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Presidential Documents

Title 3—

The President

Executive Order 13946 of August 24, 2020

Targeting Opportunity Zones and Other Distressed Communities for Federal Site Locations

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to promote economy and efficiency in the planning, acquisition, utilization, and management of Federal space facilities, it is hereby ordered as follows:

Section 1. *Amendments to Executive Order 12072.* Executive Order 12072 of August 16, 1978 (Federal Space Management), is amended as follows:

(a) The heading of section 1–1 is amended to read as follows: ''*Space Acquisition and Management.*'';

(b) Section 1–103 is amended to read as follows: ''In the process for meeting Federal space needs, except where such selection is otherwise prohibited, and where cost and security considerations take precedence, preference is to be given to qualified opportunity zones (as defined in 26 U.S.C. 1400Z–1), other distressed areas, and centralized community business areas (including other specific areas which may be recommended by local officials).'';

(c) Section 1–201 is amended to read as follows: ''The Administrator of General Services shall develop programs to implement the policies of this Order through the efficient acquisition, utilization, and disposal of Federally owned and leased space. In particular, the Administrator shall:'';

(d) Section 1–201(a) is amended to read as follows: ''(a) Select, acquire, manage, and dispose of Federal space in a manner that will foster the policies and programs of the Federal Government and improve the management and administration of government activities.'';

(e) Sections 1–201(e) and 1–202 are each amended by replacing the word ''his'' where such word appears with ''the Administrator's''; and

(f) Section 1–201(f) is deleted.

Sec. 2. *Amendments to Executive Order 13006.* Executive Order 13006 of May 21, 1996 (Locating Federal Facilities on Historic Properties in our Nation's Central Cities), is amended as follows:

(a) Section 1 is amended by deleting ''the Administration's'' where it appears in the first sentence. Section 1 is further amended by deleting ''our central cities, which have historically served as the centers for growth and commerce in our metropolitan areas'' where such language appears in the first sentence and by replacing the deleted language with ''distressed communities''. Further, the second sentence of section 1 is amended to read as follows: ''This order reaffirms the commitment set forth in Executive Order No. 12072, as amended, to strengthen our Nation's distressed communities by encouraging the location of Federal facilities in qualified opportunity zones (as defined in 26 U.S.C. 1400Z–1), other distressed areas, and centralized business districts.'' Section 1 is further amended by deleting ''The Administration'' where such language appears in the third sentence and replacing the deleted language with ''This order''; and

(b) Section 2 is amended in the first sentence by inserting '', as amended,'' after the words ''Executive Order No. 12072,'' and by deleting the word ''first'' where such word appears. Section 2 is further amended by combining and amending the second and third sentences to read as follows: ''If no

such property is suitable, then such consideration shall include other developed or undeveloped sites within historic districts or historic properties outside of historic districts.''; and

(c) Section 4 is amended by deleting ''States, local governments, Indian tribes'' where such language appears in the first sentence and replacing the deleted language with ''State, local, and tribal governments,''.

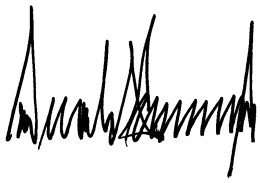
Sec. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
August 24, 2020.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket Number SBA–2020–0044]

RIN 3245–AH56

Business Loan Program Temporary Changes; Paycheck Protection Program—Treatment of Owners and Forgiveness of Certain Nonpayroll Costs

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted on its website an interim final rule relating to the implementation of Sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act) (published in the **Federal Register** on April 15, 2020). Section 1102 of the Act temporarily adds a new product, titled the ''Paycheck Protection Program,'' to the U.S. Small Business Administration's (SBA's) 7(a) Loan Program. Subsequently, SBA issued a number of interim final rules implementing the Paycheck Protection Program. This interim final rule supplements the previously posted interim final rules by providing additional guidance on treatment of owners and forgiveness of certain nonpayroll costs.

DATES:

Effective date: The provisions in this interim final rule are effective August 25, 2020.

Comment date: Comments must be received on or before September 28, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0044 through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, tribal, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, have been implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, have been implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the CARES Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency.

Section 1102 of the CARES Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program.'' Section 1106 of the CARES Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP).

On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the PPP. On June 5, 2020, the President signed the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) (Pub. L. 116–142), which changed provisions of the PPP relating to the maturity of PPP loans, the deferral of PPP loan payments, and the forgiveness of PPP loans. On July 4, 2020, the President signed into law S. 4116, which reauthorized lending under the PPP through August 8, 2020 (Pub. L. 116–147).

This interim final rule addresses the ownership percentage that triggers the applicability of owner compensation rules for forgiveness purposes. This interim final rule also addresses limitations on the eligibility of certain nonpayroll costs for forgiveness.

II. Comments and Immediate Effective Date

This interim final rule is effective without advance notice and public comment because Section 1114 of the CARES Act authorizes SBA to issue regulations to implement Title I of the Act without regard to notice requirements. In addition, SBA has determined that there is good cause for dispensing with advance public notice and comment on the grounds that it would be contrary to the public interest. Specifically, advance public notice and comment would defeat the purpose of this interim final rule given that SBA's authority to guarantee PPP loans expired on August 8, 2020 and SBA began accepting lender loan forgiveness submissions on August 10, 2020. These same reasons provide good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act (APA). *See* 5 U.S.C. 553(b)(B). Although this interim final rule is effective on or before date of filing, comments are solicited from interested members of the public on all aspects of the interim final rule, including Section III below. These

comments must be submitted on or before September 28, 2020. The SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program—Treatment of Owners and Forgiveness of Certain Nonpayroll Costs

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under a new 7(a) loan program titled the ''Paycheck Protection Program.'' Loans guaranteed under the Paycheck Protection Program (PPP) will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. The purpose of this interim final rule is to provide additional guidance concerning the ownership percentage that triggers the applicability of the owner compensation rule for forgiveness purposes and limitations on the eligibility of certain nonpayroll costs for forgiveness.

