested unit, that would be gross tested income (without regard to this paragraph (c)(7)), and that would be in a single tested income group. Under paragraphs (c)(7)(ii)(B)(*1*) and (*2*) of this section, items of gross income of CFC1X are attributable to the CFC1X tested unit, or the FDE1Y tested unit, to the extent properly reflected on its separate set of books and records, as determined under federal income tax principles and adjusted to take into account disregarded payments. Without regard to the €20x disregarded interest payment from FDE1Y to CFC1X, gross income attributable to the CFC1X tested unit would be €0 (that is, the €20x of interest income reflected on the books and records of CFC1X would be reduced by €20x, the amount attributable to the payment that is disregarded for federal income tax purposes). Similarly, without regard to the €20x disregarded interest payment from FDE1Y to CFC1X, gross income attributable to the FDE1Y tested unit would be €100x (that is, €100x of services income reflected on the books and records of FDE1Y, unreduced by the €20x disregarded interest payment from FDE1Y to CFC1X). However, under paragraph (c)(7)(ii)(B)(*2*) of this section, the gross income attributable to each of the CFC1X tested unit and the FDE1Y tested unit is adjusted by €20x, the amount of the disregarded interest payment from FDE1Y to CFC1X that is deductible for Country Y tax purposes. Accordingly, the tentative gross tested income item attributable to the CFC1X tested unit (the ''CFC1X tentative gross tested income item'') is €20x (€0 + €20x), and the tentative gross tested income item attributable to the FDE1Y tested unit (the ''FDE1Y tentative gross tested income item'') is €80x (€100x − €20x).

(*ii*) *Foreign income tax deduction.* Under paragraph (c)(7)(iii)(A) of this section, CFC1X's tentative tested income items are computed by treating the CFC1X tentative gross tested income item and the FDE1Y tentative gross tested income item each as income in a separate tested income group (the ''CFC1X income group'' and the ''FDE1Y income group'') and by allocating and apportioning CFC1X's deductions for current year taxes under the principles of § 1.960–1(d)(3)(ii) (CFC1X has no other deductions to allocate and apportion). Under paragraph (c)(7)(iii)(A) of this section, the €20x deduction for Country Y income taxes is allocated and apportioned solely to the FDE1Y income group (the ''FDE1Y group tax''). None of the Country Y taxes are allocated and apportioned to the CFC1X income group under paragraph (c)(7)(iii)(B) of this section and the principles of § 1.904–6(a)(2)(ii)(A), because none of the Country Y tax is imposed solely by reason of the disregarded interest payment.

(*iii*) *Tentative tested income items.* Under paragraph (c)(7)(iii) of this section, the tentative tested income item with respect to the CFC1X income group (the ''CFC1X tentative tested item''), is €20x. The tentative tested income item with respect to the FDE1Y income group (the ''CFC1X tentative tested item'') is €60x (the FDE1Y tentative gross tested income item of €80x, less the €20x deduction for the FDE1Y group tax).

(*iv*) *Foreign income tax paid or accrued with respect to a tentative tested income item.* Under paragraph (c)(7)(vii) of this section, the foreign income taxes paid or accrued with

respect to a tentative tested income item is the U.S. dollar amount of the current year taxes that are allocated and apportioned to the related tentative gross tested income item under the rules of paragraph (c)(7)(iii) of this section. Therefore, the foreign income taxes paid or accrued with respect to the FDE1Y tentative tested income item is $20x, the U.S. dollar amount of the FDE1Y group tax. The foreign income tax paid or accrued with respect to the CFC1X tentative tested income item is $0, the U.S. dollar amount of the foreign tax allocated and apportioned to the CFC1X tentative gross tested income item under paragraph (c)(7)(iii) of this section.

(*v*) *Effective foreign tax rate.* The effective foreign tax rate is determined under paragraph (c)(7)(vi) of this section by dividing the U.S. dollar amount of foreign income taxes paid or accrued with respect to each respective tentative tested income item by the U.S. dollar amount of the tentative tested income item increased by the U.S. dollar amount of the relevant foreign income taxes. Therefore, the effective foreign tax rate with respect to the FDE1Y tentative tested income item is 25%, computed by dividing $20x (the U.S. dollar amount of the foreign income taxes paid or accrued with respect to the FDE1Y tentative tested income item under paragraph (c)(7)(vii) of this section) by $80x (the sum of $60x, the U.S. dollar amount of the FDE1Y tentative tested income item, and $20x, the U.S. dollar amount of the foreign income taxes paid or accrued with respect to the FDE1Y tentative tested income item). The CFC1X tentative tested income item is not subject to any foreign income tax, so is subject to an effective foreign tax rate of 0%, calculated as $0 (the U.S. dollar amount of the foreign income taxes paid or accrued with respect to the CFC1X tentative tested income item) divided by $20x (the U.S. dollar amount of the CFC1X tentative tested income item).

(vi) *Gross income items excluded under sections 954(b)(4) and 951A(c)(2)(A)(i)(III).* The FDE1Y tentative tested income item is subject to an effective foreign tax rate (25%) that is greater than 18.9% (90% of the maximum rate of tax specified in section 11). Therefore, the requirement of paragraph (c)(7)(i)(B) of this section is satisfied, and the FDE1Y tentative gross tested income item qualifies under paragraph (c)(7)(i) of this section for the high-tax exception of section 954(b)(4) and is excluded from tested income under sections 951A(c)(2)(A)(i)(III) and 954(b)(4) and paragraph (c)(1)(iii) of this section. The CFC1X tentative tested income item is subject to an effective foreign tax rate of 0%. Therefore, the CFC1X tentative tested income item does not satisfy the requirement of paragraph (c)(7)(i)(B) of this section, and the CFC1X tentative gross tested income item does not qualify under paragraph (c)(7)(i) of this section for the high-tax exception of section 954(b)(4) and is not excluded from tested income under sections 951A(c)(2)(A)(i)(III) and 954(b)(4) and paragraph (c)(1)(iii) of this section.

(B) *Example 2: Disregarded payment for services*—(*1*) *Facts*—(*i*) *Ownership.* USP owns all of the stock of CFC1X. CFC1X owns all of the interests of FDE1Y. FDE1Y is a tax resident of Country Y, but is treated as fiscally transparent for Country X tax purposes, so that FDE1Y is subject to tax in Country Y and CFC1X is subject to tax in Country X with respect to FDE1Y's activities.

(*ii*) *Gross income, deductions (other than for foreign income taxes), and disregarded payments.* In Year 1, CFC1X generates €1,000x of gross income from services to unrelated parties that would be gross tested income without regard to paragraph (c)(7) of this section and that is properly reflected on the books and records of CFC1X. In Year 1, CFC1X accrues and pays €480x of deductible expenses to unrelated parties, €280x of which is properly reflected on CFC1X's books and records and is definitely related solely to CFC1X's gross income reflected on its books and records, and €200x of which is properly reflected on FDE1Y's books and records and is definitely related solely to FDE1Y's gross income reflected on its books and records. Country X law does not provide rules for the allocation or apportionment of these deductions to particular items of gross income. In Year 1, CFC1X also accrues and pays €325x to FDE1Y for support services performed by FDE1Y in Country Y; the payment is disregarded for federal income tax purposes. The €325x of disregarded support services income received by FDE1Y from CFC1X is properly reflected on FDE1Y's books and records, and the €325x of disregarded support services expense paid from CFC1X to FDE1Y is properly reflected on CFC1X's books and records.

(*iii*) *Foreign income taxes.* Country X imposes a 10% tax on net income, and Country Y imposes a 16% tax on net income. Country X allows a deduction, but not a credit, for foreign income taxes paid or accrued to another country (such as Country Y). For Country Y tax purposes, FDE1Y (which is not disregarded under Country Y tax law) has €125x of taxable income (€325x of support services income received from CFC1X, less a €200x deduction for expenses paid to unrelated parties). Accordingly, FDE1Y incurs a Country Y income tax liability with respect to Year 1 of €20x (€125x × 16%), the U.S. dollar amount of which is $20x. For Country X tax purposes, CFC1X has €500x of taxable income (€1,000x of gross income for services, less a €480x deduction for expenses paid to unrelated parties by CFC1X and FDE1Y and a €20x deduction for Country Y taxes; Country X does not allow CFC1X a deduction for the €325x paid to FDE1Y for support services because the €325x payment is disregarded for Country X tax purposes). Accordingly, CFC1X incurs a Country X income tax liability with respect to Year 1 of €50x (€500x × 10%), the U.S. dollar amount of which is $50x.

(*2*) *Analysis*—(*i*) *Tentative gross tested income item.* Under paragraph (c)(7)(ii) of this section, CFC1X has two tentative gross tested income items, one item with respect to CFC1X (the ''CFC1X tentative gross tested income item'') and one item with respect to CFC1X's interest in FDE1Y (the ''FDE1Y tentative gross tested income item''). The gross income attributable to each tested unit comprises the gross income properly reflected on the books and records of each tested unit under paragraph (c)(7)(ii)(B)(*1*) of this section, as adjusted under paragraph (c)(7)(ii)(B)(*2*) of this section. Without regard to the €325x payment for support services from CFC1X to FDE1Y, the gross income attributable to the FDE1Y tested unit would be €0 (that is, the €325x of services income properly reflected on the books and records of FDE1Y, reduced by the €325x payment from CFC1X to FDE1Y that is disregarded for federal income tax purposes). Similarly, without regard to the €325x payment for support services from CFC1X to FDE1Y, the gross income attributable to the CFC1X tested unit would be €1,000x (that is, €1,000x of services income reflected on the books and records of CFC1X, unreduced by the €325x disregarded payment). However, under paragraph (c)(7)(ii)(B)(*2*) of this section, the gross income attributable to each of the CFC1X tested unit and the FDE1Y tested unit is adjusted by €325x, the amount of the disregarded services payment from CFC1X to FDE1Y. Accordingly, the FDE1Y tentative gross tested income item is €325x (€0 + €325x), and the CFC1X tentative gross tested income item is €675x (€1,000x − €325x).

(*ii*) *Deductions (other than for foreign income taxes).* Under paragraph (c)(7)(iii) of this section, CFC1X's tentative tested income items are computed by applying the principles of § 1.960–1(d)(3), treating the CFC1X

tentative gross tested income item and the FDE1Y tentative gross tested income item each as income in a separate tested income group (the ''CFC1X income group'' and the ''FDE1Y income group'') and by allocating and apportioning CFC1X's deductions among the income groups under federal income tax principles. For Year 1, CFC1X has deductible expense (other than foreign income tax) of €480x. This amount includes €280x of deductible expense that is definitely related solely the services activity of the CFC1X tested unit, and another €200x of deductible expense (other than foreign income tax) that is definitely related solely to the services provided by the FDE1Y tested unit. Therefore, €280x of deductible expense (other than foreign income tax) is allocated and apportioned to the CFC1X income group, and €200x of deductible expense (other than foreign income tax) is allocated and apportioned to the FDE1Y income group.

(*iii*) *Foreign income tax deduction.* CFC1X accrues foreign income tax in Year 1 of €70x (€50x imposed by Country X and €20x imposed by Country Y). Under paragraph (c)(7)(iii) of this section, the deductions for foreign income taxes are allocated and apportioned under the principles of § 1.960–1(d)(3)(ii) to the FDE1Y income group and the CFC1X income group. Under paragraph (c)(7)(iii)(A) of this section and § 1.960–1(d)(3)(ii), the principles of § 1.904–6(a)(1) generally apply to determine the amount of the foreign income tax paid or accrued with respect to each income group. However, under paragraph (c)(7)(iii)(B) of this section, foreign income taxes imposed by reason of the receipt of a disregarded payment are allocated and apportioned under the principles of § 1.904–6(a)(2). The Country Y tax of €20x is imposed solely by reason of FDE1Y's receipt of a €325x disregarded payment. As a result, the entire €20x of Country Y tax is allocated and apportioned to the FDE1Y income group under the principles of § 1.904–6(a)(2)(ii)(A). If Country X had allowed a deduction for the disregarded payment from CFC1X to FDE1Y and not otherwise imposed tax on CFC1X with respect to income of FDE1Y, the foreign tax imposed by Country X would relate only to the CFC1X tested income group, and no portion of it would be allocated and apportioned to the FDE1Y income group because the FDE1Y income would not be included in the Country X tax base. However, because gross income subject to tax in Country X includes gross income that for federal income tax purposes is attributable to both the FDE1Y tested unit and the CFC1X tested unit, the €50x of foreign income tax imposed by Country X is related to both the FDE1Y income group and to the CFC1X income group and must be allocated and apportioned under the principles of § 1.904–6(a)(1)(i). Because Country X does not provide specific rules for the allocation or apportionment of the €500x of deductible expenses, § 1.904–6(a)(1)(ii) applies the principles of §§ 1.861–8 through 1.861–14T to determine the foreign law net income subject to Country X tax for purposes of apportioning the €50x of Country X tax between the income groups. CFC1X has €1,000x of gross income and €500x of deductible expenses under the tax laws of Country X, resulting in €500x of net foreign law income. Of the €1,000x of foreign law gross income, €325x corresponds to the gross income in the FDE1Y income group, and €675x corresponds to the gross income in the CFC1X income group. Applying federal income tax principles to allocate and apportion the foreign law deductions to foreign law gross income, €220x of the €500x foreign law deductions is allocated and apportioned to the FDE1Y income group and €280x is allocated and apportioned to the CFC1X income group. Of the total €500x of net foreign law income, €105x (€325x Country X gross income corresponding to the FDE1Y income group, less €220x allocable Country X expenses) corresponds to the FDE1Y income group and €395x (€675x Country X gross income corresponding to the CFC1X income group, less €280x allocable Country X expenses) corresponds to the CFC1X income group. Therefore, €10.5x (€50x × €105x/€500x) of Country X tax is allocated and apportioned to the FDE1Y income group, and €39.5x (€50x × €395x/€500x) is allocated and apportioned to the CFC1X income group. In total, €30.5x of foreign tax (€10.5x of Country X tax and €20x of Country Y tax) is allocated and apportioned to the FDE1Y income group (the ''FDE1Y group tax''), and €39.5x of foreign tax (all of which is Country X tax) is allocated and apportioned to the CFC1X tested income group (the ''CFC1X group tax'').

(*iv*) *Tentative tested income items.* Under paragraph (c)(7)(iii) of this section, the tentative tested income item attributable to FDE1Y (the ''FDE1Y tentative tested income item'') is €94.5x (the FDE1Y gross tested income item of €325x, less the allocated and apportioned deductions of €230.5x (the sum of deductions (other than for foreign income tax) of €200x, Country Y tax of €20x, and Country X tax of €10.5x)). The tentative tested income item attributable to CFC1X (the ''CFC1X tentative tested income item'') is €355.5x (the CFC1X gross tentative tested income item of €675x, less the allocated and apportioned deductions of €319.5x (the sum of deductions (other than for foreign income tax) of €280x and Country X tax of €39.5x)).

(*v*) *Foreign income taxes paid or accrued with respect to a tentative tested income item.* Under paragraph (c)(7)(vii) of this section, the foreign income taxes paid or accrued with respect to a tentative tested income item is the U.S. dollar amount of the current year taxes that are allocated and apportioned to the related tentative gross tested income item under the rules of paragraph (c)(7)(iii) of this section. Therefore, the foreign income taxes paid or accrued with respect to the FDE1Y tentative tested income item is $30.5x, the U.S. dollar amount of the FDE1Y group tax, and the foreign income taxes paid or accrued with respect to the CFC1X tentative tested income item is $39.5x, the U.S. dollar amount of the CFC1X group tax.

(*vi*) *Effective foreign tax rate.* The effective foreign tax rate is determined under paragraph (c)(7)(vi) of this section by dividing the U.S. dollar amount of foreign income taxes paid or accrued with respect to each respective tentative tested income item by the U.S. dollar amount of the tentative tested income item increased by the U.S. dollar amount of the relevant foreign income taxes. Therefore, the effective foreign tax rate for the FDE1Y tentative tested income item is 24.4%, computed by dividing $30.5x (the U.S. dollar amount of the foreign income taxes paid or accrued with respect to the FDE1Y tentative tested income item), by $125x (the sum of $94.5x, the U.S. dollar amount of the FDE1Y tentative tested income item, and $30.5x, the U.S. dollar amount of the foreign income taxes paid or accrued with respect to the FDE1Y tentative tested income item). Similarly, the effective foreign tax rate for the CFC1X tentative tested income item is 10%, computed by dividing $39.5x (the U.S. dollar amount of the foreign income taxes paid or accrued with respect to the CFC1X tentative tested income item) by $395x (the sum of $355.5x, the U.S. dollar amount of the CFC1X tentative tested income item, and $39.5x, the U.S. dollar amount of the foreign taxes paid or accrued with respect to the CFC1X tentative tested income item).

(*vii*) *Gross income items excluded under sections 954(b)(4) and*

951A(c)(2)(A)(i)(III). The FDE1Y tentative tested income item has an effective foreign tax rate (24.4%) that is greater than 18.9% (90% of the maximum rate of tax specified in section 11). Therefore, the requirement of paragraph (c)(7)(i)(B) of this section is satisfied, and the FDE1Y tentative gross tested income item qualifies under paragraph (c)(7)(i) of this section for the high-tax exception of section 954(b)(4) and is excluded from tested income under sections 951A(c)(2)(A)(i)(III) and 954(b)(4) and paragraph (c)(1)(iii) of this section. The CFC1X tentative tested income item has an effective foreign tax rate (10%) that is not greater than 90% of the maximum rate of tax specified in section 11. Therefore, the CFC1X tentative gross tested income item does not qualify under paragraph (c)(7)(i) of this section for the high-tax exception of section 954(b)(4) and is not excluded from tested income under sections 951A(c)(2)(A)(i)(III) and 954(b)(4) and paragraph (c)(1)(iii) of this section.

(C) *Example 3: Interest expense allocated and apportioned with respect to the income of a lower-tier CFC*—(*1*) *Facts*—(*i*) *Ownership.* USP owns all of the stock of CFC1X. CFC1X directly owns all the interests of FDE1Y. FDE1Y owns all of the stock of CFC3Z. Pursuant to § 1.861–9(j) and § 1.861–9T(j), CFC1X uses the modified gross income method to allocate and apportion its interest expense.

(*ii*) *Gross income and deductions (including for foreign income taxes).* During Year 1, CFC1X generates €4,000x of gross income from services that would be gross tested income without regard to paragraph (c)(7) of this section, €3,000x of which is properly reflected on the books and records of the CFC1X tested unit and €1,000x of which is properly reflected on the books and records of the FDE1Y tested unit. CFC1X also accrues €1,000x of interest expense to an unrelated person. Country X imposes €200x of income taxes with respect to the €3,000x of gross income properly reflected on the books and records of the CFC1X tested unit, and Country Y imposes €200x of income taxes with respect to the €1,000x of gross income properly reflected on the books and records of the FDE1Y tested unit. CFC3Z generates €1,000x of gross income from services that would be gross tested income without regard to paragraph (c)(7) of this section, and such gross income is properly reflected on the books and records of the CFC3Z tested unit. CFC3Z accrues no expenses, and Country Z imposes €100x of income taxes with respect to the €1,000x of gross income generated by CFC3Z.

(*2*) *Analysis*—(*i*) *Tentative gross tested income items.* Under paragraph (c)(7)(ii) of this section, the €3,000x of gross income that is reflected on the books and records of the CFC1X tested unit, and the €1,000x of gross income that is reflected on the books and records of the FDE1Y tested unit, are attributable to the CFC1X tested unit and the FDE1Y tested unit, respectively. Under paragraph (c)(7)(ii) of this section, each of these amounts is a separate tentative gross tested income item of CFC1X (the ''CFC1X tentative gross tested income item'' and the ''FDE1Y tentative gross tested income item,'' respectively). Under paragraph (c)(7)(ii) of this section, the €1,000x item of tentative gross tested income that is properly reflected on the books and records of the CFC3Z tested unit is attributable to the CFC3Z tested unit. Under paragraph (c)(7)(ii) of this section, the amount attributable to the CFC3Z tested unit is a tentative gross tested income item of CFC3Z (the ''CFC3Z tentative gross tested income item'').

(*ii*) *Allocation and apportionment of interest expense.* To compute CFC1X's tentative tested income items, the principles of § 1.960–1(d)(3) apply by treating each of CFC1X's tentative gross tested income items as income in a separate tested income group (the ''CFC1X income group'' and the ''FDE1Y income group'') and allocate and apportion its deductions among those income groups under federal income tax principles. Because CFC1X uses the modified gross income method under § 1.861–9(j) and § 1.861–9T(j) to allocate and apportion interest expense, it must allocate and apportion its interest expense between the CFC1X income group and the FDE1Y income group based on a combined gross income amount that includes both the gross income of CFC1X (including the gross income attributable to both the CFC1X tested unit and the FDE1Y tested unit) and the gross income of CFC3Z, adjusted as provided under § 1.861–9(j) and § 1.861–9T(j). Under § 1.861–9(j) and § 1.861–9T(j), the adjusted combined gross income of CFC1X comprises the CFC1X tentative gross tested income item (€3,000x), or 60% of the combined adjusted gross income amount, the FDE1Y tentative gross tested income item (€1,000x), or 20% of the combined adjusted gross income amount, and the CFC3Z gross tentative tested income item (€1,000x), or 20% of the combined adjusted gross income amount. Under paragraph (c)(7)(iii) of this section, interest expense of CFC1X that is allocated and apportioned to the gross income of CFC3Z under § 1.861–9(j) and § 1.861–9T(j) is not allocated and apportioned to either the CFC1X income group or the FDE1Y income group. Therefore, €600x of interest expense (60% of the €1,000x of interest expense) is allocated and apportioned to the CFC1X income group, and €200x of interest expense (20% of the €1,000x of interest expense) is allocated and apportioned to the FDE1Y income group. The €200x of interest expense that is allocated and apportioned to the €1,000x of gross tentative tested income of CFC3Z is allocated and apportioned to the residual income group for purposes of paragraph (c)(7) of this section, but can still be allocated and apportioned to a statutory grouping of tested income of CFC1X for purposes of paragraph (c)(3) of this section. *See* paragraph (c)(7)(iii) of this section.

(*iii*) *Foreign income tax deduction.* Under paragraph (c)(7)(iii) of this section, deductions for foreign income taxes paid or accrued by CFC1X are allocated and apportioned under the principles of §§ 1.960–1(d)(3)(ii) and § 1.904–6(a)(1) to the CFC1X income group and the FDE1Y income group. Similarly, foreign income taxes paid or accrued by CFC3Z are allocated and apportioned under the principles of §§ 1.960–1(d)(3)(ii) and 1.904–6(a)(1) to the tentative gross tested income item of CFC3Z (the ''CFC3Z income group''). Under these principles, the €200x of Country X income taxes are allocated and apportioned to the CFC1X income group (the ''CFC1X group tax''), the €200x of Country Y income taxes are allocated and apportioned to the FDE1Y income group (the ''FDE1Y group tax''), and the €100x of Country Z income taxes are allocated and apportioned to the CFC3Z income group (the ''CFC3Z group tax'').

(*iv*) *Tentative tested income items.* After the allocation and apportionment of deductions to reduce the tentative gross tested income in each income group, under paragraph (c)(7)(iii) of this section, CFC1X has a tentative tested income item with respect to the CFC1X tested unit of €2,200x (€3,000x, less €600x of interest expense and €200x of foreign income tax expense, the ''CFC1X tentative tested income item'') and a tentative tested income item with respect to the FDE1Y tested unit of €600x (€1,000x, less €200x of interest expense and €200x of foreign income tax expense, the ''FDE1Y tentative tested income item''). CFC3Z has a tentative tested income item of €900x (€1,000x, less €100x of foreign income tax expense, the ''CFC3Z tentative tested income item'').

(*v*) *Foreign income taxes paid or accrued with respect to a tentative*

tested income item. Under paragraph (c)(7)(vii) of this section, the foreign income taxes paid or accrued with respect to a tentative tested income item is the U.S. dollar amount of the current year taxes that are allocated and apportioned to the related tentative gross tested income item under the rules of paragraph (c)(7)(iii) of this section. Therefore, the foreign income tax paid or accrued with respect to the CFC1X tentative tested income item is $200x, the U.S. dollar amount of the CFC1X group tax. Similarly, the foreign income tax paid or accrued with respect to the FDE1Y tentative tested income item is $200x, the U.S. dollar amount of the FDE1Y group tax, and the foreign income tax paid or accrued with respect to the CFC3Z tentative tested income item is $100x, the U.S. dollar amount of the CFC3Z group tax.

(*vi*) *Effective foreign tax rate.* The effective foreign tax rate is determined under paragraph (c)(7)(vi) of this section by dividing the U.S. dollar amount of foreign income taxes paid or accrued with respect to each respective tentative tested income item by the U.S. dollar amount of the tentative tested income item increased by the U.S. dollar amount of the relevant foreign income taxes. Therefore, the effective foreign tax rate for the CFC1X tentative tested income item is 8.3%, computed by dividing $200x (the U.S. dollar amount of the foreign income taxes paid or accrued with respect to the CFC1X tentative tested income item), by $2,400x (the sum of $2,200x, the U.S. dollar amount of the CFC1X tentative tested income item and $200x, the U.S. dollar amount of the foreign taxes paid or accrued with respect to the CFC1X tentative tested income item). The effective foreign tax rate for the FDE1Y tentative tested income item is 25%, computed by dividing $200x (the U.S. dollar amount of the foreign taxes paid or accrued with respect to the FDE1Y tentative tested income item) by $800x (the sum of $600x, the U.S. dollar amount of the FDE1Y tentative tested income item, and $200x, the U.S. dollar amount of the foreign taxes paid or accrued with respect to the FDE1Y tentative tested income item). The effective foreign tax rate for the CFC3Z tentative tested income item is 10%, computed by dividing $100x (the U.S. dollar amount of the foreign taxes paid or accrued with respect to the CFC3Z tentative tested income item) by $1,000x (the sum of $900x, the U.S. dollar amount of the CFC3Z tentative tested income item, and $100x, the U.S. dollar amount of the foreign taxes paid or accrued with respect to the CFC3Z tentative tested income item).

(vii) *Gross income items excluded under sections 954(b)(4) and 951A(c)(2)(A)(i)(III).* The FDE1Y tentative tested income item is subject to tax at an effective foreign tax rate (25%) that is greater than 18.9% (90% of the maximum rate of tax specified in section 11). Therefore, the requirement of paragraph (c)(7)(i)(B) of this section is satisfied, and the FDE1Y tentative gross tested income item qualifies under paragraph (c)(7)(i) of this section for the high-tax exception of section 954(b)(4) and is excluded from tested income under sections 951A(c)(2)(A)(i)(III) and 954(b)(4) and paragraph (c)(1)(iii) of this section. In computing the tested income of CFC1X under paragraph (c)(3) of this section, the deductions of CFC1X that were allocated and apportioned to the FDE1Y tentative gross tested income item (that is, the €200x of interest expense and the €200x of FDE1Y group taxes) are allocated and apportioned to this item of tentative gross tested income. As a result, the €1,000x of tentative gross tested income excluded from tested income under section 954(b)(4), as well as the €200x of interest expense and €200x of foreign tax expense allocable to that gross income, are allocated and apportioned to the residual category under paragraph (c)(3) of this section for purposes of determining the tested income of CFC1X. Under § 1.960–1(d)(3), the $200x of foreign income taxes allocated and apportioned to the excluded gross income would also be assigned to the residual income group for purposes of determining CFC1X's tested taxes for purposes of section 960(d). The CFC1X tentative tested income item and CFC3Z tentative tested income item each have effective foreign tax rates (8.3% and 10%, respectively) that are not greater than 90% of the maximum rate of tax specified in section 11. Therefore, the CFC1X tentative gross tested income item and the CFC3Z tentative gross tested income item do not qualify under paragraph (c)(7)(i) of this section for the high-tax exception of section 954(b)(4), and are not excluded from tested income under sections 951A(c)(2)(A)(i)(III) and 954(b)(4) and paragraph (c)(1)(i) of this section. Under paragraph (c)(3) of this section, the corresponding deductions are allocated and apportioned to that gross tested income in a manner that achieves a result that is consistent the result of the allocation and apportionment of those deductions under paragraph (c)(7) of this section. Accordingly, because CFC3Z's tentative gross tested income is not excluded from gross tested income under sections 951A(c)(2)(A)(i)(IIII) and 954(b)(4) and paragraph (c)(1)(i) of this section, under paragraph (c)(3) of this section the €200x of CFC1X's interest expense that was apportioned to tentative gross tested income of CFC3Z under the modified gross income method in § 1.861–9 is allocated and apportioned to gross tested income of CFC1X and therefore reduces CFC1X's tested income. In contrast, if the CFC3Z tentative gross tested item had been excluded from gross tested income under sections 951A(c)(2)(A)(i)(III) and 954(b)(4) and paragraph (c)(1)(i) of this section, then the €200x of CFC1X's interest expense that was allocated and apportioned to that income would be assigned to the residual category.

(D) *Example 4: Application of tested unit rules*—(*1*) *Facts*—(*i*) *Ownership.* USP owns all of the stock of CFC1X. CFC1X directly owns all the interests of FDEX and FDE1Y. In addition, CFC1X directly carries on activities in Country Y that constitute a branch (as described in § 1.267A–5(a)(2)) and that give rise to a taxable presence under Country Y tax law and Country X tax law (such branch, ''FBY'').

(*ii*) *Items reflected on books and records.* For the CFC inclusion year, CFC1X had a €20x item of gross income (Item A), which is properly reflected on the books and records of FBY, and a €30x item of gross income (Item B), which is properly reflected on the books and records of FDEX.

(*2*) *Analysis*—(*i*) *Identifying the tested units of CFC1X.* Without regard to the combination rule of paragraph (c)(7)(iv)(C) of this section, CFC1X, CFC1X's interest in FDEX, CFC1X's interest in FDE1Y, and FBY would each be a tested unit of CFC1X. *See* paragraph (c)(7)(iv)(A) of this section. Pursuant to the combination rule, however, the FDE1Y tested unit is combined with the FBY tested unit and treated as a single tested unit because FDE1Y is a tax resident of Country Y, the same country in which FBY is located (the ''Country Y tested unit''). *See* paragraph (c)(7)(iv)(C)(*1*) of this section. The CFC1X tested unit (without regard to any items attributable to the FDEX, FDE1Y, or FBY tested units) is also combined with the FDEX tested unit and treated as a single tested unit because CFC1X and FDEX are both tax residents of County X (the ''Country X tested unit''). *See* paragraph (c)(7)(iv)(C)(*1*) of this section.

(*ii*) *Computing the items of CFC1X.* Under paragraph (c)(7)(ii)(A) of this section, a tentative gross tested income item is determined with respect to each of the Country Y tested unit and the

Country X tested unit. To determine the tentative gross tested income item of each tested unit, the item of gross income that is attributable to the tested unit is determined under paragraph (c)(7)(ii)(B) of this section. Under paragraph (c)(7)(ii)(B) of this section, only Item A is attributable to the Country Y tested unit. Item A is not attributable to the Country X tested unit because it is not reflected on the separate set of books and records of the CFC1X tested unit or the FDEX tested unit, and an item of gross income is only attributable to one tested unit. *See* paragraph (c)(7)(ii)(B)(*1*) of this section. Under paragraph (c)(7)(ii)(B) of this section, only Item B is attributable to the Country X tested unit.

(*3*) *Alternative facts—branch does not give rise to a taxable presence in country where located*—(*i*) *Facts.* The facts are the same as in paragraph (c)(8)(iii)(D)(*1*) of this section (the original facts in this *Example 4*), except that FBY does not give rise to a taxable presence under Country Y tax law; moreover, Country X tax law does not provide an exclusion, exemption, or other similar relief with respect to income attributable to FBY.

(*ii*) *Analysis.* FBY is not a tested unit but is a transparent interest. *See* paragraphs (c)(7)(iv)(A)(*3*) and (c)(7)(ix)(C) of this section. CFC1X has a tested unit in Country X that includes the CFC1X tested unit (without regard to any items related to the interest in FDEX or FDE1Y, but that includes FBY since it is a transparent interest and not a tested unit) and the interest in FDEX. *See* paragraph (c)(7)(iv)(C) of this section. CFC1X has another tested unit in Country Y, the interest in FDE1Y.

(*4*) *Alternative facts—branch is a tested unit but is not combined*—(*i*) *Facts.* The facts are the same as in paragraph (c)(8)(iii)(D)(*1*) of this section (the original facts in this *Example 4*), except that FBY does not give rise to a taxable presence under Country Y tax law but Country X tax law provides an exclusion, exemption, or other similar relief (such as a preferential rate) with respect to income attributable to FBY.

(*ii*) *Analysis.* FBY is a tested unit. *See* paragraph (c)(7)(iv)(A)(*3*) of this section. CFC1X has two tested units in Country Y, the interest in FDE1Y and FBY. The interest in FDE1Y and FBY tested units are not combined because FBY does not give rise to a taxable presence under the tax law of Country Y. *See* paragraph (c)(7)(iv)(C)(*2*) of this section. CFC1X also has a tested unit in Country X that includes the activities of CFC1X (without regard to any items related to the interest in FDEX, the interest in FDE1Y, or FBY) and the interest in FDEX.

(*5*) *Alternative facts—split ownership of tested unit*—(*i*) *Facts.* The facts are the same as in paragraph (c)(8)(iii)(D)(*1*) of this section (the original facts in this *Example 4*), except that USP also owns CFC2X, CFC1X does not own FDE1Y, and CFC1X and CFC2X own 60% and 40%, respectively, of the interests of FPSY.

(*ii*) *Analysis for CFC1X.* Under paragraph (c)(7)(iv)(C)(*1*) of this section, FBY and CFC1X's 60% interest in FPSY are combined and treated as a single tested unit of CFC1X (''CFC1X's Country Y tested unit''), and CFC1X's interest in FDEX and CFC1X's other activities are combined and treated as a single tested unit of CFC1X (''CFC1X's Country X tested unit''). CFC1X's Country Y tested unit is attributed any item of CFC1X that is derived through its interest in FPSY to the extent the item is properly reflected on the books and records of FPSY. *See* paragraph (c)(7)(ii)(B)(*1*) of this section.

(*iii*) *Analysis for CFC2X.* Under paragraphs (c)(7)(iv)(A)(*1*) and (c)(7)(iv)(A)(*2*)(*i*) of this section, CFC2X and CFC2X's 40% interest in FPSY are tested units of CFC2X. CFC2X's interest in FPSY is attributed any item of CFC2X that is derived through FPSY to the extent that it is properly reflected on the books and records of FPSY. *See* paragraph (c)(7)(ii)(B)(*1*) of this section.

(*iv*) *Analysis for not combining CFC1X and CFC2X tested units.* None of the tested units of CFC1X are combined with the tested units of CFC2X under paragraph (c)(7)(iv)(C)(*1*) of this section because they are tested units of different controlled foreign corporations, and the combination rule only combines tested units of the same controlled foreign corporation.

(*6*) *Alternative facts—split ownership of transparent interest*—(*i*) *Facts.* The facts are the same as in paragraph (c)(8)(iii)(D)(*1*) of this section (the original facts in this *Example 4*), except that USP also owns CFC2X, CFC1X does not own DE1Y, and CFC1X and CFC2X own 60% and 40%, respectively, of the interests in FPSY, but FPSY is not a tax resident of any foreign country and is fiscally transparent for Country X tax law purposes.

(*ii*) *Analysis for CFC1X.* CFC1X's interest in FPSY is not a tested unit but is a transparent interest. *See* paragraphs (c)(7)(iv)(A)(*2*) and (c)(7)(ix)(C) of this section. Under paragraph (c)(7)(v)(C) of this section, any item of CFC1X that is derived through its interest in FPSY and is properly reflected on the books and records of FPSY is treated as properly reflected on the books and records of CFC1X.

(*iii*) *Analysis for CFC2X.* CFC2X's interest in FPSY is not a tested unit but is a transparent interest. *See* paragraphs (c)(7)(iv)(A)(*2*) and (c)(7)(ix)(C) of this section. Under paragraph (c)(7)(v)(C) of this section, any item of CFC2X that is derived through its interest in FPSY and is properly reflected on the books and records of FPSY is treated as properly reflected on the books and records of CFC1X.

(E) *Example 5: CFC group—Controlled foreign corporations with different taxable years*—(*1*) *Facts.* USP owns all the stock of CFC1X and CFC2X. CFC2X has a taxable year ending November 30. On December 15, Year 1, USP sells all the stock of CFC2X to an unrelated party for cash.

(*2*) *Analysis.* The determination of whether CFC1X and CFC2X are in a CFC group is made as of the close of their CFC inclusion years that end with or within the taxable year ending December 31, Year 1, the taxable year of USP, the controlling domestic shareholder. *See* paragraph (c)(7)(viii)(E)(*2*)(*ii*) of this section. Under paragraph (c)(7)(viii)(E)(*2*)(*i*) of this section, USP directly owns more than 50% of the stock of CFC1X as of December 31, Year 1, the end of CFC1X's CFC inclusion year. USP also directly owns more than 50% of the stock of CFC2X as of November 30, Year 1, the end of CFC2X's CFC inclusion year. Therefore, CFC1X and CFC2X are members of a CFC group, and USP must consistently make high-tax elections, or revocations, under paragraph (c)(7)(viii) of this section with respect to CFC1X's taxable year ending December 31, Year 1, and CFC2X's taxable year ending November 30, Year 1. This is the case notwithstanding that USP does not directly own more than 50% of the stock of CFC2X as of December 31, Year 1, the end of CFC1X's CFC inclusion year. *See* paragraph (c)(7)(viii)(E)(*2*)(*ii*) of this section.

■ **Par. 4.** Section 1.951A–7 is amended by:

■ 1. Designating the undesignated text as paragraph (a);

■ 2. Adding a subject heading to newly designated paragraph (a);

■ 3. Removing the word ''Sections'' and adding in its place ''Except as otherwise provided in this section, sections'' in newly designated paragraph (a); and

■ 4. Adding paragraph (b).

The additions read as follows:

§ 1.951A–7 Applicability dates.

(a) *In general.* * * *

(b) *High-tax exception.* Section 1.951A–2(c)(1)(iii), (c)(3)(ii), and (c)(7)

and (8) apply to taxable years of foreign corporations beginning on or after July 23, 2020, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. In addition, taxpayers may choose to apply the rules in § 1.951A–2(c)(1)(iii), (c)(3)(ii), and (c)(7) and (8) to taxable years of foreign corporations that begin after December 31, 2017, and before July 23, 2020, and to taxable years of U.S. shareholders in which or with which such taxable years of the foreign corporations end, provided that they consistently apply those rules and the rules in § 1.954–1(c)(1)(iii)(A)(*3*), § 1.954–1(c)(1)(iv), and the first sentence of § 1.954–1(d)(3)(i) to such taxable years.

§ 1.954–0 [Amended]

■ **Par. 5.** Section 1.954–0 is amended by removing and reserving paragraph (b).

■ **Par. 6.** Section 1.954–1 is amended by:

■ 1. Adding ''or'' to the end of paragraph (c)(1)(iii)(A)(*2*)(*ii*);

■ 2. Removing and reserving paragraphs (c)(1)(iii)(A)(*2*)(*iii*) and (*iv*);

■ 3. Adding paragraphs (c)(1)(iii)(A)(*3*) and (c)(1)(iv);

■ 4. In paragraph (d)(1) introductory text, removing the language ''foreign base company oil related income, as defined in section 954(g), or'' in the second sentence and adding a sentence after the fourth sentence;

■ 5. Removing the language ''imposed by a foreign country or countries'' in paragraph (d)(1)(ii);

■ 6. Removing the language ''in a chain of corporations through which a distribution is made'' in the first sentence in paragraph (d)(2) introductory text;

■ 7. Removing the language ''(or deemed paid or accrued)'' in paragraph (d)(2)(i);

■ 8. Revising paragraph (d)(3)(i);

■ 9. Removing and reserving paragraph (d)(3)(ii);

■ 10. Removing paragraph (d)(7);

■ 11. Revising paragraph (h)(1); and

■ 12. Adding paragraph (h)(3).

The additions and revisions read as follows:

§ 1.954–1 Foreign base company income.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(A) * * *

(*3*) For purposes of paragraph (c)(1)(iii)(A) of this section, the aggregate amount from all transactions that falls within a single separate category (as defined in § 1.904–5(a)(4)(v)) and is described in paragraph (c)(1)(iii)(A)(*1*)(*i*) of this section is a single item of income. Similarly, the aggregate amount from all transactions that falls within a single separate category (as defined in § 1.904–5(a)(4)(v)) and is described in each one of paragraphs (c)(1)(iii)(A)(*1*)(*ii*) through (c)(1)(iii)(A)(*1*)(*v*) of this section is in each case a separate single item of income. The same principles apply for transactions described in each one of paragraphs (c)(1)(iii)(A)(*2*)(*i*) through (*v*) of this section.

* * * * *

(iv) *Treatment of deductions or loss attributable to disqualified basis.* For purposes of paragraph (c)(1)(i) of this section (and in the case of insurance income, paragraph (a)(6) of this section), in determining the amount of a net item of foreign base company income or insurance income, deductions or loss described in § 1.951A–2(c)(5) or (c)(6) are not allocated and apportioned to gross foreign base company income or gross insurance income.

(d) * * *

(1) * * * For rules concerning the application of the high-tax exception of sections 954(b)(4) and 951A(c)(2)(A)(i)(III) to tentative gross tested income items, see § 1.951A–2(c)(1)(iii), (c)(3)(ii), and (c)(7) and (8). * * *

* * * * *

(3) * * *

(i) *In general.* The amount of foreign income taxes paid or accrued by a controlled foreign corporation with respect to a net item of income for purposes of section 954(b)(4) and this paragraph (d) is the U.S. dollar amount of the controlled foreign corporation's current year taxes (as defined in § 1.960–1(b)(4)) that are allocated and apportioned under § 1.960–1(d)(3)(ii) to the subpart F income group (as defined in § 1.960–1(d)(2)(ii)(B)) that corresponds with the net item of income.

* * * * *

(h) * * *

(1) *Paragraph (d)(3) of this section for taxable years ending on or after December 4, 2018, and before* July 23, 2020. For the application of paragraph (d)(3) of this section to taxable years of controlled foreign corporations ending on or after December 4, 2018, and before July 23, 2020, and to taxable years of United States shareholders in which or with which such taxable years of the controlled foreign corporations end, see § 1.954–1, as contained in 26 CFR part 1 revised as of April 1, 2020.

* * * * *

(3) *Paragraphs (c)(1)(iii)(A)(3), (c)(1)(iv), and (d)(3)(i) of this section for taxable years beginning on or after* July 23, 2020. Paragraphs (c)(1)(iii)(A)(*3*), (c)(1)(iv), and (d)(3)(i) of this section apply to taxable years of a controlled foreign corporation beginning on or after July 23, 2020, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. In addition, taxpayers may choose to apply the rules in paragraphs (c)(1)(iii)(A)(*3*), (c)(1)(iv), and (d)(3)(i) of this section to taxable years of controlled foreign corporations that begin after December 31, 2017, and before July 23, 2020, and to taxable years of United States shareholders in which or with which such taxable years of the controlled foreign corporations end, provided that they consistently apply those rules and the rules in § 1.951A–2(c)(1)(iii), (c)(3)(ii), and (c)(7) and (8) to such taxable years.

§ 1.1502 [Amended]

■ **Par. 7.** Section 1.1502–51 is amended in paragraph (g)(1) by removing the language ''§ 1.951A–7'' and adding in its place ''§ 1.951A–7(a)'' wherever it appears.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: July 1, 2020.

David Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–15351 Filed 7–20–20; 4:15 pm]

BILLING CODE 4830–01–P

Proposed Rules

Federal Register
Vol. 85, No. 142
Thursday, July 23, 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.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–127732–19]

RIN 1545–BP62

Guidance Under Section 954(b)(4) Regarding Income Subject to a High Rate of Foreign Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under the subpart F income and global intangible low-taxed income provisions of the Internal Revenue Code regarding the treatment of certain income that is subject to a high rate of foreign tax. This document also contains proposed regulations under the information reporting provisions for foreign corporations to facilitate the administration of certain rules in the proposed regulations. The proposed regulations would affect United States shareholders of controlled foreign corporations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 21, 2020. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–127732–19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

Send hard copy submissions to: CC:PA:LPD:PR (REG–127732–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jorge M. Oben or Larry R. Pounders at (202) 317–6934; concerning submissions of comments or requests for a public hearing, Regina Johnson at (202) 317–5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 951(a)(1) of the Internal Revenue Code (the ''Code'') provides that if a foreign corporation is a controlled foreign corporation (as defined in section 957) (''CFC'') at any time during a taxable year, every person who is a United States shareholder (as defined in section 951(b) (a ''U.S. shareholder'')) of such corporation and who owns (within the meaning of section 958(a)) stock in such corporation on the last day, in such year, on which such corporation is a CFC must include in gross income, for the taxable year in which or with which such taxable year of the corporation ends, the U.S. shareholder's pro rata share of the corporation's subpart F income for such year. Section 952 provides that subpart F income generally includes insurance income (as defined under section 953) and foreign base company income (as determined under section 954). Section 954(b)(4), however, provides that for purposes of sections 953 and 954(a), insurance income and foreign base company income do not include any item of income received by a CFC if a taxpayer establishes to the satisfaction of the Secretary that the income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum tax rate specified in section 11. Historically, § 1.954–1(d) has implemented section 954(b)(4) by providing an election to exclude certain high-taxed income from the computation of subpart F income (the ''subpart F high-tax exception'').

Section 951A, added to the Code by the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054, 2208 (December 22, 2017) (the ''Act''), generally requires, for taxable years of foreign corporations beginning after December 31, 2017, that each U.S. shareholder of a CFC include in gross income its global intangible low-taxed income for the taxable year (''GILTI''). Section 951A(b) defines GILTI as a U.S. shareholder's excess (if any) of net CFC tested income for a taxable year over the U.S. shareholder's net deemed tangible income return for such taxable year. Section 951A(c)(1) provides that the net CFC tested income of a U.S. shareholder is the excess of the U.S. shareholder's aggregate pro rata share of tested income over the U.S. shareholder's aggregate pro rata share of tested loss of each CFC. To determine the tested income of a CFC, section 951A(c)(2)(A)(i) first determines the ''gross tested income'' of the CFC, which is the gross income of the CFC without regard to certain items, including any gross income excluded from foreign base company income and insurance income by reason of section 954(b)(4). *See* section 951A(c)(2)(A)(i)(III). Tested income is then determined as the excess of gross tested income over the deductions properly allocable to such gross tested income under rules similar to the rules of section 954(b)(5). *See* section 951A(c)(2)(A).

On June 21, 2019, the Treasury Department and the IRS published proposed regulations (REG–101828–19) under sections 951, 951A, 954, 956, 958, and 1502 in the **Federal Register** (84 FR 29114) (the ''2019 proposed regulations''). The 2019 proposed regulations under section 951A provide an election to apply section 954(b)(4) to certain high-taxed income of a CFC to which the subpart F high-tax exception does not apply, such that it can be excluded from tested income under section 951A(c)(2)(A)(i)(III) (the ''GILTI high-tax exclusion''). Rules in the 2019 proposed regulations relating to sections 951A and 954, including the GILTI high-tax exclusion, are finalized, with modification, in the Final Rules section of this issue of the **Federal Register** (the ''final regulations''). For rules in the final regulations relating to the GILTI high-tax exclusion, see § 1.951A–2(c)(1)(iii), (c)(3), (c)(7) and (c)(8).

Terms used but not defined in this preamble have the meaning provided in

these proposed regulations or the final regulations.

Explanation of Provisions

I. Conforming the Subpart F High-Tax Exception With the GILTI High-Tax Exclusion

As discussed in more detail in parts I and IV of the Summary of Comments and Explanation of Revisions in the preamble to the final regulations, comments on the 2019 proposed regulations recommended that various aspects of the GILTI high-tax exclusion be conformed with the subpart F high-tax exception to ensure that the goals of the Treasury Department and the IRS in promulgating the GILTI high-tax exclusion are not undermined. For example, comments noted that the election for the subpart F high-tax exception (other than with respect to passive foreign personal holding company income) is made on an item-by-item basis with respect to each individual CFC. In contrast, the election for the GILTI high-tax exclusion is subject to a ''consistency requirement,'' pursuant to which an election must be made with respect to all of the CFCs that are members of a CFC group (as discussed in part III of this Explanation of Provisions). Comments asserted that the consistency requirement would make the GILTI high-tax exclusion less beneficial to taxpayers, causing them in certain cases to engage in uneconomic tax planning to convert tested income into subpart F income to avail themselves of the subpart F high-tax exception, contrary to one of the stated purposes of the GILTI high-tax exclusion (to eliminate incentives to convert tested income into subpart F income).

As discussed in the preamble to the final regulations, numerous comments recommended that the application of the GILTI high-tax exclusion be conformed with the subpart F high-tax exception. The Treasury Department and the IRS agree that the GILTI high-tax exclusion and the subpart F high-tax exception should be conformed but have determined that the rules applicable to the GILTI high-tax exclusion are appropriate and better reflect the changes made as part of the Act than the existing subpart F high-tax exception. Accordingly, to prevent inappropriate tax planning and reduce complexity, these proposed regulations revise and conform the provisions of the subpart F high-tax exception with the provisions of the GILTI high-tax exclusion in the final regulations, as modified by these proposed regulations.

Another comment on the 2019 proposed regulations suggested that section 954(b)(4) should apply consistently to all of a CFC's items of gross income. In response to this comment, these proposed regulations provide for a single election under section 954(b)(4) for purposes of both subpart F income and tested income (the ''high-tax exception'').[1] This unified rule, modeled on the GILTI high-tax exclusion in the final regulations, provides for further simplification.

II. Calculation of the Effective Tax Rate on the Basis of Tested Units

A. In General

Under § 1.954–1(d), effective tax rates and the applicability of the subpart F high-tax exception are determined on the basis of net foreign base company income of a CFC.[2] Net foreign base company income generally means income described in § 1.954–1(c)(1)(iii) reduced by deductions. *See* § 1.954–1(c)(1). In general, single items of income tested for eligibility are determined by aggregating items of income of a certain type. *See* § 1.954–1(c)(iii)(A) and (B). For example, the aggregate amount of a CFC's income from dividends, interests, rents, royalties, and annuities giving rise to non-passive foreign personal holding company income constitutes a single item of income. *See* § 1.954–1(c)(1)(iii)(A)(*1*)(*i*). In contrast, under the final regulations, effective tax rates and the applicability of the GILTI high-tax exclusion are determined by aggregating gross income that would be gross tested income (but for the GILTI high-tax exclusion) within a separate category to the extent attributable to a tested unit of a CFC. *See* § 1.951A–2(c)(7)(ii)(A). For this purpose, the tentative tested income items and foreign taxes of multiple tested units of a CFC (including the CFC itself) that are tax residents of, or located in (in the case of certain branches), the same foreign country, generally are aggregated. *See* § 1.951A–2(c)(7)(iv)(C)(*1*) and (*3*). As described further in the preamble to the final regulations, applying these rules on a tested unit basis ensures that high-taxed and low-taxed items of income are not inappropriately aggregated for purposes of determining the effective rate of tax, while at the same time allowing for some level of aggregation to minimize complexity. Measuring the effective rate of foreign tax on a tested unit basis is also appropriate in light of the reduction of corporate federal income tax rates by the Act; as a result of such lower rates, it is likely that CFCs will earn more high-taxed income potentially eligible for section 954(b)(4).

For the same reasons that the GILTI high-tax exclusion applies on a tested unit basis, the Treasury Department and the IRS have determined that the subpart F high-tax exception should apply on a tested unit basis. *See* proposed § 1.954–1(d)(1)(ii)(A) and (B). In addition, the Treasury Department and the IRS have determined that for purposes of determining the applicability of section 954(b)(4), it is appropriate to group general category items of income attributable to a tested unit that would otherwise be tested income, foreign base company income, or insurance income. *See* proposed § 1.954–1(d)(1)(ii)(A). By grouping these items of income, taxpayers making a high-tax exception election may be able to forego the often-complex analysis required to determine whether income would meet the definition of subpart F income. For example, taxpayers will not be required to determine whether income is foreign base company sales income versus tested income if the high-tax exception applies to the income.

The proposed regulations generally group passive foreign personal holding company income in the same manner as existing § 1.954–1(c)(1)(iii)(B). *See* proposed § 1.954–1(d)(1)(ii)(C). However, the Treasury Department and the IRS may propose conforming changes to the income grouping rules in § 1.904–4(c) as part of future guidance. Comments are requested on this topic.

Certain income and deductions attributable to equity transactions (for example, dividends or losses attributable to stock) are also separately grouped for purposes of the high-tax exception if the income is subject to preferential rates or an exemption under the tax law of the country of residence of the recipient. *See* proposed § 1.954–1(d)(1)(ii)(B) and (iv)(C). The purpose of this separate equity grouping is to separately test income or loss that is subject to foreign tax at a different rate than other general category income attributed to the tested unit and that may be susceptible to manipulation through, for example, the timing of distributions or losses.

[1] As a result, when the rules in these proposed regulations are adopted as final regulations, the rules in § 1.951A–2(c)(7) (which provide the election specific to the GILTI high-tax exclusion) will be withdrawn.

[2] Similar rules apply for insurance income. *See* § 1.954–1(d)(3)(i) and § 1.954–1(a)(6).

B. Gross Income Attributable to Tested Units Based on Applicable Financial Statement

The final regulations generally use items properly reflected on the separate set of books and records (within the meaning of § 1.989(a)–1(d)) as the starting point for determining gross income attributable to a tested unit. *See* § 1.951A–2(c)(7)(ii)(B)(*1*). Books and records are used for this purpose because they serve as a reasonable proxy for determining the amount of gross income that the foreign country of the tested unit is likely to subject to tax and, given that this approach is consistent with the approach taken in other provisions, it should promote administrability.

The proposed regulations retain this general approach but replace the reference to ''books and records'' with a more specific standard based on items of gross income attributable to the ''applicable financial statement'' of the tested unit. *See* proposed § 1.954–1(d)(1)(iii)(A). For this purpose, an applicable financial statement refers to a ''separate-entity'' (or ''separate-branch,'' if applicable) financial statement that is readily available, with the highest priority within a list of different types of financial statements. *See* proposed § 1.954–1(d)(3)(i). These financial statements include, for example, financial statements that are audited or unaudited, and that are prepared in accordance with U.S. generally accepted accounting principles (''U.S. GAAP''), international financial reporting standards (''IFRS''), or the generally accepted accounting principles of the jurisdiction in which the entity is organized or the activities are located (''local-country GAAP''). *See id.*

The Treasury Department and the IRS have determined that this new standard will provide more accurate and reliable information and will promote certainty in cases where there may be various forms of readily available financial information. This standard is also expected to promote administrability because it is consistent with approaches taken under other provisions. *See* section 451(b) and Rev. Proc. 2019–40, 2019–43 I.R.B. 982. Finally, the Treasury Department and the IRS anticipate that the type of applicable financial statement will, in many cases, be the same from year to year and therefore will result in consistency and minimize opportunities for manipulation.

C. Allocation and Apportionment of Deductions for Purposes of the High-Tax Exception

As explained in section II.B of this Explanation of Provisions, the final regulations generally use items properly reflected on the separate set of books and records as the starting point for determining gross income attributable to a tested unit. *See* § 1.951A–2(c)(7)(ii)(B)(*1*). In contrast, the final regulations do not allocate and apportion deductions to those items of gross income by reference to the items of deduction that are properly reflected on the books and records of a tested unit. Instead, the final regulations apply the general allocation and apportionment rules for purposes of determining a tentative tested income item with respect to a tentative gross tested income item, such that deductions are generally allocated and apportioned under the principles of § 1.960–1(d)(3) by treating each tentative gross tested income item as income in a separate tested income group, as that term is described in § 1.960–1(d)(2)(ii)(C). *See* § 1.951A–2(c)(7)(iii). Under those principles, certain deductions, such as interest expense, are allocated and apportioned based on a specific factor (such as assets or gross income) among the separate items of gross income of a CFC, such that deductions reflected on the books and records of a single tested unit, and generally taken into account for foreign tax purposes in computing the foreign taxable income, may not be fully taken into account for purposes of determining a tentative tested income item.

The application of this provision of the final regulations may be illustrated by the following example. Assume that a CFC owns interests in two disregarded entities the interests in which are tested units (''TU1'' and ''TU2''), an equal amount of gross income is attributable to each of TU1 and TU2, and the CFC has no other activities. TU1's income is subject to a 30 percent rate of foreign tax, and TU2's income is subject to a 15 percent rate of foreign tax. TU1 accrues deductible interest expense payable to a third party that is allocated and apportioned to the CFC's gross income using the modified gross income method of § 1.861–9T(j)(1), such that interest expense incurred by TU1 is allocated and apportioned equally between TU1 and TU2 for purposes of the GILTI high-tax exclusion. The foreign countries in which TU1 and TU2 are tax residents allow for deductions of interest expense only to the extent that resident entities in the country actually accrue such interest expenses. Therefore, the foreign country in which TU1 is tax resident allows a full deduction for the interest accrued by TU1, and TU2's country of tax residence does not allow an interest deduction for any interest accrued by TU1. Under the final regulations, the allocation of interest expense for federal income tax purposes may cause TU1's gross income to fail to qualify for the high-tax exception and may cause TU2's gross income to qualify for the high-tax exception, notwithstanding the higher tax rate in TU1's country of residence and the lower tax rate in TU2's country of residence.

The Treasury Department and the IRS have determined that the policy goal of section 954(b)(4) is to identify income of a CFC subject to a high effective rate of foreign tax and is better served by determining the effective foreign tax rate with respect to items of income attributable to a tested unit by reference to an amount of income that approximates taxable income as computed for foreign tax purposes, rather than federal income tax purposes. However, the use of U.S. (rather than foreign) tax accounting rules to determine the amount and timing of items of income, gain, deduction, and loss included in the high-tax exception computation remains appropriate to ensure that the computation is not distorted by reason of foreign tax rules that do not conform to federal income tax principles. Therefore, these proposed regulations generally determine tentative net items by allocating and apportioning deductions, determined under federal income tax principles, to items of gross income to the extent the deductions are properly reflected on the applicable financial statement of the tested unit, consistent with the manner in which gross income is attributed to a tested unit. Under this method, a tentative net item better approximates the tax base upon which foreign tax is imposed than would be the case under the allocation and apportionment rules set forth in the regulations under section 861.

The proposed regulations allocate and apportion deductions to the extent properly reflected on the applicable financial statement only for purposes of section 954(b)(4), and not for any other purpose, such as for determining U.S. taxable income of the CFC under sections 954(b)(5) and 951A(c)(2)(A)(ii), and the associated foreign tax credits under section 960. In contrast to section 954(b)(4), under which the rules in the proposed regulations are intended to approximate the foreign tax base, taxable income and items of income for

purposes of sections 954(b)(5), 951A(c)(2)(A)(ii), and 960 continue to be determined using the allocation and apportionment rules set forth in the regulations under section 861. Nevertheless, the Treasury Department and the IRS are considering whether for purposes of sections 954(b)(5), 951A(c)(2)(A)(ii), and 960 it would be appropriate, in limited cases (for example to reduce administrative and compliance burdens), to allocate and apportion deductions incurred by a CFC based on the extent to which they are properly reflected on an applicable financial statement, and request comments in this regard. For example, a rule could allocate and apportion deductions (other than foreign tax expense) only to the extent of the items of gross income attributable to the tested unit, and allocate and apportion any deductions in excess of such gross income to all gross income of the CFC. In addition, applying a method based on applicable financial statements for purposes of the high-tax exception could, in certain circumstances, affect the allocation and apportionment of deductions for purposes of determining the amount of an inclusion with respect to gross income of the CFC that is not eligible for the high-tax exception. One approach under consideration is to provide that deductions allocated and apportioned to an item of gross income based on an applicable financial statement for purposes of calculating a tentative net item under the high-tax exception cannot be allocated and apportioned to a different item of gross income that does not qualify for the high-tax exception for purposes of calculating the inclusion under section 951(a) or section 951A. This approach would be a limited change to the traditional rules for allocating and apportioning deductions and would address concerns that, if deductions were not allocated and apportioned using a consistent method when the high-tax exception has been elected, they could be viewed as effectively being ''double counted'' by both reducing the tentative net item for purposes of determining whether an item of gross income is eligible for the high-tax exception and also reduce the amount of a U.S. shareholder's inclusions under sections 951(a)(1) and 951A(a) with respect to a different item of gross income. Comments are requested on this issue.

D. Undefined or Negative Foreign Tax Rates

In certain cases, the effective foreign tax rate at which taxes are imposed on a tentative net item may result in an undefined value or a negative effective foreign tax rate. This may occur, for example, if foreign taxes are allocated and apportioned to the corresponding item of gross income, and the tentative net item (plus the foreign taxes) is negative because the amount of deductions allocated and apportioned to the gross income exceeds the amount of gross income (plus the foreign taxes). The proposed regulations provide that the effective rate of foreign tax with respect to a tentative net item that results in an undefined value or a negative effective foreign tax rate will be deemed to be high-taxed. *See* § 1.954–1(d)(4)(ii). As a result, the item of gross income, and the deductions allocated and apportioned to such gross income under the rules set forth in the regulations under section 861, are assigned to the residual grouping, and no credit is allowed for the foreign taxes allocated and apportioned to such gross income. Nevertheless, the Treasury Department and the IRS are considering whether this result is appropriate in all cases and request comments in this regard.

E. Combination of de Minimis Tested Units

As discussed in the preamble to the final regulations, a comment recommended that taxpayers be permitted to aggregate QBUs within the same CFC that have a small amount of tested income. Although the final regulations did not adopt this recommendation, the proposed regulations include a rule that, subject to an anti-abuse provision, combines tested units (on a non-elective basis) that are attributed gross income less than the lesser of one percent of the gross income of the CFC, or $250,000. *See* proposed § 1.954–1(d)(2)(iii)(A)(*2*). This de minimis combination rule applies after the application of the ''same foreign country'' combination rule in proposed § 1.954–1(d)(2)(iii)(A)(*1*) and, therefore, combines tested units that are not residents of (or located in) the same foreign country.

Comments are requested on this de minimis combination rule, including whether the rule could be better tailored to reduce administrative burden without permitting an excessive amount of blending of income subject to different foreign tax rates.

F. Anti-Abuse Rules

The Treasury Department and the IRS are concerned that taxpayers may include, or fail to include, items on an applicable financial statement or make, or fail to make, disregarded payments, to manipulate the application of the high-tax exception. As a result, the proposed regulations include an anti-abuse rule to address such cases if undertaken with a significant purpose of avoiding the purposes of section 951, 951A, 954(b)(4), or proposed § 1.954–1(d). *See* proposed § 1.954–1(d)(3)(v).

The Treasury Department and the IRS are also concerned that taxpayers may enter into transactions with a significant purpose of manipulating the eligibility of income for the high-tax exception. This could occur, for example, if a payment or accrual by a CFC is deductible for federal income tax purposes but not for purposes of the tax laws of the foreign country of the payor. As a result, the deduction would reduce the tentative net items of the CFC but would not reduce the amount of foreign income taxes paid or accrued with respect to the tentative net item, which would have the effect of increasing the foreign effective tax rate imposed on the item. Accordingly, the proposed regulations include an anti-abuse rule to address transactions or structures involving certain instruments (''applicable instruments'') or reverse hybrid entities that are undertaken with a significant purpose of manipulating whether an item of income qualifies for the high-tax exception. *See* proposed § 1.954–1(d)(7). The Treasury Department and the IRS continue to study other transactions and structures that may be used to inappropriately manipulate the application of the high-tax exception, including transactions and structures with hybrid entities, and may expand the application of the anti-abuse rule in the final regulations such that it is not limited to specific types of transactions or structures.

III. Mechanics of the Election

A. In General

As described in part I of this Explanation of Provisions, under current § 1.954–1(d), the election for the subpart F high-tax exception is made separately with respect to each CFC, unlike the GILTI high-tax exclusion election, which must be made with respect to all of the CFCs that are members of a CFC group. As discussed in the preamble to the final regulations, the consistency requirement contained in the GILTI high-tax exclusion rules is necessary to prevent inappropriate cross-crediting with respect to high-taxed income under section 904. As a result of the changes made by the Act, a consistency requirement is also appropriate for the subpart F high-tax exception. The benefit of a CFC-specific election before the Act was to defer U.S.

tax with respect to high-tax income items. After the Act, as described further in the preamble to the final regulations, the ability to exclude some high-taxed income from subpart F, while claiming foreign tax credits with respect to other high-taxed income, can produce inappropriate results under section 904. As a result, the Treasury Department and the IRS have determined that a single high-tax exception election applicable to all income of all CFCs that are members of a CFC group better reflects the purposes of sections 904 and 954(b)(4) than a CFC-by-CFC election. Accordingly, the proposed regulations include a single unified election that applies for purposes of both subpart F and GILTI, incorporating a consistency requirement parallel to that in § 1.951A–2(c)(7)(viii)(A)(*1*) and (c)(7)(viii)(E). *See* proposed § 1.954–1(d)(6)(v).

B. Contemporaneous Documentation

Neither current § 1.954–1(d) nor the final regulations specify the documentation necessary for a U.S. shareholder to substantiate either the calculation of an amount excluded by reason of an election under section 954(b)(4) or that the requirements under current § 1.954–1(d) or the final regulations were met. However, to facilitate the administration of the rules regarding these elections, the Treasury Department and the IRS have determined that U.S. shareholders must maintain specific contemporaneous documentation to substantiate their high-tax exception computations. Accordingly, the proposed regulations include a contemporaneous documentation requirement. *See* proposed § 1.954–1(d)(6)(i)(D) and (d)(6)(vii). In addition, the proposed regulations add this information to the list of information that must be included on Form 5471 (''Information Return of U.S. Persons With Respect to Certain Foreign Corporations''). *See* proposed § 1.6038–2(f)(19).

IV. Other Changes to § 1.954–1

A. Coordination Rules

1. Earnings and Profits Limitation

Section 1.954–1(d)(4)(ii) provides that the amount of income that is a net item of income (an input in determining whether the subpart F high-tax exception applies) is determined after the application of the earnings and profits limitation provided under section 952(c)(1). Section 952(c)(1)(A) generally limits the amount of subpart F income of a CFC to the CFC's earnings and profits for the taxable year. In addition, section 952(c)(2) provides that if the subpart F income of a CFC is reduced by reason of the earnings and profits limitation under section 952(c)(1)(A), any excess of the earnings and profits of the CFC for any subsequent taxable year over the CFC's subpart F income for such taxable year is recharacterized as subpart F income under rules similar to the rules under section 904(f)(5).

The Treasury Department and the IRS have determined that this coordination rule can lead to inappropriate results. When the section 952(c)(1) limitation applies, the effective rate at which taxes are imposed under § 1.954–1(d)(2) would be calculated on a smaller net item of income than if the net item of income were determined before the limitation, but the amount of foreign income taxes with respect to the net item would be unchanged. *See* § 1.954–1(d)(4)(iii). This could have the effect of causing a net item of income to qualify for the subpart F high-tax exception even though the item, without regard to the limitation, would not have so qualified. In addition, amounts subject to recharacterization as subpart F income in a subsequent taxable year under section 952(c)(2) may not qualify for the subpart F high-tax exception even if the net item of income to which the recapture amount relates did so qualify. *See* § 1.954–1(a)(7). As a result, the proposed regulations provide that the high-tax exception applies without regard to the limitation in section 952(c)(1). *See* proposed § 1.954–1(a)(2)(i) and (5). The proposed regulations also follow current § 1.951–1(a)(7), which provides that the subpart F income of a CFC is increased by earnings and profits of the CFC that are recharacterized under section 952(c)(2) and § 1.952–1(f)(2)(ii) after determining the items of income of the CFC that qualify for the high-tax exception. *See* proposed § 1.954–1(a)(5).

2. Full Inclusion Rule

The current regulations generally provide that, except as provided in section 953, adjusted gross foreign base company income consists of all gross income of the CFC other than gross insurance income (and amounts described in section 952(b)), and adjusted gross insurance income consists of all gross insurance income (other than amounts described in section 952(b)), if the sum of the gross foreign base company income and the gross insurance income for the taxable year exceeds 70 percent of gross income (the ''full inclusion rule''). *See* § 1.954–1(a)(3) and (b)(1)(ii). Thus, under the current regulations the full inclusion rule generally applies before the application of the subpart F high-tax exception (which occurs when adjusted net foreign base company income is determined). Under a special coordination rule, however, full inclusion foreign base company income is excluded from subpart F income if more than 90 percent of the adjusted gross foreign base company income and adjusted gross insurance company income of a CFC (determined without regard to the full inclusion rule) is attributable to net amounts excluded from subpart F income under the subpart F high-tax exception. *See* § 1.954–1(d)(6).

The Treasury Department and the IRS have determined that these rules could be simplified if the determination of whether income is foreign base company income occurs before the application of the full inclusion rule. Current § 1.954–1, for example, requires taxpayers to determine whether income is foreign base company income or insurance income before applying the full inclusion rule or the high tax exception. *See* § 1.954–1(a)(2) through (a)(5), and (a)(6). Applying the high-tax exception first will eliminate the need to perform this factual analysis in many cases. Therefore, the proposed regulations provide that the high-tax exception applies before the full inclusion rule and, consequently, the special coordination rule in § 1.954–1(d)(6) is eliminated. *See* proposed § 1.954–1(a)(2)(i). In addition, the proposed regulations make conforming revisions to the coordination rule for full inclusion income and the high-tax election in the regulations under section 951A. Consequently, the proposed regulations delete § 1.951A–2(c)(4)(iii)(C) and (iv)(C) (Example 3).

B. Elections on Amended Returns

Current § 1.954–1(d)(5) generally provides that a controlling U.S. shareholder (as defined in § 1.964–1(c)(5)) may make (or revoke) a subpart F high-tax election by attaching a statement to its amended income tax return and that this election is binding on all U.S. shareholders of the CFC. In conforming the provisions of the subpart F high-tax exception with the provisions of the GILTI high-tax exclusion in the final regulations (as modified by these proposed regulations), the Treasury Department and the IRS have determined that it is also necessary to revise the rules regarding elections on amended returns. The final regulations require that amended returns for all U.S. shareholders of the CFC for the CFC inclusion year must be filed within a single 6-month period within 24 months of the unextended due date of the

original income tax return of the controlling domestic shareholder's inclusion year with or within which the relevant CFC inclusion year ends. *See* § 1.951A–2(c)(7)(viii)(A)(*1*)(*iii*). As stated in the preamble to the final regulations, the Treasury Department and the IRS determined that the requirement that all amended returns be filed by the end of this period is necessary to administer the GILTI high-tax exclusion and to allow the IRS to timely evaluate refund claims or make additional assessments.

For this reason, the proposed regulations also provide that the high-tax election may be made (or revoked) on an amended federal income tax return only if all U.S. shareholders of the CFC file amended returns (unless an original federal income tax returns has not yet been filed, in which case the original return may be filed consistently with the election (or revocation)) for the year (and for any other tax year in which their U.S. tax liabilities would be increased by reason of that election (or revocation)), within a single 6-month period within 24 months of the unextended due date of the original federal income tax return of the controlling domestic shareholder's inclusion year. *See* proposed § 1.954–1(d)(6)(i)(B)(*2*). The proposed regulations provide that in the case of a U.S. shareholder that is a partnership, the election may be made (or revoked) with an amended Form 1065 or an administrative adjustment request, as applicable. Further, the proposed regulations provide that if a partnership files an administrative adjustment request, a partner that is a U.S. shareholder in the CFC is treated as having complied with these requirements (with respect to the portion of the interest held through the partnership) if the partner and the partnership timely comply with their obligations under section 6227. *See* proposed § 1.954–1(d)(6)(i)(C).

The Treasury Department and the IRS are aware that changes in circumstances occurring after the 24-month period may cause a taxpayer to benefit from making (or revoking) the election, for example, if there is a foreign tax redetermination with respect to one or more CFCs. The Treasury Department and the IRS request comments on rules that would permit a taxpayer to make (or revoke) an election after the 24-month period in cases where the taxpayer can establish that the election (or revocation) will not result in time-barred tax deficiencies.

V. Application of Section 952(c)(2) to Transactions Described in Section 381(a)

Section 952(c)(2) generally provides that if subpart F income of a CFC for a taxable year was reduced by reason of the current earnings and profits limitation in section 952(c)(1)(A), any excess of the earnings and profits of such CFC for any subsequent taxable year over the subpart F income of such foreign corporation for such taxable year is recharacterized as subpart F income under rules similar to the rules of section 904(f)(5). Section 1.904(f)–2(d)(6) generally provides, in part, that in the case of a distribution or transfer described in section 381(a), an overall foreign loss account of the distributing or transferor corporation is treated as an overall foreign loss account of the acquiring or transferee corporation as of the close of the date of the distribution or transfer.

The Treasury Department and the IRS have determined that, because of some lack of certainty whether recapture accounts carry over in transactions to which section 381(a) applies, it is appropriate to provide clarification. Therefore, the proposed regulations clarify that recapture accounts carry over to the acquiring corporation (including foreign corporations that are not CFCs) in a distribution or transfer described in section 381(a). *See* proposed § 1.952–1(f)(4). The Treasury Department and the IRS believe that this clarification is consistent with general successor principles as may be applied under current law in certain successor transactions such as transactions described in section 381(a).

VI. Applicability Dates

The proposed regulations under § 1.951A–2, 1.952–1(e), and § 1.954–1 are proposed to apply to taxable years of CFCs beginning after the date the Treasury decision adopting these rules as final regulations is filed with the **Federal Register**, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

The proposed regulations under § 1.952–1(f)(4) are proposed to apply to taxable years of a foreign corporation ending on or after July 20, 2020. *See* section 7805(b)(1)(B). As a result of this applicability date, proposed § 1.952–1(f)(4) would apply with respect to recapture accounts of an acquiring corporation for taxable years of the corporation ending on or after July 20, 2020, even if the distribution or transfer described in section 381(a) occurred in a taxable year ending before July 20, 2020.

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. Order 13771 designation for any final rule resulting from these proposed regulations will be informed by comments received. The preliminary Executive Order 13771 designation for this proposed rule is regulatory.

The Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has designated these regulations as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs (OIRA) has designated the final rulemaking as significant under section 1(c) of the Memorandum of Agreement. Accordingly, OMB has reviewed the final regulations.

A. Background

A foreign corporation with significant U.S. ownership may be classified as a controlled foreign corporation (''CFC''). Under section 951(a)(1)(A), each United States shareholder is required to include in gross income its pro rata share of the CFC's subpart F income. Subpart F income consists of the sum of a CFC's foreign base company income (as defined in section 954(a)) and insurance income (as defined in section 953(a)) and certain income described in section 952(a)(3) through (5). Section 954(b)(4), however, provides an exclusion of high-taxed items of income from foreign base company income and insurance income (the ''subpart F high-tax exception''). The subpart F high-tax exception is generally governed by regulations originally issued in 1988 and significantly updated in 1995 (''current subpart F HTE regulations'').

As part of the Tax Cuts and Jobs Act, Congress enacted section 951A, which

subjects certain income earned by a CFC to U.S. tax on a current basis at the United States shareholder level as global intangible low-taxed income (''GILTI''). Under section 951A(c)(2)(A)(i)(III), taxpayers may apply the high-tax exception of section 954(b)(4) in order to exclude certain high-taxed income from taxation under section 951A (the ''GILTI high-tax exclusion''). The final regulations (''final GILTI HTE regulations,'' referred to elsewhere in this Preamble as the final regulations) released at this same time as these proposed regulations provide provisions for the implementation of the GILTI high-tax exclusion.

B. Need for Regulations

The current subpart F high-tax exception regulations and the final GILTI HTE regulations each contain guidance regarding statutory exclusions for high-taxed income that would otherwise be included in subpart F or tested income but these rules do not conform to each other. The proposed regulations are needed to conform the subpart F high-tax exception to the GILTI high-tax exclusion and to provide for a single election to exclude high-taxed income under section 954(b)(4).

C. Overview of Regulations

The proposed regulations provide for a single election under section 954(b)(4) for purposes of both subpart F and GILTI, modeled on the final GILTI HTE regulations. Consistent with the final GILTI HTE regulations, the proposed regulations include the requirement that an election is generally made with respect to all CFCs that are members of a CFC group (instead of an election made on a CFC-by-CFC basis) and provide that the determination of whether income is high-taxed is made on a tested unit-by-tested unit basis. The proposed regulations would also simplify the determination of high-taxed income and often eliminate the fact intensive analysis by grouping certain income that would otherwise qualify as subpart F income together with income that would otherwise qualify as tested income for the purpose of determining the effective foreign tax rate. In addition, the proposed regulations would modify the method for allocating and apportioning deductions to items of gross income for the purposes of the high-tax exception.

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. Summary of Economic Effects

The proposed regulations conform the subpart F high-tax exception and GILTI high-tax exclusion by providing a single election for the purposes of both such exclusions, based on the final GILTI HTE regulations. This guidance thus reduces compliance costs and generally treats income earned across different forms of international business activity more equitably than under the no-action baseline. Based on these reasons, the Treasury Department and the IRS project that the proposed regulations will improve U.S. economic performance.

The Treasury Department and the IRS project that the proposed regulations, if finalized, would have annual economic effects greater than $100 million ($2020). This determination is based on the fact that many of the taxpayers potentially affected by these proposed regulations are large multinational enterprises. Because of their substantial size, even modest changes in the treatment of their foreign-source income, relative to the no-action baseline, can lead to changes in patterns of economic activity that amount to at least $100 million per year.

The Treasury Department and the IRS have not undertaken more precise estimates of the economic effects of the proposed regulations. We do not have readily available data or models that predict with reasonable precision the business decisions that taxpayers would make under the proposed regulations, such as the amount and location of their foreign business activities and the extent to which this foreign business activity may substitute for or complement domestic business activity, versus alternative regulatory approaches, including the no-action baseline.

In the absence of quantitative estimates, the Treasury Department and the IRS have undertaken a qualitative analysis of the economic effects of the proposed regulations relative to the no-action baseline and alternative regulatory approaches.

The Treasury Department and the IRS solicit comments on the economic analysis of the proposed regulations and particularly solicit data, models, or other evidence that may be used to enhance the rigor with which the final regulations are developed.

3. Economic Analysis of Specific Provisions

a. Single Exception for all High-Taxed Income

The current subpart F high-tax exception regulations and the final GILTI HTE regulations each contain guidance regarding statutory exceptions for high-taxed income that would otherwise potentially be included in U.S. taxable income through a subpart F inclusion or a GILTI inclusion. These rules do not conform to each other. In addition, there currently are two elections under section 954(b)(4) with respect to distinct categories of income that are made separately. The proposed regulations provide for a single election under section 954(b)(4) of a unified high-tax exception.

Under the current subpart F high-tax exception regulations, taxpayers may elect to exclude high-taxed income from foreign base company income and insurance income on an item-by-item basis with respect to each individual CFC. Thus, taxpayers may select individual CFCs for which they elect to exclude high-taxed income from subpart F, while not making the election for other related CFCs. In contrast, the final GILTI HTE regulations contain a ''consistency requirement'' such that the election into the GILTI high-tax exclusion must be made for all related CFCs and with respect to all high-taxed income of those CFCs.

Comments preceding the final GILTI HTE regulations noted that the lack of conformity between the two high-tax exceptions, and particularly the ability of taxpayers to exclude items of high-taxed income from subpart F on a selective basis under the current subpart F high-tax exception regulations, may provide taxpayers with an incentive to structure activities such that certain foreign income would qualify as foreign base company income or insurance income, rather than tested income, in the absence of an election under section 954(b)(4).

To better understand this incentive and why it may be problematic, consider the following example. Under the current regulations, by structuring in a way that some of its high-taxed foreign income is treated as foreign base company sales income (a category of foreign base company income) and electing the subpart F high-tax exception for only certain CFCs, a taxpayer may selectively exclude only a portion of its high-taxed CFC income from U.S. taxation under sections 951 and 951A. The taxpayer can then use foreign tax credits from the high-taxed income that is not excluded against its

low-taxed foreign income. However, the taxpayer's foreign tax credit limitation will not fully take into account the expenses attributable to investments giving rise to high-taxed income, since expenses allocable to excluded high-taxed income will be disregarded under section 904(b)(4). Consequently, the foreign tax limitation may be higher on a relative basis than it would have been if all high-taxed foreign income and all expenses attributable to such income were taken into account, and tax credits from non-excluded high-taxed income may more generously reduce U.S. tax liability on the taxpayer's low-taxed income.

In contrast, under the single high-tax exception provided by these proposed regulations, the election into the high-tax exception must be made for all CFCs that are members of a CFC group. A taxpayer that wishes to use high-taxed income to cross-credit against low-taxed income would need to include all its foreign income and allocable expenses in the foreign tax credit limitation calculation. Thus, the foreign tax credit limitation will take into account all expenses attributable to foreign income and the tax credits from high-taxed foreign income will be appropriately limited. Therefore, the proposed regulations will decrease taxpayers' incentives to inefficiently structure their foreign business activities relative to the current regulations, since such structuring would no longer be advantageous to taxpayers for purposes of the high-tax exception.

The Treasury Department and the IRS project that such structuring of foreign business activities to reclassify foreign income would be undertaken for tax-driven rather than market-driven reasons and would not provide any general economic benefit relative to the single exclusion provided in the proposed regulations. Thus, the no-action baseline may lead to higher compliance costs and less efficient patterns of business activity relative to proposed regulations with a unified high-tax exception and a consistency requirement.

The Treasury Department and the IRS recognize that relative to the no-action baseline, the proposed regulations may increase U.S. tax on some foreign income earned by U.S. shareholders of CFCs since they may reduce tax planning opportunities for U.S. taxpayers. Thus, the proposed regulations may, on the margin, decrease foreign investment by some U.S. taxpayers compared to the baseline.

The Treasury Department and the IRS have not undertaken estimation of the reduction in compliance costs or the changes in the pattern of business activity under the proposed regulations, relative to the no-action baseline. We do not have readily available data or models to estimate with any reasonable precision: (i) The number and attributes of the taxpayers that will elect the unified high-tax exception under the proposed regulations or that would elect the subpart F and GILTI high-tax exceptions under the no-action baseline; (ii) the range of effective tax rates on foreign investment that taxpayers are likely to have under the proposed regulations versus the no-action baseline; and (iii) the business activities that taxpayers would undertake as a result of these effective tax rates under the proposed regulations versus the no-action baseline.

b. Grouping Various Categories of Income Into a Single Category

Under the current subpart F high-tax exception regulations, effective foreign tax rates are determined separately for a number of different income categories. Thus, taxpayers need to classify their income items into these categories when electing into the subpart F high-tax exception. In addition, under the final GILTI HTE regulations, taxpayers must determine whether income would otherwise qualify as tested income when electing into the GILTI high-tax exclusion. In both of these cases, to classify their income items into these various categories, taxpayers may need to undertake complex factual analyses. To simplify for taxpayers the determination of which income is subject to a high rate of foreign tax, the proposed regulations modify the categories into which income is grouped for the purpose of determining effective foreign tax rates for the unified high-tax exception.

Under the proposed regulations, several categories of income that would otherwise qualify as subpart F income or tested income are grouped into a single category for the purpose of determining if income is high-taxed and qualifies for the high-tax exception. This grouping of income types will, in many circumstances, eliminate the need for taxpayers to determine exactly which category an income item would belong to in the absence of an election relative to the current regulations. For example, under the no-action baseline, the taxpayer may need to undertake a complex analysis to determine whether income is properly categorized as foreign base company services income or tested income. Under the proposed regulations, taxpayers could avoid such an analysis because the income would clearly fall into the new broader category that includes both foreign base company services income and potential tested income. This proposed approach will therefore result in substantial simplification and reduce the compliance burden for taxpayers electing into the high-tax exception relative to the no-action baseline.

The proposed approach will also decrease incentives for taxpayers to organize their operations solely for the purpose of ensuring that income will qualify for a certain category, relative to the no-action baseline. Under the current subpart F high-tax exception regulations, taxpayers may have an incentive to organize certain business activities to generate, for example, sales income rather than services income in order to raise (or lower) the effective foreign tax rates in the categories of foreign base company sales income and foreign base company services income. By manipulating the effective foreign tax rates of certain income categories, taxpayers may be able to maximize the tax saving they can achieve through the subpart F high-tax exception. However, organizing their activities to generate certain types of income may result in less efficient patterns of business activity relative to a regulatory approach with less specific income categories. Under the proposed regulations, because items of income will be grouped into broader categories for the purpose of determining high-taxed income, the incentive for taxpayers to generate specific types of income will be diminished relative to the no-action baseline.

Due to the absence of readily available data or models, the Treasury Department and the IRS have not estimated the difference in compliance costs or tax administration costs between the proposed regulations and the no-action baseline. We also have not estimated the difference in business activities that taxpayers might undertake between the proposed regulations and the no-action baseline.

c. Allocation and Apportionment of Deductions for Purposes of the High-Tax Exception

The Tax Cuts and Jobs Act is silent over how deductions should be allocated and apportioned to the gross income for purposes of the high-tax exception. The allocation of these deductions can have an impact on a tested unit's effective foreign tax rate for the purposes of the high-tax exception.

Under the final GILTI HTE regulations, certain deductions are allocated and apportioned among separate items of gross income of a CFC, even if the deductions are reflected on

the books and records of only one of the CFC's tested units and are likely only taken into account for the computation of foreign taxable income, as calculated for foreign tax purposes, in the jurisdiction of that tested unit. Thus, the allocation and apportionment of deductions to items of gross income may differ from how those deductions are treated by foreign jurisdictions in calculating foreign tax. For example, suppose that a CFC has an expense that for foreign jurisdictions' tax purposes is granted a full deduction against foreign taxable income in the jurisdiction of a single tested unit and is not granted deductions in any other jurisdictions where the CFC operates for the purposes of computing taxable income in these jurisdictions. Under the final GILTI HTE regulations, this deduction may nevertheless be allocated and apportioned against the gross income of multiple tested units of a CFC, some of which may not be tax resident in the same jurisdiction where the deduction is allowed for foreign tax purposes. This difference between federal and foreign tax treatment may result in some income qualifying (or not qualifying) for the high-tax exception even when the statutory rate of foreign tax is low (or high). In addition, the difference between federal tax treatment and how taxpayers record deductions in their books and records may add to taxpayers' compliance burden and may complicate tax administration relative to alternative regulatory approaches.

To address these issues, the proposed regulations adopt an approach based on the books and records kept by the taxpayer. In particular, the proposed regulations generally provide that, for the purposes of the high-tax exception, deductions will be allocated and apportioned to items of gross income by reference to the items of deduction that are properly reflected on the books and records of a tested unit. This approach will align the method for allocating deductions to tested units with the method for attributing items of gross income to tested units, which also follows a books-and-records approach under the final GILTI HTE regulations.

Using the books-and-records approach for both gross income and deductions, tested units' income will also more closely approximate taxable income as computed by foreign jurisdictions for foreign tax purposes than it does under the final GILTI HTE regulations. The approach thus serves as a more accurate and more administrable method for determining the effective foreign tax rate paid tax than the no-action baseline.

Due to the absence of readily available data or models, the Treasury Department and the IRS have not estimated the difference in compliance costs or tax administration costs between the proposed regulations and the no-action baseline. We also have not estimated the difference in business activities that taxpayers might undertake between the proposed regulations and the no-action baseline.

4. Profile of Affected Taxpayers

The proposed regulations potentially affect those taxpayers that have at least one CFC with at least one tested unit (including, potentially, the CFC itself) that has high-taxed income. Taxpayers with CFCs that have only low-taxed income are not eligible to elect the high-tax exception and hence are unaffected by the proposed regulations.

The Treasury Department and the IRS estimate that there are approximately 4,000 business entities (corporations, S corporations, and partnerships) with at least one CFC that pays an effective foreign tax rate above 18.9 percent, the current high-tax statutory threshold. The Treasury Department and the IRS further estimate that, for the partnerships with at least one CFC that pays an effective foreign tax rate greater than 18.9 percent, there are approximately 1,500 partners that have a large enough share to potentially qualify as a 10 percent U.S. shareholder of the CFC.[3] The 4,000 business entities and the 1,500 partners provide an estimate of the number of taxpayers that could potentially be affected by guidance governing the election into the high-tax exception. The figure is approximate because the tax rate at the CFC-level will not necessarily correspond to the tax rate at the tested unit-level if there are multiple tested units within a CFC.

The Treasury Department and the IRS do not have readily available data to determine how many of these taxpayers would elect the high-tax exception as provided in these proposed regulations. Under the proposed regulations, a taxpayer that has both high-taxed and low-taxed tested units will need to evaluate the benefit of eliminating any tax under section 951 and section 951A with respect to high-taxed income against the costs of forgoing the use of foreign tax credits and, with respect to section 951A, the use of tangible assets in the computation of qualified business asset investment (QBAI).

Tabulations from the IRS Statistics of Income 2014 Form 5471 file[4] further indicate that approximately 85 percent of earnings and profits are reported by CFCs incorporated in jurisdictions where the average effective foreign tax rate is less than or equal to 18.9 percent. The data indicate several examples of jurisdictions where CFCs have average effective foreign tax rates above 18.9 percent, such as France, Italy, and Japan. However, information is not readily available to determine how many tested units are part of the same CFC and what the effective foreign tax rates are with respect to such tested units. Taxpayers potentially more likely to elect the high-tax exception are those taxpayers with CFCs that only operate in high-tax jurisdictions. Data on the number or types of CFCs that operate only in high-tax jurisdictions are not readily available.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (''Paperwork Reduction Act'') requires that a federal agency obtain the approval of the OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

A. Overview of Collections of Information in the Proposed Regulations

The proposed regulations include new collection of information requirements in proposed § 1.954–1(d)(6)(i)(A)(*1*) and (*2*), § 1.954–1(d)(6)(vii)(A), and § 1.6038–2(f)(19).

The collection of information in proposed § 1.954–1(d)(6)(i)(A)(*1*) requires a statement that a controlling domestic shareholder of a CFC must file with an original or amended income tax return to elect to apply the high-tax exception in section 954(b)(4) with respect to a controlled foreign corporation. The collection of information in proposed § 1.954–1(d)(6)(i)(A)(*2*) requires a notice that the controlling domestic shareholder must provide to other domestic shareholders who own stock of the foreign corporation to notify them of the election. The collection of information in proposed § 1.954–1(d)(6)(vii)(A) requires each U.S. shareholder of a CFC

[3] Data are from IRS's Research, Applied Analytics, and Statistics division based on E-file data available in the Compliance Data Warehouse for tax years 2015 and 2016. The counts include Category 4 and Category 5 IRS Form 5471 filers. Category 4 filers are U.S. persons who had control of a foreign corporation during the annual accounting period of the foreign corporation. Category 5 filers are U.S. shareholders who own stock in a foreign corporation that is a CFC and who owned that stock on the last day in the tax year of the foreign corporation in that year in which it was a CFC. For full definitions, see *https://www.irs.gov/pub/irs-pdf/i5471.pdf*.

[4] The IRS Statistics of Income Tax Stats report on Controlled Foreign Corporations can be accessed here: *https://www.irs.gov/statistics/soi-tax-stats-controlled-foreign-corporations*.

that makes a high-tax election under section 954(b)(4) and § 1.954–1(d)(6) to maintain certain documentation. The collection of information in proposed § 1.6038–2(f)(19) requires a U.S. shareholder of a CFC that makes a high-tax election under section 954(b)(4) and § 1.954–1(d)(6) to include certain information in the Form 5471 (or successor form).

As shown in Table 1, the Treasury Department and the IRS estimate that the number of persons potentially subject to the collections of information in proposed § 1.954–1(d)(6)(i)(A)(*1*) and (*2*), § 1.954–1(d)(6)(vii)(A), and § 1.6038–2(f)(19) is between 25,000 and 35,000. The estimate in Table 1 is based on the number of taxpayers that filed an income tax return that included a Form 5471, ''Information Return of U.S. Persons With Respect to Certain Foreign Corporations.'' The collections of information in proposed § 1.954–1(d)(6)(i)(A)(*1*) and (*2*), § 1.954–1(d)(6)(vii)(A), and § 1.6038–2(f)(19) can only apply to taxpayers that are U.S. shareholders (as defined in section 951(b)) and U.S. shareholders are required to file a Form 5471.

TABLE 1—TABLE OF TAX FORMS IMPACTED

Tax forms impacted		
Collection of information	Number of respondents (estimated)	Forms to which the information may be attached
Proposed § 1.954–1(d)(6)(i)(A)(*1*) and (*2*), § 1.954–1(d)(6)(vii)(A), and § 1.6038–2(f)(19).	25,000–35,000	Form 990 series, Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.

Source: MeF, DCS, and IRS's Compliance Data Warehouse.

B. Reporting of Burden Related to Proposed § 1.954–1(d)(6)(i)(A)(1) and (2) and § 1.6038–2(f)(19)

The collection of information contained in proposed § 1.954–1(d)(6)(i)(A)(*1*) and (*2*) and § 1.6038–2(f)(19) will be reflected in the Form 14029, Paperwork Reduction Act Submission, that the Treasury Department and the IRS will submit to OMB for income tax returns in the Form 990 series, Forms 1120, Forms 1040, Forms 1041, and Forms 1065. In particular, the reporting burden associated with the information collection in proposed § 1.954–1(d)(6)(i)(A)(*1*) and (*2*) and § 1.6038–2(f)(19) will be included in the burden estimates for OMB control numbers 1545–0123, 1545–0074, 1545–0092, and 1545–0047. OMB control number 1545–0123 represents a total estimated burden time for all forms and schedules for corporations of 3.344 billion hours and total estimated monetized costs of $61.558 billion ($2019). OMB control number 1545–0074 represents a total estimated burden time, including all other related forms and schedules for individuals, of 1.717 billion hours and total estimated monetized costs of $33.267 billion ($2019). OMB control number 1545–0092 represents a total estimated burden time, including all other related forms and schedules for trusts and estates, of 307,844,800 hours and total estimated monetized costs of $9.950 billion ($2016). OMB control number 1545–0047 represents a total estimated burden time, including all other related forms and schedules for tax-exempt organizations, of 52.450 million hours and total estimated monetized costs of $1,496,500,000 ($2020). Table 2 summarizes the status of the Paperwork Reduction Act submissions of the Treasury Department and the IRS related to forms in the Form 990 series, Forms 1120, Forms 1040, Forms 1041, and Forms 1065.

The overall burden estimates provided by the Treasury Department and the IRS to OMB in the Paperwork Reduction Act submissions for OMB control numbers 1545–0123, 1545–0074, 1545–0092, and 1545–0047 are aggregate amounts related to the U.S. Business Income Tax Return, the U.S. Individual Income Tax Return, and the U.S. Income Tax Return for Estates and Trusts, along with any associated forms. The burdens included in these Paperwork Reduction Act submissions, however, do not account for any burdens imposed by proposed § 1.954–1(d)(6)(i)(A)(*1*) and (*2*) and § 1.6038–2(f)(19). The Treasury Department and the IRS have not identified the estimated burdens for the collections of information in proposed § 1.954–1(d)(6)(i)(A)(*1*) and (*2*) and § 1.6038–2(f)(19) because there are no burden estimates specific to proposed § 1.954–1(d)(6)(i)(A)(*1*) and (*2*) and § 1.6038–2(f)(19) currently available. The burden estimates in the Paperwork Reduction Act submissions that the Treasury Department and the IRS will submit to the OMB will in the future include, but not isolate, the estimated burden related to the tax forms that will be revised for the collection of information in proposed § 1.954–1(d)(6)(i)(A)(*1*) and (*2*) and § 1.6038–2(f)(19).

The Treasury Department and the IRS have included the burdens related to the Paperwork Reduction Act submissions for OMB control numbers 1545–0123, 1545–0074, 1545–0092, and 1545–0047 in the Paperwork Reduction Act analysis for other regulations issued by the Treasury Department and the IRS related to the taxation of cross-border income. The Treasury Department and the IRS encourage users of this information to take measures to avoid overestimating the burden that the collections of information in proposed § 1.954–1(d)(6)(i)(A)(*1*) and (*2*) and § 1.6038–2(f)(19), together with other international tax provisions, impose. Moreover, the Treasury Department and the IRS also note that the Treasury Department and the IRS estimate Paperwork Reduction Act burdens on a taxpayer-type basis rather than a provision-specific basis because an estimate based on the taxpayer-type most accurately reflects taxpayers' interactions with the forms.

The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize the paperwork burden. Any proposed revisions to these forms that reflect the information collections contained in proposed § 1.954–1(d)(6)(i)(A)(*1*) and (*2*) and § 1.6038–2(f)(19) 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 Paperwork Reduction Act.

TABLE 2—SUMMARY OF INFORMATION COLLECTION REQUEST SUBMISSIONS RELATED TO FORM 990 SERIES, FORMS 1120, FORMS 1040, FORMS 1041, AND FORMS 1065

Form	Type of filer	OMB No.(s)	Status
Forms 990	Tax exempt entities (NEW Model)	1545–0047	Approved by OIRA 2/12/2020 until 2/28/2021.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201912-1545-014.*		
Form 1040	Individual (NEW Model)	1545–0074	Approved by OIRA 1/30/2020 until 1/31/2021.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201909-1545-021.*		
Form 1041	Trusts and estates	1545–0092	Approved by OIRA 5/08/2019 until 5/31/2022.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201806-1545-014.*		
Form 1065 and 1120	Business (NEW Model)	1545–0123	Approved by OIRA 1/30/2020 until 1/31/2021.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201907-1545-001.*		

C. Reporting of Burden Related to Proposed § 1.954–1(d)(6)(vii)(A)

The collections of information contained in proposed § 1.954–1(d)(6)(vii)(A) will not be conducted using a new or existing IRS form.

The collections of information contained in § 1.954–1(d)(6)(vii)(A) have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act. Commenters are strongly encouraged to submit public comments electronically. Comments and recommendations for the proposed information collection should be sent to *www.reginfo.gov/public/do/PRAMain,* with electronic copies emailed to the IRS at *omb.unit@irs.gov* (indicate REG–127732–19 on the subject line). Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and then by using the search function. Comments can also be mailed to OMB, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed to the IRS, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by September 21, 2020.

The likely respondents are U.S. shareholders of CFCs.

Estimated total annual reporting burden: 300,000 hours.

Estimated average annual burden per respondent: 10 hours.

Estimated number of respondents: 30,000.

Estimated frequency of responses: Annually.

III. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis (IRFA)'' which will ''describe the impact of the proposed rule on small entities.'' 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

These proposed regulations directly affect small entities that are a U.S. shareholder of a CFC and elect to apply the exception for high-tax income in section 954(b)(4) and proposed § 1.954–1(d)(6)(i). A U.S. shareholder is a U.S. person that owns, directly, indirectly, or constructively, 10 percent or more of the vote or value of a foreign corporation. A foreign corporation is a CFC if U.S. shareholders own directly, indirectly, or constructively, more than 50 percent of the vote or value of the foreign corporation. Therefore, the proposed regulations apply only to U.S. persons that operate a foreign business in corporate form, and only if the foreign corporation is a CFC.

The Small Business Administration establishes small business size standards (13 CFR part 121) by annual receipts or number of employees. There are several industries that may be identified as small even through their annual receipts are above $25 million or because of the number of employees. The Treasury Department and the IRS do not have data indicating the number of small entities that will be significantly impacted by the proposed regulations. Nevertheless, for the reasons described below, the Treasury Department and the IRS do not believe that the regulations will have a significant economic impact on small entities. The proposed regulations are elective, and small entities will likely not avail of the election unless the net benefits in terms of tax liability and any consequent compliance costs are positive. Thus, the Treasury Department and the IRS hereby certify that the proposed regulations are not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f), these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. The Treasury Department and the IRS also request comments from the public on the certifications in this Part III.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These proposed regulations do not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed regulations do not have

federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Comments and Requests for Public Hearing

Before the proposed amendments 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** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. See also part II.A. of the Explanation of Provisions (requesting comments related to the income grouping rules in § 1.904–4(c)), part II.C. of the Explanation of Provisions (requesting comments related to the allocation and apportionment of deductions incurred by a CFC for purposes of sections 954(b)(5), 951A(c)(2)(A)(ii), and 960 based on the extent to which they are properly reflected on an applicable financial statement), part II.D. of the Explanation of Provisions (requesting comments related to any case in which undefined or negative foreign tax rates should not be deemed high-taxed), part II.E. of the Explanation of Provisions (requesting comments related to combination of de minimis tested units to reduce administrative burden without permitting an excessive amount of blending of income subject to different foreign tax rates), and part IV.B. of the Explanation of Provisions (requesting comments related to rules that would permit a taxpayer to make (or revoke) an election after the 24-month period in cases where the taxpayer can establish that the election (or revocation) will not result in time-barred tax deficiencies). Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Because the Treasury Department and the IRS intend to make revisions to the rules concerning high-taxed income in § 1.904–4(c) to conform them with the rules in these proposed regulations, comments are requested concerning any issues that should be taken into consideration in connection with such revisions.

Comments are requested on transition rules with respect to the application of existing § 1.954–1(d), which does not contain a consistency requirement, and the final regulations in circumstances in which a U.S. shareholder's CFCs have different taxable years.

Comments are also requested on the attribution of items to a tested unit based on an applicable financial statement in certain cases in which a CFC holds directly or indirectly more than one interest in an entity. For example, assume a CFC directly owns DEX, a disregarded entity that is a tax resident in Country X, and DEY, a disregarded entity that is a tax resident in Country Y. DEX and DEY together own all the interests in DEZ, a disregarded entity organized in Country Z that is viewed as fiscally transparent under the laws of all countries. Comments are requested on how items that are properly reflected on the applicable financial statement of DEZ, and taken into account by CFC, should be attributed to CFC's interests in DEX and DEY, each of which is a tested unit.

Drafting Information

The principal authors of these regulations are Jorge M. Oben and Larry R. Pounders 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 is amended by revising the entry for § 1.954–1 to read in part as follows:

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

* * * * *

Section 1.954–1 also issued under 26 U.S.C. 964(c), 6001 and 6038(a)(1).

* * * * *

§ 1.951A–2 [Amended]

■ **Par. 2.** Section 1.951A–2:

■ 1. As amended in a final rule published elsewhere in this issue of the **Federal Register**, effective September 21, 2020, is amended by revising paragraph (c)(1)(iii), removing the paragraph (c)(3)(i) subject heading, redesignating paragraph (c)(3)(i) as paragraph (c)(3), and removing paragraph (c)(3)(ii);

■ 2. Is amended by removing paragraphs (c)(4)(iii)(C) and (c)(4)(iv)(C); and

■ 3. As amended in a final rule published elsewhere in this issue of the **Federal Register**, effective September 21, 2020, is amended by removing paragraphs (c)(7) and (8).

The revisions read as follows:

§ 1.951A–2 Tested income and tested loss.

* * * * *

(c) * * *

(1) * * *

(iii) Gross income described in section 951A(c)(2)(A)(i)(III) that is excluded from the foreign base company income (as defined in section 954) or insurance income (as defined in section 953) of the corporation by reason of the exception described in section 954(b)(4) and § 1.954–1(d)(1) pursuant to an election under § 1.954–1(d)(6),

* * * * *

■ **Par. 3.** Section 1.951A–7, as amended in a final rule published elsewhere in this issue of the **Federal Register**, effective September 21, 2020, is amended by revising paragraph (b) to read as follows:

§ 1.951A–7 Applicability dates.

* * * * *

(b) *High-tax exception.* Section 1.951A–2(c)(1)(iii) applies to taxable years of foreign corporations beginning after [the date that final regulations are filed for public inspection], and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. For the application of § 1.951A–2(c)(1)(iii) to taxable years of controlled foreign corporations beginning on or after September 21, 2020, and before [the date final regulations are filed with the **Federal Register**] and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see § 1.951A–2(c)(1)(iii), as in effect on September 21, 2020.

■ **Par. 4.** Section 1.952–1 is amended by:

■ 1. Revising paragraph (e)(4);

■ 2. Redesignating paragraphs (f)(4) and (5) as paragraphs (f)(5) and (6), respectively;

■ 3. Adding a new paragraph (f)(4);

■ 4. In newly redesignated paragraph (f)(5), designating Examples (1) through

(4) as paragraphs (f)(5)(i) through (iv), respectively;

■ 5. In newly designated paragraphs (f)(5)(i) through (iv), redesignating the paragraphs in the first column as the paragraphs in the second column in the following table:

Old paragraphs	New paragraphs
(f)(5)(i)(i) through (iii)	(f)(5)(i)(A) through (C).
(f)(5)(ii)(i) through (iii)	(f)(5)(ii)(A) through (C).
(f)(5)(iii)(i) through (iii)	(f)(5)(iii)(A) through (C).
(f)(5)(iv)(i) through (iii)	(f)(5)(iv)(A) through (C).

■ 6. Revising newly designated paragraph (f)(6).

The revisions and addition read as follows:

§ 1.952–1 Subpart F income defined.

* * * * *

(e) * * *

(4) *Coordination with sections 953 and 954.* The rules of this paragraph (e) apply after the determination of net foreign base company income, as provided in § 1.954–1(a)(5). This paragraph (e)(4) applies to taxable years of controlled foreign corporations beginning after [the date that final regulations are filed for public inspection], and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. For taxable years before those described in the preceding sentence, see § 1.952–1(e)(4), as contained in 26 CFR part 1 revised as of April 1, 2020.

* * * * *

(f) * * *

(4) *Carryover of recapture accounts in transactions to which section 381(a) applies.* In the case of a distribution or transfer described in section 381(a), any recapture accounts (as described in paragraph (f)(2)(i) of this section) of the distributor or transferor corporation are treated as recapture accounts of the acquiring corporation as of the close of the date of the distribution or transfer. If the acquiring corporation has recapture accounts in the same separate category (as defined in § 1.904–5(a)(4)(v) and § 1.954–1(c)(1)(iii)(1) or (2)), the recapture accounts of the distributor or transferor corporation are added to the recapture accounts of the acquiring corporation in such category; if not, the acquiring corporation adopts the recapture accounts of the distributor or transferor corporation in such category.

* * * * *

(6) *Effective date*—(i) *Paragraphs (e) and (f).* Except as provided in paragraphs (e)(4) and (f)(6)(ii) of this section, paragraph (e) of this section and this paragraph (f) apply to taxable years of a controlled foreign corporation beginning after March 3, 1997.

(ii) *Paragraph (f)(4).* Paragraph (f)(4) of this section applies to taxable years of a corporation ending on or after July 20, 2020 (even if the distribution or transfer described in section 381(a) occurred in a taxable year ending before July 20, 2020).

* * * * *

■ **Par. 5.** Section 1.954–1:

■ 1. Is amended by revising paragraphs (a)(2) and (3);

■ 2. Is amended in paragraph (a)(4) by removing the language ''term,'' removing the language ''means the'' and adding the language ''of a controlled foreign corporation is'' in its place, removing the language ''a'' after the language ''adjusted gross foreign base company income of'' and adding ''the'' in its place;

■ 3. Is amended by revising paragraphs (a)(5) and (6);

■ 4. Is amended in paragraph (a)(7) by adding in the first sentence the language ''and § 1.952–1(f)(2)(ii) of'' after the language ''under section 952(c)'' and revising the last sentence;

■ 5. Is amended in paragraph (b)(1)(ii) by removing the second sentence; and

■ 6. As amended in a final rule published elsewhere in this issue of the **Federal Register**, effective September 21, 2020, is amended by: Revising paragraphs (d) and (h)(3).

The revisions read as follows:

§ 1.954–1 Foreign base company income.

(a) * * *

(2) *Gross foreign base company income*—(i) *In general.* The *gross foreign base company income* of a controlled foreign corporation, determined after the application of section 952(b) and § 1.952–1(b)(2), and after the application of the high-tax exception under section 954(b)(4) and paragraph (d) of this section, consists of the categories of gross income of the controlled foreign corporation described in paragraphs (a)(2)(i)(A) through (C) of this section.

(A) Foreign personal holding company income, as defined in section 954(c).

(B) Foreign base company sales income, as defined in section 954(d).

(C) Foreign base company services income, as defined in section 954(e).

(ii) *Foreign base company income for purposes of section 954(b).* The term foreign base company income as used in section 954(b) refers to gross foreign base company income.

(3) *Adjusted gross foreign base company income.* The *adjusted gross foreign base company income* of a controlled foreign corporation is the gross foreign base company income of the controlled foreign corporation as adjusted by the de minimis rule in section 954(b)(3)(A) and paragraph (b)(1)(i) of this section, and the full inclusion rule in section 954(b)(3)(B) and paragraph (b)(1)(ii) of this section.

* * * * *

(5) *Adjusted net foreign base company income.* The *adjusted net foreign base company income* of a controlled foreign corporation is the net foreign base company income of the controlled foreign corporation, reduced by the earnings and profits limitation of section 952(c)(1) and § 1.952–1(c), and increased by earnings and profits that are recharacterized as foreign base company income under section 952(c)(2) and § 1.952–1(f)(2)(ii). Unless otherwise provided (for example, in paragraph (a)(2)(ii) of this section), the term foreign base company income as used in the Internal Revenue Code and elsewhere in the Income Tax Regulations means adjusted net foreign base company income.

(6) *Insurance income.* The *gross insurance income* of a controlled foreign corporation is all the gross income of the controlled foreign corporation, determined after the application of section 952(b) and § 1.952–1(b)(2), and after the application of the high-tax exception under section 954(b)(4) and paragraph (d) of this section, that is taken into account to determine the insurance income of the controlled foreign corporation under section 953. The *adjusted gross insurance income* of a controlled foreign corporation is the gross insurance income of the controlled foreign corporation as adjusted by the de minimis rule in section 954(b)(3)(A) and paragraph (b)(1)(i) of this section, and the full inclusion rule in section 954(b)(3)(B) and paragraph (b)(1)(ii) of this section. The *net insurance income*

of a controlled foreign corporation is the adjusted gross insurance income of the controlled foreign corporation reduced under section 953 so as to take into account deductions (including taxes) properly allocable or apportionable to such income. The *adjusted net insurance income* of a controlled foreign corporation is the net insurance income of the controlled foreign corporation reduced by the earnings and profits limitation of section 952(c)(1) and § 1.952–1(c), and increased by earnings and profits that are recharacterized as insurance income under section 952(c)(2) and § 1.952–1(f)(2)(ii). The term insurance income as used in subpart F of the Internal Revenue Code and in the regulations under that subpart means adjusted net insurance income, unless otherwise provided.

(7) *Additional items of adjusted net foreign base company income or adjusted net insurance income by reason of section 952(c).* The earnings and profits described in this paragraph (a)(7) are not subject to the de minimis rule in section 954(b)(3)(A) and paragraph (b)(1)(i) of this section, the full inclusion rule in section 954(b)(3)(B) and paragraph (b)(1)(ii) of this section, or the high-tax exception of section 954(b)(4) and paragraph (d) of this section.

* * * * *

(d) *High-tax exception*—(1) *Application*—(i) *In general.* An item of gross income of a controlled foreign corporation for a CFC inclusion year qualifies for the high-tax exception under section 954(b)(4) and this paragraph (d)(1) only if—

(A) An election made under section 954(b)(4) and paragraph (d)(6) of this section is effective with respect to the controlled foreign corporation for the CFC inclusion year; and

(B) The tentative net item with respect to the item of gross income was subject to an effective rate of foreign tax, as determined under paragraph (d)(4) of this section, that is greater than 90 percent of the maximum rate of tax specified in section 11 for the CFC inclusion year. See paragraphs (d)(9)(iii)(A)(*2*)(*vi*) (Example 1) and (d)(9)(iii)(B)(*2*)(*vi*) (Example 2) of this section for illustrations of the application of the rules set forth in this paragraph (d)(1)(i)(B).

(ii) *Item of gross income.* For purposes of this paragraph (d), an item of gross income means an item described in paragraph (d)(1)(ii)(A), (B), or (C) of this section. See paragraphs (d)(9)(iii)(A)(*2*)(*i*) (Example 1) and (d)(9)(iii)(B)(*2*)(*i*) (Example 2) of this section for illustrations of the application of the rule set forth in this paragraph (d)(1)(ii).

(A) *General gross item.* A general gross item is the aggregate amount of all gross income, determined under federal income tax principles but without regard to items described in section 952(c)(2) and § 1.952–1(f)(2)(ii), that is attributable to a single tested unit (as provided in paragraph (d)(1)(iii) of this section) of the controlled foreign corporation in the CFC inclusion year and that is—

(*1*) In a single separate category (as defined in § 1.904–5(a)(4)(v));

(*2*) Not described in paragraph (d)(1)(ii)(B) of this section;

(*3*) Not passive foreign personal holding company income; and

(*4*) Of a type that would be treated as gross tested income, gross foreign base company income (as defined in paragraph (a)(2) of this section), or gross insurance income (as defined in paragraph (a)(6) of this section) (in all cases, determined without regard to the high-tax exception described in section 954(b)(4) and paragraph (d)(1) of this section).

(B) *Equity gross item.* An equity gross item is the sum of gross income described in paragraph (d)(1)(ii)(A) of this section, determined without regard to paragraph (d)(1)(ii)(A)(*2*) of this section, that is also described in either paragraph (d)(1)(ii)(B)(*1*) or (*2*) of this section.

(*1*) *Income or gain arising from stock.* Gross income described in this paragraph (d)(1)(ii)(B)(*1*) consists of dividends, income or gain recognized from dispositions of stock, and any similar items arising from stock that are taken into account by the tested unit, the entity an interest in which is the tested unit, or the branch the portion of the activities of which is the tested unit, as applicable, and subject to an exclusion, exemption, or other similar relief (such as a preferential tax rate) under the tax law of the country of tax residence of the tested unit or the entity, or the country in which the branch is located. For purposes of the preceding sentence, other similar relief does not include a deduction or credit against the tax imposed under such tax law for tax paid to another foreign country with respect to income attributable to the branch. Gross income described in this paragraph (d)(1)(ii)(B)(*1*) does not include gain recognized from dispositions of stock if the stock would be dealer property (as defined in § 1.954–2(a)(4)(v)).

(*2*) *Income or gain arising from interests in pass-through entities.* Gross income described in this paragraph (d)(1)(ii)(B)(*2*) is income or gain recognized on the disposition of, or a distribution with respect to, an interest in a pass-through entity (including an interest in a disregarded entity) that is attributable to the tested unit, the entity an interest in which is the tested unit, or the branch the portion of the activities of which is the tested unit, as applicable, and subject to an exclusion, exemption, or other similar relief (such as a preferential tax rate) under the tax law of the country of tax residence of the tested unit or the entity, or the country in which the branch is located. For purposes of the preceding sentence, other similar relief does not include a deduction or credit against the tax imposed under such tax law for tax paid to another foreign country with respect to income attributable to the branch.

(C) *Passive gross item.* A passive gross item is the sum of the gross income described in paragraph (d)(1)(ii)(A) of this section (without regard to the exclusion of passive foreign personal holding company income under paragraph (d)(1)(ii)(A)(*3*) of this section) that constitutes a single item of passive foreign personal holding company income described in paragraph (c)(1)(iii)(B) of this section.

(iii) *Gross income attributable to a tested unit*—(A) *Items properly reflected on an applicable financial statement.* Gross income of a controlled foreign corporation is attributable to a tested unit of the controlled foreign corporation to the extent it is properly reflected, as modified under paragraph (d)(1)(iii)(B) of this section, on the applicable financial statement of the tested unit. All gross income of a controlled foreign corporation is attributable to a tested unit (but no portion of the gross income is attributable to more than one tested unit) of the controlled foreign corporation. See paragraphs (d)(9)(iii)(C)(*2*)(*ii*) and (d)(9)(iii)(C)(*5*) (Example 3) of this section for illustrations of the application of the rule set forth in this paragraph (d)(1)(iii)(A).

(B) *Adjustments to reflect disregarded payments.* The principles of § 1.904–4(f)(2)(vi) apply to adjust gross income of the tested unit, to the extent thereof, to reflect disregarded payments. For purposes of this paragraph (d)(1)(iii)(B), the principles of § 1.904–4(f)(2)(vi) are applied taking into account the rules in paragraphs (d)(1)(iii)(B)(*1*) through (*5*) of this section. See paragraphs (d)(9)(iii)(A) (Example 1) and (d)(9)(iii)(B) (Example 2) of this section for examples that illustrate the application of the adjustments set forth in this paragraph (d)(1)(iii)(B).

(*1*) The controlled foreign corporation is treated as the foreign branch owner and any other tested units of the controlled foreign corporation are treated as foreign branches.

(*2*) The principles of § 1.904–4(f)(2)(vi)(A) apply in the case of disregarded payments between a foreign branch and another foreign branch without regard to whether either foreign branch makes a disregarded payment to, or receives a disregarded payment from, the foreign branch owner.

(*3*) The exclusion for payments described in § 1.904–4(f)(2)(vi)(C)(*1*) (''disregarded interest'') does not apply to the extent of the amount of a disregarded payment that is deductible in the country of tax residence (or location, in the case of a branch) of the tested unit that is the payor.

(*4*) In the case of an amount of disregarded interest described in paragraph (d)(1)(iii)(B)(*3*) of this section, the rules in § 1.904–4(f)(2)(vi)(B) for determining how a disregarded payment is allocated to gross income of a foreign branch or foreign branch owner are applied by treating the disregarded payment as allocated and apportioned ratably to all of the gross income attributable to the tested unit that is making the disregarded payment. However, if a tested unit is both a payor and payee of an amount of disregarded interest described in paragraph (d)(1)(iii)(B)(*3*) of this section, the payments made are first allocable to the gross income allocated to it as a result of the receipt of amounts of disregarded interest described in paragraph (d)(1)(iii)(B)(*3*) of this section, to the extent thereof. If a tested unit makes and receives payments described in paragraph (d)(1)(iii)(B)(*3*) of this section to and from the same tested unit, the payments are netted so that paragraph (d)(1)(iii)(B)(*3*) of this section and the principles of § 1.904–4(f)(2)(vi) apply only to the net amount of such payments between the two tested units. If the payment described in paragraph (d)(1)(iii)(B)(*3*) of this section would (if regarded) be directly allocated under the principles of § 1.861–10T(b) or (c) if such payment were regarded for federal income tax purposes, then notwithstanding any other rule in this paragraph (d)(1)(iii)(B)(*4*), a disregarded payment is allocated to gross income of a tested unit under the principles of § 1.904–4(f)(2)(vi)(B) by applying the principles of § 1.861–10T.

(*5*) In the case of multiple disregarded payments, in lieu of the rules in § 1.904–4(f)(2)(vi)(F), disregarded payments are taken into account under paragraph (d)(1)(iii)(B) of this section under the rules provided in paragraphs (d)(1)(iii)(B)(*5*)(*i*) through (*iii*) of this section.

(*i*) Adjustments are first made with respect to disregarded payments received by a payee tested unit that are not themselves attributable to disregarded payments received by the payor tested unit. Second, adjustments are made with respect to disregarded payments made by the payee tested unit that are attributable to the income of that tested unit, adjusted as described in the preceding sentence. Third, adjustments are made with respect to amounts of disregarded interest received and paid, as described in paragraph (d)(1)(iii)(B)(*4*) of this section. Fourth, adjustments are made with respect to any other disregarded payments made or received.

(*ii*) Adjustments with respect to disregarded payments made are first made with respect to disregarded payments that would be definitely related to a single class of gross income under the principles of § 1.861–8; second, adjustments are made with respect to disregarded payments that would be definitely related to multiple classes of gross income under the principles of § 1.861–8, but that are not definitely related to all gross income of the tested unit; third, adjustments are made with respect to disregarded payments that would be definitely related to all gross income under the principles of § 1.861–8, other than payments described in paragraph (d)(1)(iii)(B)(*3*) of this section; and fourth, adjustments are made with respect to payments described in paragraph (d)(1)(iii)(B)(*3*) of this section and disregarded payments that would not be definitely related to any gross income under the principles of § 1.861–8.

(*iii*) Adjustments can be made only to the extent there is sufficient gross income (in the relevant income group) of the tested unit making the payment, taking into account the adjustments that increase gross income as provided in this paragraph (d)(1)(iii)(B)(*5*).

(iv) *Tentative net item*—(A) *In general.* Except as provided in paragraphs (d)(1)(iv)(B) and (C) of this section, a tentative net item with respect to an item of gross income described in paragraph (d)(1)(ii) of this section is determined by allocating and apportioning deductions for the CFC inclusion year (not including any items described in § 1.951A–2(c)(5) or (c)(6)) to the item of gross income under the principles of § 1.960–1(d)(3) by treating each single item of gross income described in paragraph (d)(1)(ii) of this section as gross income in a separate income group described in § 1.960–1(d)(2)(ii) and by treating all other income as assigned to a residual income group. A deduction for current year taxes (as defined in § 1.960–1(b)(4)) imposed solely by reason of a disregarded payment that gives rise to an adjustment under paragraph (d)(1)(iii)(B) of this section, however, is allocated and apportioned under the principles of § 1.904–6(b)(2) in lieu of the rules under § 1.861–20(d)(3)(ii). See paragraph (d)(9)(iii)(A)(*2*)(*ii*) (Example 1) and (d)(9)(iii)(B)(*2*)(*iii*) (Example 2) of this section for illustrations of the application of the rule set forth in this paragraph (d)(1)(iv)(A).

(B) *Booking rule for deductions other than current year tax expense.* Deductions (other than deductions for current year taxes) are attributable to a tested unit to the extent they are properly reflected on the applicable financial statement of the tested unit under the principles of paragraph (d)(1)(iii)(A) of this section. In applying the principles of § 1.960–1(d)(3) under paragraph (d)(1)(iv)(A) of this section, deductions (other than deductions for current year taxes) attributable to a tested unit are allocated and apportioned on the basis of the income and activities to which the expense relates, but are applied only to reduce the items of gross income described in paragraph (d)(1)(ii) of this section attributable to the same tested unit (including gross income that is attributed to the tested unit by reason of disregarded payments, and regardless of whether the tested unit has gross income in the relevant income group during the CFC inclusion year). In applying §§ 1.861–9 and 1.861–9T pursuant to § 1.960–1(d)(3), solely for purposes of paragraph (d)(1)(iv)(A) of this section interest deductions attributable to a tested unit are allocated and apportioned only on the basis of the assets (or gross income, in the case of a taxpayer that has elected the modified gross income method) of that tested unit. No interest deductions attributable to the tested unit are allocated and apportioned to the assets or gross income of another tested unit, or of a corporation, owned by the controlled foreign corporation indirectly through the tested unit. See paragraph (d)(9)(iii)(B)(*2*)(*ii*) (Example 2) of this section for illustrations of the application of the rule set forth in this paragraph (d)(1)(iv)(B).

(C) *Deduction or loss with respect to equity.* Notwithstanding paragraph (d)(1)(iv)(A) of this section, if a tested unit takes into account a loss or deduction (including a deduction for foreign income taxes) with respect to a transaction involving stock or an

interest in a pass-through entity, and income or gain with respect to the stock or interest is or would have been described in paragraph (d)(1)(ii)(B)(*1*) or (*2*) of this section, then for purposes of allocating and apportioning deductions under paragraph (d)(1)(iv)(A) of this section, the deduction or loss is allocated and apportioned solely to the item of gross income described in paragraph (d)(1)(ii)(B)(*1*) or (*2*) of this section, as applicable, with respect to such tested unit, regardless of whether there is any gross income included in such item during the CFC inclusion year.

(D) *Effect of potential and actual changes in taxes paid or accrued.* Except as otherwise provided in this paragraph (d)(1)(iv)(D), the amount of current year taxes paid or accrued with respect to an item of gross income (as described in paragraph (d)(1)(ii) of this section) does not take into account any potential reduction in foreign income taxes that may occur by reason of a future distribution to shareholders of all or part of such income. However, to the extent the foreign income taxes paid or accrued by the controlled foreign corporation are reasonably certain to be returned to a shareholder by the foreign country imposing such taxes, directly or indirectly, through any means (including, but not limited to, a refund, credit, payment, discharge of an obligation, or any other method) on a subsequent distribution to such shareholder, the foreign income taxes are not treated as paid or accrued for purposes of paragraphs (d)(1)(iv) or (d)(5) of this section. In addition, foreign income taxes that have not been paid or accrued because they are contingent on a future distribution of earnings (or other similar transaction, such as a loan to a shareholder) are not taken into account for purposes of paragraph (d)(1)(iv) or (d)(5) of this section. If, pursuant to section 905(c) and § 1.905–3, a redetermination of U.S. tax liability is required to account for the effect of a foreign tax redetermination (as defined in § 1.905–3(a)), paragraph (d)(1)(iv) and (d)(5) of this section are applied in the adjusted year taking into account the adjusted amount of the redetermined foreign tax.

(v) *Portfolio interest and treatment of certain income under foreign tax credit rules.* Portfolio interest, as described in section 881(c), does not qualify for the high-tax exception under section 954(b)(4) and this paragraph (d). For rules concerning the treatment for foreign tax credit purposes of distributions of passive income excluded from foreign base company income, insurance income or tested income under section 954(b)(4) and this paragraph (d), see section 904(d)(3)(E) and § 1.904–4(c)(7)(iii).

(2) *Tested unit rules*—(i) *In general.* Subject to the combination rule in paragraph (d)(2)(iii) of this section, the term *tested unit* means any corporation, interest, or branch described in paragraphs (d)(2)(i)(A) through (C) of this section. See paragraph (d)(9)(iii)(C) of this section for an example that illustrates the application of the tested unit rules set forth in this paragraph (d)(2).

(A) A controlled foreign corporation (as defined in section 957(a)).

(B) An interest held directly or indirectly by a controlled foreign corporation in a pass-through entity that is—

(*1*) A tax resident (as described in § 1.267A–5(a)(23)(i)) of any foreign country; or

(*2*) Not treated as fiscally transparent (as determined under the principles of § 1.267A–5(a)(8)) for purposes of the tax law of the foreign country of which the controlled foreign corporation is a tax resident or, in the case of an interest in a pass-through entity held by a controlled foreign corporation indirectly through one or more other tested units, for purposes of the tax law of the foreign country of which the tested unit that directly (or indirectly through the fewest number of transparent interests) owns the interest is a tax resident.

(C) A branch (as described in § 1.267A–5(a)(2)) the activities of which are carried on directly or indirectly (through one or more pass-through entities) by a controlled foreign corporation. However, in the case of a branch that does not give rise to a taxable presence under the tax law of the foreign country where the branch is located, the branch is a tested unit only if, under the tax law of the foreign country of which the controlled foreign corporation is a tax resident (or, if applicable, under the tax law of a foreign country of which the tested unit that directly (or indirectly, through the fewest number of transparent interests) carries on the activities of the branch is a tax resident), an exclusion, exemption, or other similar relief (such as a preferential rate) applies with respect to income attributable to the branch. For purposes of this paragraph (d)(2)(i)(C), similar relief does not include a deduction or credit against the tax imposed under such tax law for tax paid to another foreign country with respect to income attributable to the branch. If a controlled foreign corporation carries on directly or indirectly less than all of the activities of a branch (for example, if the activities are carried on indirectly through an interest in a partnership), then the rules in this paragraph (d)(2)(i)(C) apply separately with respect to the portion (or portions, if carried on indirectly through more than one chain of pass-through entities) of the activities carried on by the controlled foreign corporation. See paragraphs (d)(9)(iii)(C)(*3*) and (d)(9)(iii)(C)(*4*) (Example 3) of this section for illustrations of the application of the rules set forth in this paragraph (d)(2)(i)(C).

(ii) *Items attributable to only one tested unit.* For purposes of paragraph (d) of this section, if an item is attributable to more than one tested unit in a tier of tested units, the item is considered attributable only to the lowest-tier tested unit. Thus, for example, if a controlled foreign corporation directly owns a branch tested unit described in paragraph (d)(2)(i)(C) of this section, and an item of gross income is (under the rules of paragraph (d)(1)(iii) of this section) attributable to both the branch tested unit and the controlled foreign corporation tested unit, then the item is considered attributable only to the branch tested unit.

(iii) *Combination rule*—(A) *In general.* Except as provided in paragraph (d)(2)(iii)(B) of this section, tested units of a controlled foreign corporation (including the controlled foreign corporation tested unit) that meet the requirements in paragraph (d)(2)(iii)(A)(*1*) of this section are treated as a single tested unit, and tested units that meet the requirements of paragraph (d)(2)(iii)(A)(*2*) of this section (after taking into account the application of paragraph (d)(2)(iii)(A)(*1*) of this section) are also treated as a single tested unit.

(*1*) *Subject to tax in same foreign country.* The tested units are tax residents of, or located in (in the case of a tested unit that is branch, or a portion of the activities of a branch, that gives rise to a taxable presence under the tax law of a foreign country), the same foreign country. For purposes of this paragraph (d)(2)(iii)(A)(*1*), in the case of a tested unit that is an interest in a pass-through entity or a portion of the activities of a branch, a reference to the tax residency or location of the tested unit means the tax residency of the entity the interest in which is the tested unit or the location of the branch, as applicable. See paragraphs (d)(9)(iii)(C)(*2*)(*i*) and (d)(9)(iii)(C)(*5*) (Example 3) for illustrations of the application of the rule set forth in this paragraph (d)(2)(iii)(A)(*1*).

(*2*) *De minimis gross income.* The gross income attributable to the tested

unit (determined under paragraph (d)(1)(iii) of this section and translated into U.S. dollars, if necessary, at the appropriate exchange rate under section 989(b)(3)) is less than the lesser of one percent of gross income of the controlled foreign corporation, or $250,000. Appropriate adjustments are made for purposes of applying this paragraph (d)(2)(iii)(A)(*2*) if assets, including assets of or interests in a tested unit or a transparent entity, are transferred, including by issuance, contribution or distribution, if a significant purpose of the transfer is to qualify for the rule in this paragraph (d)(2)(iii), or if the rule is otherwise availed of with a significant purpose of avoiding the purposes of section 951, 951A, or 954(b)(4). A purpose may be a significant purpose even though it is outweighed by other purposes (taken together or separately). See paragraph (d)(9)(iii)(D) (Example 4) of this section for an example that illustrates the application of the rule set forth in this paragraph (d)(2)(iii)(A)(*2*).

(B) *Exception for nontaxed branches.* The rule in paragraph (d)(2)(iii)(A) of this section does not apply to a tested unit that is described in paragraph (d)(2)(i)(C) of this section if the branch described in paragraph (d)(2)(i)(C) of this section does not give rise to a taxable presence under the tax law of the foreign country where the branch is located. See paragraph (d)(9)(iii)(C)(*4*) (Example 4) of this section for an illustration of the application of the rule set forth in this paragraph (d)(2)(iii)(B).

(C) *Effect of combination rule.* If, pursuant to paragraph (d)(2)(iii)(A) of this section, tested units are treated as a single tested unit, then, solely for purposes of paragraph (d) of this section, items of gross income attributable to such tested units, and items of deduction and foreign taxes allocated and apportioned to such gross income, are aggregated for purposes of determining the combined tested unit's tentative net items, and foreign income taxes paid or accrued with respect to such tentative net items.

(3) *Applicable financial statement rules*—(i) *In general.* For purposes of this paragraph (d), the term *applicable financial statement* means a statement or information described in paragraphs (d)(3)(i)(A) through (H) of this section. A statement or information described in one of these paragraphs qualifies as an applicable financial statement only if the statement or information described in all preceding paragraphs is not readily available. For example, the statement or information described in paragraph (d)(3)(i)(C) of this section qualifies as an applicable financial statement only if the statement or information described in paragraphs (d)(3)(i)(A) and (B) of this section is not readily available. For purposes of paragraphs (d)(3)(i)(A) through (H) of this section, the term ''separate-entity'' includes the term ''separate-branch,'' as applicable. For purposes of paragraph (d) of this section, in the case of a tested unit or a transparent interest that is an interest in a pass-through entity or a portion of the activities of a branch, a reference to the applicable financial statement of the tested unit or the transparent interest means the applicable financial statement of the entity or the branch, as applicable.

(A) An audited separate-entity financial statement that is prepared in accordance with U.S. generally accepted accounting principles (''U.S. GAAP'').

(B) An audited separate-entity financial statement that is prepared on the basis of international financial reporting standards (''IFRS'').

(C) An audited separate-entity financial statement that is prepared on the basis of the generally accepted accounting principles of the jurisdiction in which the entity is organized or the activities are located (''local-country GAAP'').

(D) An unaudited separate-entity financial statement that is prepared in accordance with U.S. GAAP.

(E) An unaudited separate-entity financial statement that is prepared on the basis of IFRS.

(F) An unaudited separate-entity financial statement that is prepared on the basis of local-country GAAP.

(G) Separate-entity records used for tax reporting.

(H) Separate-entity records used for internal management controls or regulatory or other similar purposes.

(ii) *Failure to prepare an applicable financial statement.* If an applicable financial statement is not prepared for a tested unit or a transparent interest, the items of gross income, deduction, disregarded payments, and any other items required to apply paragraph (d) of this section that would be properly reflected on an applicable financial statement of the tested unit or transparent interest must be determined. Such items are treated as properly reflected on the applicable financial statement of the tested unit or transparent interest for purposes of applying paragraph (d) of this section.

(iii) *Transparent interests.* If a tested unit of a controlled foreign corporation or an entity an interest in which is a tested unit of a controlled foreign corporation holds a transparent interest, either directly or indirectly through one or more other transparent interests, then, for purposes of paragraph (d) of this section (and subject to the rule of paragraph (d)(2)(iii) of this section), items of the controlled foreign corporation properly reflected on the applicable financial statement of the transparent interest are treated as being properly reflected on the applicable financial statement of the tested unit, as modified under paragraph (d)(1)(iii)(B) of this section. See paragraph (d)(9)(iii)(C)(*6*) (Example 3) of this section for an illustration of the application of the rule set forth in this paragraph (d)(3)(iii).

(iv) *Items not taken into account for financial accounting purposes.* For purposes of this paragraph (d), an item in a CFC inclusion year that is not taken into account in such year for financial accounting purposes, and therefore not property reflected on an applicable financial statement of a tested unit or a transparent interest, is treated as properly reflected on such applicable financial statement to the extent it would have been so reflected if the item were taken into account for financial accounting purposes in such CFC inclusion year.

(v) *Adjustments to items reflected on the applicable financial statement*—(A) *In general.* Appropriate adjustments are made if an item is included or not included on an applicable financial statement, or if a disregarded payment described in paragraph (d)(1)(iii)(B) of this section is made or not made, with a significant purpose of avoiding the purposes of section 951, 951A, 954(b)(4), or paragraph (d) of this section. Adjustments pursuant to this paragraph (d)(3)(v) include attributing all or a portion of the item to one or more tested units or transparent interests in a manner that reflects the substance of the transaction, or segregating all or a portion of the item and treating it as attributable to a separate item of gross income described in paragraph (d)(1)(ii) of this section. The combination rule of paragraph (d)(2)(iii)(A)(*1*) of this section does not apply to an item that is segregated and treated as a separate item of gross income under this paragraph (d)(3)(v). See also § 1.904–4(f)(2)(vi)(E) for rules relating to the determination of the amount of disregarded payments taken into account under paragraph (d)(1)(iii)(B) of this section.

(B) *Factually unrelated items*—(*1*) *Gross income.* Without limiting the scope of a significant avoidance purpose as described in paragraph (d)(3)(v)(A) of this section, gross income generally is treated as included on an applicable financial statement with a significant purpose of avoiding the purposes of

section 951, 951A, 954(b)(4), or paragraph (d) of this section if it is factually unrelated to the other activities of the relevant entity or branch and is subject to tax at a materially different effective rate of foreign tax than the other activities of the tested unit (or entity, an interest in which is a tested unit) to which the item would otherwise be attributable, or is subject to a withholding tax imposed by a foreign country other than the country of residence of the tested unit. For purposes of this paragraph (d)(3)(v)(B)(*1*), an effective rate of foreign tax is materially different than the effective rate of foreign tax on other activities if it differs by at least 10 percentage points.

(*2*) *Deductions.* Without limiting the scope of a significant avoidance purpose as described in paragraph (d)(3)(v)(A) of this section, a deduction generally is treated as included on an applicable financial statement with a significant purpose of avoiding the purposes of section 951, 951A, 954(b)(4), or paragraph (d) of this section if it is not incurred in connection with funding, or in the ordinary course of, the preexisting activities of the relevant entity or branch and is not deductible, in whole or in part, in the country of residence or location of the tested unit (or entity, an interest in which is a tested unit) to which the item would otherwise be attributable.

(4) *Effective rate at which foreign taxes are imposed*—(i) *In general.* For a CFC inclusion year of a controlled foreign corporation, the effective rate of foreign tax with respect to the tentative net items of the controlled foreign corporation is determined separately for each such item. The effective foreign tax rate at which taxes are imposed on a tentative net item is—

(A) The U.S. dollar amount of foreign income taxes paid or accrued with respect to the tentative net item under paragraph (d)(5) of this section; divided by

(B) The U.S. dollar amount of the tentative net item, increased by the amount of foreign income taxes described in paragraph (d)(4)(i)(A) of this section.

(ii) *Undefined value or negative effective foreign tax rate.* If the amount described in paragraph (d)(4)(i)(A) of this section is positive and the amount described in paragraph (d)(4)(i)(B) of this section is zero or negative, the effective rate of foreign tax with respect to the tentative net item is deemed to be greater than 90 percent of the rate that would apply if the income were subject to the maximum rate of tax specified in section 11.

(5) *Foreign income taxes paid or accrued with respect to a tentative net item.* For a CFC inclusion year, the amount of foreign income taxes paid or accrued by a controlled foreign corporation with respect to a tentative net item (as described in paragraph (d)(1)(iv) of this section) for purposes of section 954(b)(4) and this paragraph (d) is the amount of the controlled foreign corporation's current year taxes (as defined in § 1.960–1(b)(4)) that are allocated and apportioned to the related item of gross income under the rules of paragraph (d)(1)(iv) of this section. See paragraphs (d)(9)(iii)(A)(*2*)(*iv*) (Example 1) and (d)(9)(iii)(B)(*2*)(*v*) (Example 2) of this section for illustrations of the application of this paragraph (d)(5).

(6) *Rules regarding the high-tax election*—(i) *Manner*—(A) *In general.* An election is made under this paragraph (d)(6) by the controlling domestic shareholders (as defined in paragraph (d)(8)(iii) of this section) with respect to a controlled foreign corporation for a CFC inclusion year (a *high-tax election*) in accordance with the rules provided in forms or instructions and by—

(*1*) Filing the statement required under paragraph (d)(6)(vi)(A) of this section with a timely filed original federal income tax return, or with an amended federal income tax return for the U.S. shareholder inclusion year of each controlling domestic shareholder in which or with which such CFC inclusion year ends;

(*2*) Providing any notices required under paragraph (d)(6)(vi)(B) of this section;

(*3*) Substantiating, as described in paragraph (d)(6)(vii) of this section, its determination as to whether, with respect to each item of gross income, the requirement set forth in paragraph (d)(1)(i)(B) of this section is satisfied; and

(*4*) Providing any additional information required by applicable administrative pronouncements.

(B) *Election (or revocation) made with an amended income tax return.* In the case of an election (or revocation) made with an amended federal income tax return—

(*1*) The election (or revocation) must be made on an amended federal income tax return duly filed within 24 months of the unextended due date of the original federal income tax return for the U.S. shareholder inclusion year with or within which the CFC inclusion year ends;

(*2*) Each United States shareholder of the controlled foreign corporation as of the end of the controlled foreign corporation's taxable year to which the election relates must file amended federal income tax returns (or timely original income tax returns if a return has not yet been filed) reflecting the effect of such election (or revocation) for the U.S. shareholder's inclusion year with or within which the CFC inclusion year ends as well as for any other taxable year in which the U.S. tax liability of the United States shareholder would be increased by reason of the election (or revocation) (or in the case of a partnership if any item reported by the partnership or any partnership-related item would change as a result of the election (or revocation)) within a single period no greater than six months within the 24-month period described in paragraph (d)(6)(i)(B)(*1*) of this section; and

(*3*) Each United States shareholder of the controlled foreign corporation as of the end of the controlled foreign corporation's taxable year to which the election relates must pay any tax due as a result of such adjustments within a single period no longer than six months within the 24-month period described in paragraph (d)(6)(i)(B)(*1*) of this section;

(C) *Special rules for United States shareholders that are domestic partnerships.* In the case of a United States shareholder that is a domestic partnership, paragraphs (d)(6)(i)(A) and (B) and (d)(6)(iii) of this section are applied by substituting ''Form 1065 (or successor form)'' for ''federal income tax return'' and by substituting ''amended Form 1065 (or successor form) or administrative adjustment request (as described in § 301.6227–1), as applicable,'' for ''amended federal income tax return'', each place that it appears.

(D) *Special rules for United States shareholders that hold an interest in the controlled foreign corporation through a partnership.* A United States shareholder that is a partner in a partnership that is also a United States shareholder in the controlled foreign corporation must generally file an amended return, as required under paragraph (d)(6)(i)(B)(*2*) of this section, and must generally pay any additional tax owed as required under paragraph (d)(6)(i)(B)(*3*) of this section. However, in the case of a United States shareholder that is a partner in a partnership that duly files an administrative adjustment request under paragraph (d)(6)(i)(B)(*1*) or (*2*) of this section, the partner is treated as having satisfied the requirements of paragraphs (d)(6)(i)(B)(*2*) and (*3*) of this section with respect to the interest held through that partnership if:

(*1*) The partnership files an administrative adjustment request within the time described in paragraph (d)(6)(i)(B); and,

(*2*) The partnership and the partners comply with the requirements of section 6227. See §§ 301.6227–1 through 301.6227–3 for rules relating to administrative adjustment requests.

(ii) *Scope.* A high-tax election applies with respect to each item of gross income described in paragraph (d)(1)(ii) of this section of the controlled foreign corporation for the CFC inclusion year and is binding on all United States shareholders of the controlled foreign corporation.

(iii) *Revocation.* A high-tax election may be revoked by the controlling domestic shareholders of the controlled foreign corporation in the same manner as prescribed for an election made on an amended federal income tax return as described in paragraph (d)(6)(i) of this section.

(iv) *Failure to satisfy election requirements.* A high-tax election (or revocation) is valid only if all of the requirements in paragraph (d)(6)(i)(A) of this section, including the requirement to provide notice under paragraph (d)(6)(i)(A)(*2*) of this section, are satisfied.

(v) *Rules applicable to CFC groups*—(A) *In general.* In the case of a controlled foreign corporation that is a member of a CFC group, a high-tax election is made under paragraph (d)(6)(i) of this section, or revoked under paragraph (d)(6)(iii) of this section, with respect to all controlled foreign corporations that are members of the CFC group, and the rules in paragraphs (d)(6)(i) through (iv) of this section apply by reference to the CFC group.

(B) *Determination of the CFC group*—(*1*) *Definition.* Subject to the rules in paragraphs (d)(6)(v)(B)(*2*) and (*3*) of this section, the term *CFC group* means an affiliated group as defined in section 1504(a) without regard to section 1504(b)(1) through (6), except that section 1504(a) is applied by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears, and section 1504(a)(2)(A) is applied by substituting ''or'' for ''and.'' For purposes of this paragraph (d)(6)(v)(B), stock ownership is determined by applying the constructive ownership rules of section 318(a), other than section 318(a)(3)(A) and (B), by applying section 318(a)(4) only to options (as defined in § 1.1504–4(d)) that are reasonably certain to be exercised as described in § 1.1504–4(g), and by substituting in section 318(a)(2)(C) ''5 percent'' for ''50 percent.''

(*2*) *Member of a CFC group.* The determination of whether a controlled foreign corporation is included in a CFC group is made as of the close of the CFC inclusion year of the controlled foreign corporation that ends with or within the taxable years of the controlling domestic shareholders. One or more controlled foreign corporations are members of a CFC group if the requirements of paragraph (d)(6)(v)(B)(*1*) of this section are satisfied as of the end of the CFC inclusion year of at least one of the controlled foreign corporations, even if the requirements are not satisfied as of the end of the CFC inclusion year of all controlled foreign corporations. If the controlling domestic shareholders do not have the same taxable year, the determination of whether a controlled foreign corporation is a member of a CFC group is made with respect to the CFC inclusion year that ends with or within the taxable year of the majority of the controlling domestic shareholders (determined by voting power) or, if no such majority taxable year exists, the calendar year. See paragraph (d)(9)(iii)(E) (Example 5) of this section for an example that illustrates the application of the rule set forth in this paragraph (d)(6)(v)(B)(*2*).

(*3*) *Controlled foreign corporations included in only one CFC group.* A controlled foreign corporation cannot be a member of more than one CFC group. If a controlled foreign corporation would be a member of more than one CFC group under paragraph (d)(6)(v)(E)(*2*) of this section, then ownership of stock of the controlled foreign corporation is determined by applying paragraph (d)(6)(v)(B) of this section without regard to section 1504(a)(2)(B) or, if applicable, by reference to the ownership existing as of the end of the first CFC inclusion year of a controlled foreign corporation that would cause a CFC group to exist.

(vi) *Rules regarding the statement and the notice requirements.* The following rules apply for purposes of the statement and notice requirements in this paragraph (d)(6).

(A) *Statement required to be filed with a tax return.* The statement required by paragraph (d)(6)(i)(A)(*1*) of this section must set forth the name, country of organization, and U.S. employer identification number (if applicable) of the foreign corporation, the name, address, stock interests, and U.S. employer identification number of each controlling domestic shareholder (or, if applicable, the agent described in § 1.1502–77(a) with respect to the consolidated group of which the controlling domestic shareholder is a member) approving the action, and the names, addresses, U.S. employer identification numbers, and stock interests of all other domestic shareholders notified of the action taken. Such statement must describe the nature of the action taken on behalf of the foreign corporation and the taxable year for which made, and identify a designated shareholder who retains a jointly executed consent confirming that such action has been approved by all of the controlling domestic shareholders and containing the signature of a principal officer of each such shareholder (or the agent described in § 1.1502–77(a), if applicable).

(B) *Notice.* On or before the filing date described in paragraph (d)(6)(i)(A)(*1*) of this section (or paragraph (d)(6)(i)(B)(*1*) of this section if filing an amended income tax return), the controlling domestic shareholders must provide written notice of the election made to all other persons known by them to be domestic shareholders who own (within the meaning of section 958(a)) stock of the foreign corporation. Such notice must set forth the name, country of organization and U.S. employer identification number (if applicable) of the foreign corporation, and the names, addresses, and stock interests of the controlling domestic shareholders. Such notice must describe the nature of the action taken on behalf of the foreign corporation and the taxable year for which made, and identify a designated shareholder who retains a jointly executed consent confirming that such action has been approved by all of the controlling domestic shareholders and containing the signature of a principal officer of each such shareholder (or the agent described in § 1.1502–77(a), if applicable).

(vii) *Substantiation requirements*—(A) *In general.* If an election under section 954(b)(4) and paragraph (d)(6) of this section is in effect for a controlled foreign corporation for a CFC inclusion year, then each United States shareholder of that controlled foreign corporation with respect to the CFC inclusion year is required to maintain sufficient documentation (as described in paragraph (d)(6)(vii)(B) of this section) to establish that the taxpayer reasonably concluded that each item of gross income of the controlled foreign corporation satisfied (or did not satisfy) the requirement set forth in paragraph (d)(1)(i)(B) of this section. The substantiating documents must be in existence as of the filing date of the income tax return described in paragraph (d)(6)(i)(A) of this section (or paragraph (d)(6)(i)(B)(*1*) of this section if filing an amended income tax return) and must be provided to the

Commissioner within 30 days of being requested by the Commissioner (unless otherwise agreed between the Commissioner and the taxpayer).

(B) *Sufficient documentation.* For purposes of paragraph (d)(6)(vii)(A) of this section, the term sufficient documentation means documentation that accurately and completely describes the computations related to the high-tax exception under section 954(b)(4) and this paragraph (d)(6) with respect to each item of gross income of the controlled foreign corporation. Sufficient documentation must include the information described in paragraphs (d)(6)(vii)(B)(*1*) through (*5*) of this section.

(*1*) A description of each of the tested units and transparent interests of the controlled foreign corporation, including a detailed explanation of any tested units that are combined either under the same-country combination rule, or the de minimis combination rule.

(*2*) A detailed list of the items of gross income and deductions attributable to each tested unit and the applicable financial statement of each tested unit and transparent interest.

(*3*) A list of disregarded payments taken into account under paragraph (d)(1)(iii)(B) of this section for purposes of determining the gross income attributable to a tested unit.

(*4*) A list of current year foreign taxes paid or accrued with respect to each item of gross income, as described in paragraph (d)(5) of this section.

(*5*) The effective tax rate calculation for each item of gross income attributable to a tested unit, as described in paragraph (d)(4)(i) of this section.

(7) *Anti-abuse rule.* Appropriate adjustments are made if an applicable instrument is issued or acquired, or a reverse hybrid is formed or availed of, with a significant purpose of avoiding the purposes of section 951, 951A, 954(b)(4), or paragraph (d) of this section. Adjustments pursuant to this paragraph (d)(7) include adjustments to foreign income taxes paid or accrued with respect to a tentative net item as determined under paragraph (d)(5) of this section, and adjustments to the tentative net item as determined under paragraph (d)(1)(iv) of this section. See paragraph (d)(9)(iii)(F) (Example 6) of this section for an example that illustrates the application of the anti-abuse rule set forth in this paragraph (d)(7).

(8) *Definitions.* The following definitions apply for purposes of this paragraph (d).

(i) *Applicable instrument.* The term *applicable instrument* means an instrument or arrangement described in paragraph (d)(8)(i)(A) or (B) of this section. For purposes of this paragraph (d)(8)(i), an instrument or arrangement includes a 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.

(A) *Deductions to issuer.* An instrument or arrangement is described in this paragraph (d)(8)(i)(A) if, for federal income tax purposes, the instrument or arrangement gives rise to deductions to the issuer but, under the tax law of a foreign country, does not give rise to deductions (or gives rise to deductions that are disallowed), in whole or in part, to the issuer.

(B) *Income to holder.* An instrument or arrangement is described in this paragraph (d)(8)(i)(B) if, under the tax law of a foreign country, the instrument or arrangement gives rise to income included in the holder's income but, for federal income tax purposes, does not give rise to income to the holder.

(ii) *CFC inclusion year.* The term *CFC inclusion year* has the meaning provided in § 1.951A–1(f)(1).

(iii) *Controlling domestic shareholders.* The term *controlling domestic shareholders* of a controlled foreign corporation means the United States shareholders (as defined in section 951(b) or 953(c)) who, in the aggregate, own (within the meaning of section 958(a)) more than 50 percent of the total combined voting power of all classes of the stock of such foreign corporation entitled to vote and who undertake to act on its behalf. If United States shareholders of the controlled foreign corporation do not, in the aggregate, own (within the meaning of section 958(a)) more than 50 percent of the total combined voting power of all classes of the stock of such foreign corporation entitled to vote, the controlling United States shareholders of the controlled foreign corporation are all those United States shareholders who own (within the meaning of section 958(a)) stock of such corporation.

(iv) *Disregarded entity.* The term *disregarded entity* means an entity that is disregarded as an entity separate from its owner, as described in § 301.7701–2(c)(2)(i) of this chapter.

(v) *Disregarded payment.* The term *disregarded payment* means any amount described in paragraph (d)(8)(v)(A) or (B) of this section.

(A) *Transfers to or from a disregarded entity.* An amount described in this paragraph (d)(8)(iv)(A) is any amount that is transferred to or from a disregarded entity in connection with a transaction that is disregarded for federal income tax purposes and that is properly reflected on the applicable financial statement of a tested unit or a transparent interest.

(B) *Other disregarded amounts.* An amount described in this paragraph (d)(8)(iv)(B) is any amount properly reflected on the applicable financial statement of a tested unit or transparent interest that would constitute an item of income, gain, deduction, or loss (other than an amount described in paragraph (d)(8)(iv)(A) of this section), a distribution to or contribution from the owner of the tested unit, transparent interest or entity, or a payment in exchange for property if the transaction to which the amount is attributable were regarded for federal income tax purposes.

(vi) *Indirectly.* The term *indirectly,* when used in reference to ownership, means ownership through one or more pass-through entities.

(vii) *Pass-through entity.* The term *pass-through entity* means a partnership, a disregarded entity, or any other person (whether domestic or foreign) other than a corporation to the extent that income, gain, deduction, or loss of the person is taken into account in determining the income or loss of a controlled foreign corporation that owns, directly or indirectly, interests in the person.

(viii) *Reverse hybrid.* The term *reverse hybrid* has the meaning provided in § 1.909–2(b)(1)(iv).

(ix) *Transparent interest.* The term *transparent interest* means an interest in a pass-through entity (or the activities of a branch) that is not a tested unit.

(x) *U.S. shareholder inclusion year.* The term *U.S. shareholder inclusion year* has the meaning provided in § 1.951A–1(f)(7).

(9) *Examples*—(i) *Scope.* This paragraph (d)(9) provides presumed facts and examples illustrating the application of the rules in paragraph (d) of this section.

(ii) *Presumed facts.* For purposes of the examples in paragraph (d)(9)(iii) of this section, except as otherwise stated, the following facts are presumed:

(A) USP is a domestic corporation.

(B) CFC1X and CFC2X are controlled foreign corporations organized in, and tax residents of, Country X.

(C) FDEX is a disregarded entity that is a tax resident of Country X.

(D) FDE1Y and FDE2Y are disregarded entities that are tax residents of Country Y.

(E) FPSY is an entity that is organized in, and a tax resident of, Country Y but is classified as a partnership for federal income tax purposes.

(F) CFC1X, CFC2X, and the interests in FDEX, FDE1Y, FDE2Y, and FPSY are tested units (the CFC1X tested unit, CFC2X tested unit, FDEX tested unit, FDE1Y tested unit, FDE2Y tested unit, and FPSY tested unit, respectively).

(G) CFC1X, CFC2X, FDEX, FDE1Y and FDE2Y conduct activities in the foreign country in which they are tax resident, and properly reflect items of income, gain, deduction, and loss on separate applicable financial statements.

(H) All entities have calendar taxable years (for both federal income tax purposes and for purposes of the relevant foreign country) and use the Euro (€) as their functional currency. At all relevant times €1 = $1.

(I) The maximum rate of tax specified in section 11 for the CFC inclusion year is 21 percent.

(J) Neither CFC1X nor CFC2X directly or indirectly earns income described in section 952(b), or has any items of income, gain, deduction, or loss. In addition, no tested unit of CFC1X or CFC2X makes or receives disregarded payments.

(K) No tested unit is eligible for the de minimis combination rule of paragraph (d)(2)(iii)(A)(*2*) of this section.

(L) An election made under section 954(b)(4) and paragraph (d)(6) of this section is effective with respect to CFC1X and CFC2X, as applicable, for the CFC inclusion year.

(iii) *Examples*—(A) *Example 1: Effect of disregarded interest*—(*1*) *Facts*—(*i*) *Ownership.* USP owns all of the stock of CFC1X, and CFC1X owns all of the interests of FDE1Y.

(*ii*) *Gross income and deductions (other than foreign income taxes).* In Year 1, CFC1X generates €100x of gross income from services performed for unrelated parties and properly reflects that gross income on the applicable financial statement of FDE1Y. The €100x of services income is general category income under § 1.904–4(d). In Year 1, FDE1Y accrues and pays €20x of interest to CFC1X that is deductible for Country Y tax purposes but is disregarded for federal income tax purposes. The €20x of disregarded interest income received by CFC1X from FDE1Y is properly reflected on CFC1X's applicable financial statement, and the €20x of disregarded interest expense paid from FDE1Y to CFC1X is properly reflected on FDE1Y's applicable financial statement.

(*iii*) *Foreign income taxes.* Country X imposes no tax on net income, and Country Y imposes a 25% tax on net income. For Country Y tax purposes, FDE1Y (which is not disregarded under Country Y tax law) has €80x of taxable income (€100x of services income from the unrelated parties, less a €20x deduction for the interest paid to CFC1X). Accordingly, FDE1Y incurs a Country Y income tax liability of €20x ((€100x − €20x) × 25%) with respect to Year 1, the U.S. dollar amount of which is $20x.

(*2*) *Analysis*—(*i*) *Items of gross income.* Under paragraph (d)(1)(ii) of this section, CFC1X has €100x of general category gross income that is divided into two general gross items, one item that is attributable to the CFC1X tested unit and one item that is attributable to the FDE1Y tested unit under paragraph (d)(1)(iii) of this section. Without regard to the €20x interest payment from FDE1Y to CFC1X, the gross income attributable to the CFC1X tested unit would be €0 (that is, the €20x of interest income properly reflected on the applicable financial statement of CFC1X would be reduced by €20x, the amount attributable to the payment that is disregarded for federal income tax purposes). Similarly, without regard to the €20x interest payment from FDE1Y to CFC1X, the gross income attributable to the FDE1Y tested unit would be €100x (that is, the €100x of services income properly reflected on the applicable financial statement of FDE1Y, unreduced by the €20x disregarded payment made from FDE1Y to CFC1X). However, under paragraph (d)(1)(iii)(B) of this section, the gross income attributable to each of the CFC1X tested unit and the FDE1Y tested unit is adjusted by €20x, the amount of the disregarded interest payment from FDE1Y to CFC1X that is deductible for Country Y tax purposes. Accordingly, the item of gross income attributable to the CFC1X tested unit (the ''CFC1X general gross item'') is €20x (€0 + €20x) and the item of gross income attributable to the FDE1Y tested unit (the ''FDE1Y general gross item'') is €80x (€100x − €20x), both of which are general gross items under paragraph (d)(1)(ii)(A) of this section.

(*ii*) *Foreign income tax deduction.* Under paragraph (d)(1)(iv) of this section, CFC1X's tentative net items are computed by treating the CFC1X general gross item and the FDE1Y general gross item each as in a separate income group (the ''CFC1X income group'' and the ''FDE1Y income group'') and by allocating and apportioning CFC1X's deductions for current year taxes between the income groups under the principles of § 1.960–1(d)(3) (CFC1X has no other deductions to allocate and apportion). Under paragraph (d)(1)(iv)(A) of this section, the €20x deduction for Country Y income taxes is allocated and apportioned solely to the FDE1Y income group (the ''FDE1Y group tax''). None of the Country Y taxes are allocated and apportioned to the CFC1X income group under paragraph (d)(1)(iv) of this section and the principles of § 1.904–6(b)(2), because none of the Country Y tax is imposed solely by reason of the disregarded interest payment.

(*iii*) *Tentative net items.* Under paragraph (d)(1)(iv)(A) of this section, the tentative net item with respect to the FDE1Y income group (the ''FDE1Y tentative net item'') is €60x (the FDE1Y general gross item of €80x, less the €20x deduction for the FDE1Y group tax). The tentative net item with respect to the CFC1X income group (the ''CFC1X tentative net item'') is €20x.

(*iv*) *Foreign income taxes paid or accrued with respect to a tentative net item.* Under paragraph (d)(5) of this section, the foreign income taxes paid or accrued with respect to a tentative net item is the U.S. dollar amount of the current year taxes that are allocated and apportioned to the item of gross income under the rules of paragraph (d)(1)(iv) of this section. Therefore, the foreign income taxes paid or accrued with respect to the FDE1Y tentative net item is $20x, the U.S. dollar amount of the FDE1Y group tax. The foreign income taxes paid or accrued with respect to the CFC1X tentative net item is $0, the U.S. dollar amount of the foreign tax allocated and apportioned to the CFC1X general gross item under paragraph (d)(1)(iv) of this section.

(*v*) *Effective foreign tax rate.* The effective foreign tax rate is determined under paragraph (d)(4) of this section by dividing the U.S. dollar amount of foreign income taxes paid or accrued with respect to each respective tentative net item by the U.S. dollar amount of the tentative net item increased by the U.S. dollar amount of the relevant foreign income taxes. Therefore, the effective foreign tax rate with respect to the FDEY1 tentative net item is 25%, calculated by dividing $20x (the U.S. dollar amount of the foreign income taxes paid or accrued with respect to the FDE1Y tentative net item under paragraph (d)(5) of this section) by $80x (the sum of $60x, the U.S. dollar amount of the FDE1Y tentative net item, and $20x, the U.S. dollar amount of the foreign income taxes paid or accrued with respect to the FDE1Y tentative net item). The CFC1X tentative net item is not subject to any foreign income tax, so is subject to an effective foreign tax rate of 0%, calculated as $0 (the U.S. dollar amount of the foreign income taxes paid

or accrued with respect to the CFC1X tentative net item), divided by $20x (the U.S. dollar amount of the FDE1Y tentative net item).

(*vi*) *Qualification for the high-tax exception.* The FDE1Y tentative net item is subject to an effective foreign tax rate (25%) that is greater than 18.9% (90% of the 21% maximum rate of tax specified in section 11). Therefore, the requirement of paragraph (d)(1)(i)(B) of this section is satisfied, and the FDEY1 general gross item qualifies under paragraph (d)(1)(i) of this section for the high-tax exception of section 954(b)(4) and, under paragraphs (a)(2) and (a)(6) of this section, is excluded from the gross foreign base company income and gross insurance income, respectively, of CFC1X; in addition, the FDE1Y general gross item is excluded from gross tested income under section 951A(c)(2)(A)(i)(III) and § 1.951A–2(c)(1)(iii). The CFC1X tentative net item is subject to an effective foreign tax rate of 0%. Therefore, the CFC1X tentative net item does not satisfy the requirement of paragraph (d)(1)(i)(B) of this section, and the CFC1X general gross item does not qualify under paragraph (d)(1)(i) of this section for the high-tax exception of section 954(b)(4) and, under paragraphs (a)(2) and (a)(6) of this section, is not excluded from the gross foreign base company income and gross insurance income of CFC1X; in addition, the CFC1X general gross item is not excluded from gross tested income under section 951A(c)(2)(A)(i)(III) and § 1.951A–2(c)(1)(iii).

(B) *Example 2: Effect of disregarded payment for services*—(*1*) *Facts*—(*i*) *Ownership.* USP owns all of the stock of CFC1X. CFC1X owns all of the interests of FDE1Y. FDE1Y is a tax resident of Country Y, but is treated as fiscally transparent for Country X tax purposes, so that FDE1Y is subject to tax in Country Y and that CFC1X is subject to tax in Country X with respect to FDE1Y's activities.

(*ii*) *Gross income, deductions (other than for foreign income taxes), and disregarded payments.* In Year 1, CFC1X generates €1,000x of gross income from services to unrelated parties that would be gross tested income or gross foreign base company income without regard to paragraph (d)(1) of this section and that is properly reflected on the applicable financial statement of CFC1X. The €1,000x of gross income for services is general category income under § 1.904–4(d). In Year 1, CFC1X accrues and pays €480x of deductible expenses to unrelated parties, €280x of which is properly reflected on CFC1X's applicable financial statement and is definitely related solely to CFC1X's gross income reflected on its applicable financial statement, and €200x of which is properly reflected on FDE1Y's applicable financial statement and is definitely related solely to FDE1Y's gross income reflected on its applicable financial statement. Country X law does not provide rules for the allocation or apportionment of these deductions to particular items of gross income. In Year 1, CFC1X also accrues and pays €325x to FDE1Y for support services performed by FDE1Y in Country Y; the payment is disregarded for federal income tax purposes. The €325x of disregarded support services income received by FDE1Y from CFC1X is properly reflected on FDE1Y's applicable financial statement, and the €325x of disregarded support services expense paid from CFC1X to FDE1Y is properly reflected on CFC1X's applicable financial statement.

(*iii*) *Foreign income taxes.* Country X imposes a 10% tax on net income, and Country Y imposes a 16% tax on net income. Country X allows a deduction, but not a credit, for foreign income taxes paid or accrued to another country (such as Country Y). For Country Y tax purposes, FDE1Y (which is not disregarded under Country Y tax law) has €125x of taxable income (€325x of support services income received from CFC1X, less a €200x deduction for expenses paid to unrelated parties). Accordingly, FDE1Y incurs a Country Y income tax liability with respect to Year 1 of €20x (€125x × 16%), the U.S. dollar amount of which is $20x. For Country X tax purposes, CFC1X has €500x of taxable income (€1,000x of gross income for services, less a €480x deduction for expenses paid to unrelated parties by CFC1X and FDE1Y and a €20x deduction for Country Y taxes; Country X does not allow CFC1X a deduction for the €325x paid to FDE1Y for support services because the €325x payment is disregarded for Country X tax purposes). Accordingly, CFC1X incurs a Country X income tax liability with respect to Year 1 of €50x (€500x × 10%), the U.S. dollar amount of which is $50x.

(*2*) *Analysis*—(*i*) *Items of gross income.* Under paragraph (d)(1)(ii) of this section, CFC1X has €1,000x of general category gross income that is divided into two general gross items, one item that is attributable to the CFC1X tested unit and one item that is attributable to the FDE1Y tested unit under paragraph (d)(1)(iii) of this section. Without regard to the €325x payment for support services from CFC1X to FDE1Y, the gross income attributable to the CFC1X tested unit would be €1,000x (that is, the €1,000x of gross income from services properly reflected on the applicable financial statement of CFC1X, unreduced by the €325x payment from CFC1X to FDE1Y that is disregarded for federal income tax purposes). Similarly, without regard to the €325x payment for support services from CFC1X to FDE1Y, the gross income attributable to the FDE1Y tested unit would be €0 (that is, the €325x of services income properly reflected on the applicable financial statement of FDE1Y, reduced by the €325x disregarded payment). However, under paragraph (d)(1)(iii)(B) of this section, the gross income attributable to each of the CFCX1 tested unit and the FDE1Y tested unit is adjusted by €325x, the amount of the disregarded services payment from CFC1X to FDE1Y. Accordingly, the item of gross income attributable to the CFC1X tested unit (the ''CFC1X general gross item'') is €675x (€1,000x − €325x), and the item of gross income attributable to the FDE1Y tested unit (the ''FDE1Y general gross item'') is €325x (€0 + €325x), both of which are general gross items under paragraph (d)(1)(ii)(A) of this section.

(*ii*) *Deductions (other than for foreign income taxes).* Under paragraph (d)(1)(iv) of this section, CFC1X's tentative net items are computed by applying the principles of § 1.960–1(d)(3), treating the CFC1X general gross item and the FDE1Y general gross item each as in a separate income group (the ''CFC1X income group'' and the ''FDE1Y income group'') and by allocating and apportioning CFC1X's deductions among the income groups. Under paragraph (d)(1)(iv)(B) of this section, the €280x of deductible expenses properly reflected on the applicable financial statement of the CFC1X tested unit are allocated and apportioned to the CFC1X income group, and the €200x of deductible expenses properly reflected on the applicable financial statement of the FDE1Y tested unit are allocated and apportioned to the FDE1Y income group.

(*iii*) *Foreign income tax deduction.* CFC1X accrues foreign income tax in Year 1 of €70x (€50x imposed by Country X and €20x imposed by Country Y). Under paragraph (d)(1)(iv)(A) of this section, the €70x of foreign income tax is allocated and apportioned under the principles of § 1.960–1(d)(3)(ii) (or under the principles of § 1.904–6(b)(2) in the case of tax imposed solely by reason of a disregarded payment that gives rise to an adjustment under paragraph (d)(1)(iii)(B) of this section) to the FDE1Y income group and the CFC1X income group. The Country Y tax of

€20x is imposed solely by reason of FDE1Y's receipt of a €325x disregarded payment. As a result, the €20x of Country Y tax is allocated and apportioned to the FDE1Y income group under the principles of § 1.904–6(b)(2). If Country X had allowed a deduction for the disregarded payment from CFC1X to FDE1Y and not otherwise imposed tax on CFC1X with respect to income of FDE1Y, the foreign tax imposed by Country X would relate only to the CFC1X income group, and no portion of it would be allocated and apportioned to the FDE1Y income group because the FDE1Y income would not be included in the Country X tax base. However, because gross income subject to tax in Country X corresponds to gross income that for federal income tax purposes is attributable to both the FDE1Y income group and the CFC1X income group, the €50x of foreign income tax imposed by Country X is allocated to both the FDE1Y income group and the CFC1X income group and must be apportioned between the two income groups under § 1.861–20(e). Because Country X does not provide specific rules for the allocation or apportionment of the €500x of deductible expenses, § 1.861–20(e) applies the principles of the section 861 regulations to determine the foreign law net income subject to Country X tax for purposes of apportioning the €50x of Country X tax between the income groups. CFC1X has €1,000x of gross income and €500x of deductible expenses under the tax laws of Country X, resulting in €500x of net foreign law income. Of the €1,000x of foreign law gross income, €325x corresponds to the gross income in the FDE1Y income group, and €675x corresponds to the gross income in the CFC1X income group. Applying federal income tax principles to allocate and apportion the foreign law deductions to foreign law gross income, €220x of the €500x foreign law deductions is allocated and apportioned to the FDE1Y income group and €280x is allocated and apportioned to the CFC1X income group. Of the total €500x of net foreign law income, €105x (€325x Country X gross income corresponding to the FDE1Y income group, less €220x allocable Country X expenses) corresponds to the FDE1Y income group and €395x (€675x Country X gross income corresponding to the CFC1X income group, less €280x allocable Country X expenses) corresponds to the CFC1X income group. Therefore, €10.5x (€50x × €105x/€500x) of Country X tax is allocated and apportioned to the FDE1Y income group, and €39.5x (€50x × €395x/€500x) is allocated and apportioned to the CFC1X income group. In total, €30.5x of foreign income tax (€10.5x of Country X tax and €20x of Country Y tax) is allocated and apportioned to the FDE1Y income group (the ''FDE1Y group tax'') and €39.5x of foreign income tax (all of which is Country X tax) is allocated and apportioned to the CFC1X income group (the ''CFC1X group tax'').

(*iv*) *Tentative net items.* Under paragraphs (d)(1)(iv)(A) and (B) of this section, the tentative net item in the FDE1Y income group (the ''FDE1Y tentative net item'') is €94.5x (the general gross item of €325x, less the allocated and apportioned deductions of €230.5x (the sum of deductions (other than for foreign income tax) of €200x and the FDE1Y group taxes of €30.5x)). The tentative net item in the CFC1X income group (the ''CFC1X tentative net item'') is €355.5x (the general gross item of €675x, less the allocated and apportioned deductions of €319.5x (the sum of deductions (other than for foreign income tax) of €280x and the CFC1X group tax of €39.5x)).

(*v*) *Foreign income taxes paid or accrued with respect to a tentative net item.* Under paragraph (d)(5) of this section, the foreign income taxes paid or accrued with respect to a tentative net item is the U.S. dollar amount of the current year taxes that are allocated and apportioned to the item of gross income under the rules of paragraph (d)(1)(iv) of this section. Therefore, the foreign income taxes paid or accrued with respect to the FDE1Y tentative net item is $30.5x, the U.S. dollar amount of the FDE1Y group tax. The foreign income tax paid or accrued with respect to the CFC1X tentative net item is $39.5x, the U.S. dollar amount of the CFC1X group tax.

(*vi*) *Effective foreign tax rate.* The effective foreign tax rate is determined under paragraph (d)(4) of this section by dividing the U.S. dollar amount of foreign income taxes with respect to each respective tentative net item by the U.S. dollar amount of the tentative net item increased by the U.S. dollar amount of the relevant foreign income taxes. Therefore, the effective foreign tax rate with respect to the FDE1Y tentative net item is 24.4%, calculated by dividing $30.5x (the U.S. dollar amount of the foreign income taxes paid or accrued with respect to the FDE1Y tentative net item under paragraph (d)(5)) by $125x (the sum of $94.5x, the U.S. dollar amount of the FDE1Y tentative net item, and $30.5x, the U.S. dollar amount of the foreign income taxes paid or accrued with respect to the FDE1Y tentative net item). The effective foreign tax rate with respect to the CFC1X tentative net item is 10%, calculated by dividing $39.5x (the U.S. dollar amount of the CFC1X group tax) by $395x (the sum of $355.5x, the U.S. dollar amount of the CFC1X tentative net item and $39.5x, the U.S. dollar amount of the foreign income tax paid or accrued with respect to the CFC1X tentative net item).

(*vii*) *Qualification for the high-tax exception.* The FDE1Y tentative net item is subject to an effective foreign tax rate (24.4%) that is greater than 18.9% (90% of the maximum rate of tax specified in section 11). Therefore, the requirement of paragraph (d)(1)(i)(B) of this section is satisfied, and the FDE1Y general gross item qualifies for the high-tax exception of section 954(b)(4) and, under paragraphs (a)(2) and (a)(6) of this section, is excluded from the gross foreign base company income and the gross insurance income, respectively, of CFC1X; in addition, the FDE1Y general gross item is excluded from gross tested income under section 951A(c)(2)(A)(i)(III) and § 1.951A–2(c)(1)(iii). The CFC1X tentative net item is subject to an effective foreign tax rate (10%) that is not greater than 18.9%. Therefore, the CFC1X general gross item does not satisfy the requirement of paragraph (d)(1)(i)(B) of this section, does not qualify for the high-tax exception of section 954(b)(4) and, under paragraphs (a)(2) and (a)(6) of this section, is not excluded from the gross foreign base company income and gross insurance income of CFC1X; in addition, the CFC1X general gross item is not excluded from gross tested income under section 951A(c)(2)(A)(i)(III) and § 1.951A–2(c)(1)(iii).

(C) *Example 3: Application of tested unit rules*—(*1*) *Facts*—(*i*) *Ownership.* USP owns all of the stock of CFC1X. CFC1X directly owns all of the interests of FDEX and FDE1Y. In addition, CFC1X directly carries on activities in Country Y that constitute a branch (as described in § 1.267A–5(a)(2)) and that give rise to a taxable presence under Country Y tax law and Country X tax law (such branch, ''FBY'').

(*ii*) *Items reflected on applicable financial statement.* For the CFC inclusion year, CFC1X has a €20x item of gross income (Item A), which is properly reflected on the applicable financial statement of FBY, and a €30x item of gross income (Item B), which is properly reflected on the applicable financial statement of FDEX.

(*2*) *Analysis*—(*i*) *Identifying the tested units of CFC1X.* Without regard to the combination rule of paragraph (d)(2)(iii) of this section, CFC1X, CFC1X's interest in FDEX, CFC1X's interest in FDE1Y,

and FBY would each be a tested unit of CFC1X. *See* paragraph (d)(2)(i) of this section. Pursuant to the combination rule, however, the FDE1Y tested unit is combined with the FBY tested unit and treated as a single tested unit because FDE1Y is a tax resident of Country Y, the same country in which FBY is located (the ''Country Y tested unit''). *See* paragraph (d)(2)(iii)(A)(*1*) of this section. The CFC1X tested unit (without regard to any items attributable to the FDEX, FDE1Y, or FBY tested units) is also combined with the FDEX tested unit and treated as a single tested unit because CFC1X and FDEX are both tax residents of County X (the ''Country X tested unit''). *See* paragraph (d)(2)(iii)(A)(*1*) of this section.

(*ii*) *Computing the items of CFC1X.* Under paragraph (d)(1)(ii) of this section, an item of gross income is determined with respect to each of the Country Y tested unit and the Country X tested unit. To determine the item of gross income of each tested unit, the gross income that is attributable to the tested unit is determined under paragraph (d)(1)(iii) of this section. Under paragraph (d)(1)(iii)(A) of this section, only Item A is attributable to the Country Y tested unit, and only Item B is attributable to the Country X tested unit. Item A is not attributable to the Country X tested unit because it is not reflected on the applicable financial statement of the CFC1X tested unit or the FDEX tested unit, and an item of gross income is only attributable to one tested unit. *See* paragraph (d)(1)(iii)(A) of this section.

(*3*) *Alternative facts—branch does not give rise to a taxable presence in country where located*—(*i*) *Facts.* The facts are the same as in paragraph (d)(9)(iii)(C)(*1*) of this section (the original facts in this *Example 3*), except that FBY does not give rise to a taxable presence under Country Y tax law; moreover, Country X tax law does not provide an exclusion, exemption, or other similar relief with respect to income attributable to FBY.

(*ii*) *Analysis.* FBY is not a tested unit but is a transparent interest. *See* paragraphs (d)(2)(i)(C) and (d)(8)(ix) of this section. CFC1X has a tested unit in Country X that includes the CFC1X tested unit (without regard to any items related to the interest in FDEX or FDE1Y, but that includes FBY since it is a transparent interest and not a tested unit) and the interest in FDEX. *See* paragraph (d)(2)(iii) of this section. CFC1X has another tested unit in Country Y, the interest in FDE1Y.

(*4*) *Alternative facts—branch is a tested unit but is not combined*—(*i*) *Facts.* The facts are the same as in paragraph (d)(9)(iii)(C)(*1*) of this section (the original facts in this *Example 3*), except that FBY does not give rise to a taxable presence under Country Y tax law but Country X tax law provides an exclusion, exemption, or other similar relief (such as a preferential rate) with respect to income attributable to FBY.

(*ii*) *Analysis.* FBY is a tested unit. *See* paragraph (d)(2)(i)(C) of this section. CFC1X has two tested units in Country Y, the interest in FDE1Y and FBY. The interest in FDE1Y and FBY tested units are not combined because FBY does not give rise to a taxable presence under the tax law of Country Y. *See* paragraph (d)(2)(iii)(B) of this section. CFC1X also has a tested unit in Country X that includes the activities of CFC1X (without regard to any items related to the interest in FDEX, the interest in FDE1Y, or FBY) and the interest in FDEX.

(*5*) *Alternative facts—split ownership of tested unit*—(*i*) *Facts.* The facts are the same as in paragraph (d)(9)(iii)(C)(*1*) of this section (the original facts in this *Example 3*), except that USP also owns CFC2X, CFC1X does not own FDE1Y, and CFC1X and CFC2X own 60% and 40%, respectively, of the interests of FPSY.

(*ii*) *Analysis for CFC1X.* Under paragraph (d)(2)(iii)(A)(*1*) of this section, FBY and CFC1X's 60% interest in FPSY are combined and treated as a single tested unit of CFC1X (''CFC1X's Country Y tested unit''), and CFC1X's interest in FDEX and its other activities are combined and treated as a single tested unit of CFC1X (''CFC1X's Country X tested unit''). CFC1X's Country Y tested unit is attributed any item of CFC1X that is derived through its interest in FPSY to the extent the item is properly reflected on the applicable financial statement of FPSY. *See* paragraph (d)(1)(iii)(A) of this section.

(*iii*) *Analysis for CFC2X.* Under paragraphs (d)(2)(i)(A) and (d)(2)(i)(B)(*1*) of this section, CFC2X and CFC2X's 40% interest in FPSY are tested units of CFC2X. CFC2X's interest in FPSY is attributed any item of CFC2X that is derived through FPSY to the extent that it is properly reflected on the applicable financial statement of FPSY. *See* paragraph (d)(1)(iii)(A) of this section.

(*iv*) *Analysis for not combining CFC1X and CFC2X tested units.* None of the tested units of CFC1X are combined with the tested units of CFC2X under paragraph (d)(2)(iii)(A)(*1*) of this section because they are tested units of different controlled foreign corporations, and the combination rule only combines tested units of the same controlled foreign corporation.

(*6*) *Alternative facts—split ownership of transparent interest*—(*i*) *Facts.* The facts are the same as in paragraph (d)(9)(iii)(C)(*1*) of this section (the original facts in this *Example 3*), except that USP also owns CFC2X, CFC1X does not own FDE1Y, and CFC1X and CFC2X own 60% and 40%, respectively, of the interests in FPSY, but FPSY is not a tax resident of any foreign country and is fiscally transparent for Country X tax law purposes.

(*ii*) *Analysis for CFC1X.* CFC1X's interest in FPSY is not a tested unit but is a transparent interest. *See* paragraphs (d)(2)(i)(B) and (d)(8)(ix) of this section. Under paragraph (d)(3)(iii) of this section, any item of CFC1X that is derived through its interest in FPSY and is properly reflected on the applicable financial statement of FPSY is treated as properly reflected on the applicable financial statement of CFC1X.

(*iii*) *Analysis for CFC2X.* CFC2X's interest in FPSY is not a tested unit but is a transparent interest. *See* paragraphs (d)(2)(i)(B) and (d)(8)(ix) of this section. Under paragraph (d)(3)(iii) of this section, any item of CFC2X that is derived through its interest in FPSY and is properly reflected on the applicable financial statement of FPSY is treated as properly reflected on the applicable financial statement of CFC2X.

(D) *Example 4: Application of de minimis combination rule*—(*1*) *Facts*—(*i*) *Ownership.* USP owns all of the stock of CFC1X, and CFC1X directly owns all of the interests of FDEW, FDEX, FDE1Y, FDE2Y, and FDEZ. FDEW and FDEZ are disregarded entities that are tax residents of Country W and Country Z, respectively.

(*ii*) *Gross income attributable to tested units.* Without regard to the combination rule of paragraph (d)(2)(iii) of this section, CFC1X, and CFC1X's interests in each of FDEW, FDEX, FDE1Y, FDE2Y, and FDEZ, would each be a tested unit of CFC1X. For the CFC inclusion year, and without regard to the combination rule of paragraph (d)(2)(iii) of this section, the U.S. dollar amount of the gross income attributable to the tested units of CFC1X (determined under paragraph (d)(1)(iii) of this section, and without regard to the combination rule in paragraph (d)(2)(iii) of this section) is as follows:

TABLE 1 TO PARAGRAPH (d)(9)(iii)(D)(*1*)(*ii*)

Tested unit	Gross income
CFC1X	$19,500,000
FDEW	100,000
FDEX	100,000
FDE1Y	175,000

TABLE 1 TO PARAGRAPH (d)(9)(iii)(D)(*1*)(*ii*)—Continued

Tested unit	Gross income
FDE2Y	50,000
FDEZ	*75,000*
Total	*20,000,000*

(*2*) *Analysis*—(*i*) *Same country combination rule.* Pursuant to the same country combination rule in paragraph (d)(2)(iii)(A)(*1*) of this section, which applies before the de minimis combination rule in paragraph (d)(2)(iii)(A)(*2*) this section, the CFC1X tested unit (without regard to any items attributed to other tested units) is combined with CFC1X's interest in FDEX and treated as a single tested unit because CFC1X and FDEX are both tax residents of Country X (the ''Country X tested unit''). CFC1X's interests in FDE1Y and FDE2Y are also combined under the same country combination rule and treated as a single tested unit because FDE1Y and FDE2Y are both tax residents of Country Y (the ''Country Y tested unit'').

(*ii*) *De minimis combination rule.* Pursuant to the de minimis combination rule in paragraph (d)(2)(iii)(A)(*2*) of this section, CFC1X's interests in FDEW and FDEZ are combined and treated as a single tested unit because the gross income attributable to each of these tested units ($100,000 attributable to CFC1X's interest in FDEW, and $75,000 attributable to CFC1X's interest in FDEZ) is less than $200,000, which is the lesser of 1% of CFCX's total gross income ($200,000) or $250,000. The Country X tested unit and the Country Y tested unit are not combined under the de minimis combination rule because the gross income attributable to these tested units ($19,600,000 attributable to the Country X tested unit, and $225,000 attributable to the Country Y tested unit) is not less than $200,000.

(E) *Example 5: CFC group—Controlled foreign corporations with different taxable years*—(*1*) *Facts.* USP owns all of the stock of CFC1X and CFC2X. CFC2X has a taxable year ending November 30. On December 15, Year 1, USP sells all the stock of CFC2X to an unrelated party for cash.

(*2*) *Analysis.* The determination of whether CFC1X and CFC2X are in a CFC group is made as of the close of their CFC inclusion years that end with or within the taxable year ending December 31, Year 1, the taxable year of USP, the controlling domestic shareholder under paragraph (d)(8)(iii) of this section. *See* paragraph (d)(6)(v)(B)(*2*) of this section. Under paragraph (d)(6)(v)(B)(*1*) of this section, USP directly owns more than 50% of the stock of CFC1X as of December 31, Year 1, the end of CFC1X's CFC inclusion year. USP also directly owns more than 50% of the stock of CFC2X as of November 30, Year 1, the end of CFC2X's CFC inclusion year. Therefore, CFC1X and CFC2X are members of a CFC group and USP must consistently make high-tax elections, or revocations, under paragraph (d)(6) of this section with respect to CFC1X's taxable year ending December 31, Year 1, and CFC2X's taxable year ending November 30, Year 1. This is the case notwithstanding that USP does not directly own more than 50% of the stock of CFC2X as of December 31, Year 1, the end of CFC1X's CFC inclusion year. *See* paragraph (d)(6)(v)(B)(*2*) of this section.

(F) *Example 6: Application of anti-abuse rule to applicable instrument*—(*1*) *Facts*—(*i*) *Ownership.* USP owns all the stock of CFC1X. CFC1X owns all the stock of CFCY, a controlled foreign corporation organized in Country Y. Under paragraph (d)(2)(i)(A) of this section, CFCY is a tested unit.

(*ii*) *Applicable instrument.* With a significant purpose of causing an item of gross income of CFCY to qualify for the high-tax exception described in section 954(b)(4) and paragraph (d)(1) of this section, CFCY issues an instrument to CFC1X. The instrument is treated as indebtedness that gives rise to deductible interest for federal income tax purposes and under the tax law of Country X, but payments or accruals with respect to the instrument are not deductible under the tax law of Country Y. During Year 1, CFCY accrues and pays €20x with respect to the instrument held by CFC1X. For federal income tax purposes, the €20x accrual is deductible interest expense. For Country Y tax purposes, neither the payment nor accrual is deductible. For Country X tax purposes, the €20x payment is interest and included in income. CFCY has a general gross item that after taking into account the €20x interest deduction on the instrument, but before taking into account the anti-abuse rule under paragraph (d)(7) of this section, would qualify for the high-tax exception in section 954(b)(4) and paragraph (d)(1) of this section; but for the €20x interest deduction (for federal income tax purposes), the general gross item of CFCY would not qualify for the high-tax exception.

(*2*) *Analysis.* Under paragraph (d)(8)(i)(A) of this section, the instrument CFCY issues to CFC1X is an applicable instrument because it gives rise to deductions for federal income tax purposes but not, in whole or in part, under the tax law of Country Y. In addition, CFCY issues the instrument with a significant purpose of avoiding the purposes of section 951, 951A, or 954(b)(4) or paragraph (d)(1) of this section. As a result, appropriate adjustments are made pursuant to the anti-abuse rule in paragraph (d)(7) of this section. The adjustments in this case would be an increase in the amount of the tentative net item described in paragraph (d)(1)(iv) of this section by €20x, the amount of the payment on the applicable instrument that is deductible for federal income tax purposes, but not for Country Y tax purposes, such that CFCY's item of gross income does not qualify for the high-tax exception described in section 954(b)(4) and paragraph (d)(1) of this section.

* * * * *

(h) * * *

(3) *Paragraphs (a)(2) through (a)(7), (b)(1)(ii), (c)(1)(iii)(A)(3), (c)(1)(iv), and (d) of this section.* Paragraphs (c)(1)(iii)(A)(3) and (c)(1)(iv) of this section apply to taxable years of a controlled foreign corporation beginning on or after July 23, 2020, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. Paragraphs (a)(2) through (7), (b)(1)(ii), and (d) of this section apply to taxable years of controlled foreign corporations beginning on or after [the date that final regulations are filed for public inspection], and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. For the application of paragraphs (a)(2) through (7), (b)(1)(ii), and (d) (excluding paragraphs (d)(3)(i) and (d)(3)(ii)) of this section to taxable years of controlled foreign corporations beginning before [the date that final regulations are filed for public inspection], and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see § 1.954–1, as contained in 26 CFR part 1 revised as of April 1, 2020. For the application of paragraphs (d)(3)(i) and (ii) of this section to taxable years of controlled foreign corporations beginning on or after July 23, 2020, and before [the date final regulations are filed on public inspection], and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see § 1.954–1(d)(3)(i) and (ii), as in effect on September 21, 2020.

§ 1.954–3 [Amended]

■ **Par. 6.** Section 1.954–3 is amended by removing the second sentence in paragraph (b)(3).

§§ 1.954–6, 1.954–7, and 1.954–8 [Removed]

■ **Par. 7.** Sections 1.954–6 through 1.954–8 are removed.

■ **Par. 8.** Section 1.6038–2, as amended July 15, 2020, at 85 FR43042, effective September 14, 2020, is further amended by:

■ 1. Adding reserved paragraphs (f)(16) through (18);

■ 2. Adding paragraph (f)(19);

■ 3. Adding reserved paragraph (m)(5); and

■ 4. Adding paragraph (m)(6).

The additions read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations.

* * * * *

(f) * * *

(16)–(18) [Reserved]

(19) *High-tax election documentation requirement.* If for the annual accounting period of a corporation a United States shareholder makes a high-tax election under section 954(b)(4) and § 1.954–1(d)(6), then Form 5471 (or successor form) must contain such information related to the high-tax election in the form and manner and to the extent prescribed by the form, instructions to the form, publication, or other guidance published in the Internal Revenue Bulletin.

* * * * *

(m) * * *

(5) [Reserved]

(6) *Special rule for paragraph (f)(19) of this section.* Paragraph (f)(19) of this section applies to taxable years of controlled foreign corporations beginning on or after [the date that final regulations are filed for public inspection], and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020–15349 Filed 7–20–20; 4:15 pm]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 85 Thursday,

No. 142 July 23, 2020

Part IV

The President

Memorandum of July 21, 2020—Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census

Notice of July 22, 2020—Continuation of the National Emergency With Respect to Transnational Criminal Organizations

Federal Register
Vol. 85, No. 142
Thursday, July 23, 2020

Presidential Documents

Title 3—

The President

Memorandum of July 21, 2020

Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census

Memorandum for the Secretary of Commerce

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Background.* In order to apportion Representatives among the States, the Constitution requires the enumeration of the population of the United States every 10 years and grants the Congress the power and discretion to direct the manner in which this decennial census is conducted (U.S. Const. art. I, sec. 2, cl. 3). The Congress has charged the Secretary of Commerce (the Secretary) with directing the conduct of the decennial census in such form and content as the Secretary may determine (13 U.S.C. 141(a)). By the direction of the Congress, the Secretary then transmits to the President the report of his tabulation of total population for the apportionment of Representatives in the Congress (13 U.S.C. 141(b)). The President, by law, makes the final determination regarding the ''whole number of persons in each State,'' which determines the number of Representatives to be apportioned to each State, and transmits these determinations and accompanying census data to the Congress (2 U.S.C. 2a(a)). The Congress has provided that it is ''the President's personal transmittal of the report to Congress'' that ''settles the apportionment'' of Representatives among the States, and the President's discretion to settle the apportionment is more than ''ceremonial or ministerial'' and is essential ''to the integrity of the process'' (*Franklin* v. *Massachusetts,* 505 U.S. 788, 799, and 800 (1992)).

The Constitution does not specifically define which persons must be included in the apportionment base. Although the Constitution requires the ''persons in each State, excluding Indians not taxed,'' to be enumerated in the census, that requirement has never been understood to include in the apportionment base every individual physically present within a State's boundaries at the time of the census. Instead, the term ''persons in each State'' has been interpreted to mean that only the ''inhabitants'' of each State should be included. Determining which persons should be considered ''inhabitants'' for the purpose of apportionment requires the exercise of judgment. For example, aliens who are only temporarily in the United States, such as for business or tourism, and certain foreign diplomatic personnel are ''persons'' who have been excluded from the apportionment base in past censuses. Conversely, the Constitution also has never been understood to exclude every person who is not physically ''in'' a State at the time of the census. For example, overseas Federal personnel have, at various times, been included in and excluded from the populations of the States in which they maintained their homes of record. The discretion delegated to the executive branch to determine who qualifies as an ''inhabitant'' includes authority to exclude from the apportionment base aliens who are not in a lawful immigration status.

In Executive Order 13880 of July 11, 2019 (Collecting Information About Citizenship Status in Connection With the Decennial Census), I instructed executive departments and agencies to share information with the Department of Commerce, to the extent permissible and consistent with law, to allow the Secretary to obtain accurate data on the number of citizens, non-citizens, and illegal aliens in the country. As the Attorney General and I explained at the time that order was signed, data on illegal aliens could be relevant for the purpose of conducting the apportionment, and we intended to examine that issue.

Sec. 2. *Policy.* For the purpose of the reapportionment of Representatives following the 2020 census, it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*), to the maximum extent feasible and consistent with the discretion delegated to the executive branch. Excluding these illegal aliens from the apportionment base is more consonant with the principles of representative democracy underpinning our system of Government. Affording congressional representation, and therefore formal political influence, to States on account of the presence within their borders of aliens who have not followed the steps to secure a lawful immigration status under our laws undermines those principles. Many of these aliens entered the country illegally in the first place. Increasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law. States adopting policies that encourage illegal aliens to enter this country and that hobble Federal efforts to enforce the immigration laws passed by the Congress should not be rewarded with greater representation in the House of Representatives. Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State's entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.

I have accordingly determined that respect for the law and protection of the integrity of the democratic process warrant the exclusion of illegal aliens from the apportionment base, to the extent feasible and to the maximum extent of the President's discretion under the law.

Sec. 3. *Excluding Illegal Aliens from the Apportionment Base.* In preparing his report to the President under section 141(b) of title 13, United States Code, the Secretary shall take all appropriate action, consistent with the Constitution and other applicable law, to provide information permitting the President, to the extent practicable, to exercise the President's discretion to carry out the policy set forth in section 2 of this memorandum. The Secretary shall also include in that report information tabulated according to the methodology set forth in *Final 2020 Census Residence Criteria and Residence Situations,* 83 FR 5525 (Feb. 8, 2018).

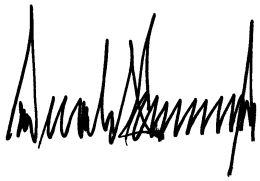
Sec. 4. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(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 memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum 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.



THE WHITE HOUSE,
Washington, July 21, 2020

[FR Doc. 2020–16216
Filed 7–22–20; 2:00 pm]
Billing code 3510–07–P

Presidential Documents

Notice of July 22, 2020

Continuation of the National Emergency With Respect to Transnational Criminal Organizations

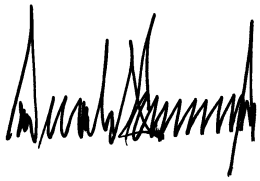
On July 24, 2011, by Executive Order 13581, the President declared a national emergency with respect to transnational criminal organizations pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the activities of significant transnational criminal organizations.

The activities of significant transnational criminal organizations have reached such scope and gravity that they threaten the stability of international political and economic systems. Such organizations are becoming increasingly sophisticated and dangerous to the United States; they are increasingly entrenched in the operations of foreign governments and the international financial system, thereby weakening democratic institutions, degrading the rule of law, and undermining economic markets. These organizations facilitate and aggravate violent civil conflicts and increasingly facilitate the activities of other dangerous persons.

On March 15, 2019, by Executive Order 13863, I took additional steps to deal with the national emergency with respect to transnational criminal organizations in view of the evolution of these organizations as well as the increasing sophistication of their activities, which threaten international political and economic systems and pose a direct threat to the safety and welfare of the United States and its citizens, and given the ability of these organizations to derive revenue through widespread illegal conduct, including acts of violence and abuse that exhibit a wanton disregard for human life as well as many other crimes enriching and empowering these organizations.

The activities of significant transnational criminal organizations continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For these reasons, the national emergency declared in Executive Order 13581 of July 24, 2011, under which additional steps were taken in Executive Order 13863 of March 15, 2019, and the measures adopted to deal with that emergency, must continue in effect beyond July 24, 2020. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to transnational criminal organizations declared in Executive Order 13581.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
July 22, 2020.

[FR Doc. 2020–16223
Filed 7–22–20; 2:00 pm]
Billing code 3295–F0–P

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