1. Owners

Are any individuals with an ownership stake in a PPP borrower exempt from application of the PPP owner-employee compensation rule when determining the amount of their compensation that is eligible for loan forgiveness?

Yes, owner-employees with less than a 5 percent ownership stake in a C- or S-Corporation are not subject to the owner-employee compensation rule. The First Loan Forgiveness Rule, as revised by the Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, 85 FR 38304, 38307 (June 26, 2020), caps the amount of loan forgiveness for payroll compensation attributable to an owner-employee. There is no exception in the rule based on the owner-employee's percentage of ownership. The Administrator, in consultation with the Secretary, has now determined that an owner-employee in a C- or S-Corporation who has less than a 5 percent ownership stake will not be subject to the owner-employee compensation rule. This exemption is intended to cover owner-employees who have no meaningful ability to influence decisions over how loan proceeds are allocated.

2. Eligibility of Certain Nonpayroll Costs for Loan Forgiveness

a. Are amounts attributable to the business operation of a tenant or sub-tenant of the PPP borrower or, in the context of home-based businesses, household expenses, eligible for forgiveness?

No, the amount of loan forgiveness requested for nonpayroll costs may not include any amount attributable to the business operation of a tenant or sub-tenant of the PPP borrower or, for home-based businesses, household expenses. The examples below illustrate this rule.

Example 1: A borrower rents an office building for $10,000 per month and sub-leases out a portion of the space to other businesses for $2,500 per month. Only $7,500 per month is eligible for loan forgiveness.

Example 2: A borrower has a mortgage on an office building it operates out of, and it leases out a portion of the space to other businesses. The portion of mortgage interest that is eligible for loan forgiveness is limited to the percent share of the fair market value of the space that is not leased out to other businesses. As an illustration, if the leased space represents 25% of the fair market value of the office building, then the borrower may only claim forgiveness on 75% of the mortgage interest.

Example 3: A borrower shares a rented space with another business. When determining the amount that is eligible for loan forgiveness, the borrower must prorate rent and utility payments in the same manner as on the borrower's 2019 tax filings, or if a new business, the borrower's expected 2020 tax filings.

Example 4: A borrower works out of his or her home. When determining the amount of nonpayroll costs that are eligible for loan forgiveness, the borrower may include only the share of covered expenses that were deductible on the borrower's 2019 tax filings, or if a new business, the borrower's expected 2020 tax filings.

b. Are rent payments to a related party eligible for loan forgiveness?

Yes, as long as (1) the amount of loan forgiveness requested for rent or lease payments to a related party is no more than the amount of mortgage interest owed on the property during the Covered Period that is attributable to the space being rented by the business, and (2) the lease and the mortgage were entered into prior to February 15, 2020.[1] Any ownership in common between the business and the property owner is a related party for these purposes. The borrower must provide its lender with mortgage interest documentation to substantiate these payments. While rent or lease payments to a related party may be eligible for forgiveness, mortgage interest payments to a related party are not eligible for forgiveness. PPP loans are intended to help businesses cover certain non-payroll obligations that are owed to third parties, not payments to a business's owner that occur because of how the business is structured. This will maintain equitable treatment between a business owner that holds property in a separate entity and one that holds the property in the same entity as its business operations.

[1] In this context, the related party itself would not also be eligible to request forgiveness for this amount.

3. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA's website at *www.sba.gov.* Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612).

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in Section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and

the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will not impose new or modify existing recordkeeping or reporting requirements under the Paperwork Reduction Act.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to Section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities.

The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Act, Ch.1. p.9.* Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Jovita Carranza,

Administrator.

[FR Doc. 2020–18940 Filed 8–25–20; 1:00 pm]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 134

[Docket Number SBA–2020–0042]

RIN 3245–AH55

Appeals of SBA Loan Review Decisions Under the Paycheck Protection Program

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted on its website an interim final rule relating to the implementation of sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act) (published in the **Federal Register** on April 15, 2020). Section 1102 of the Act temporarily adds a new product, titled the ''Paycheck Protection Program,'' to the U.S. Small Business Administration's (SBA's) 7(a) Loan Program. Subsequently, SBA issued a number of interim final rules implementing the Paycheck Protection Program (PPP). This interim final rule supplements the interim final rule on Loan Review Procedures and Related Borrower and Lender Responsibilities posted on SBA's website on May 22, 2020 (published on June 1, 2020, in the **Federal Register**), as revised by the interim final rule posted on SBA's website on June 22, 2020, in order to inform PPP borrowers and lenders of the process for a PPP borrower to appeal certain SBA loan review decisions under the PPP to the SBA Office of Hearings and Appeals, and requests public comment.

DATES:

Effective date: This rule is effective August 25, 2020.

Applicability date: This interim final rule applies to certain loan review decisions made by SBA under the Paycheck Protection Program.

Comment date: Comments must be received on or before September 28, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0042 through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/localassistance/districtoffices.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, tribal, and local public health measures that have been taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, have been implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, are being implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration

(SBA) received funding and authority through the CARES Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency. Section 1102 of the CARES Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program'' (PPP). Section 1106 of the CARES Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP.

On April 2, 2020, SBA posted its first PPP interim final rule (85 FR 20811) (the First Interim Final Rule). Subsequently, SBA issued a number of other interim final rules implementing the PPP. On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the PPP.

On May 22, 2020, SBA and Treasury posted an interim final rule on Loan Review Procedures and Related Borrower and Lender Responsibilities (85 FR 33010) (Loan Review Interim Final Rule (IFR)). The rule stated that SBA would be issuing a separate interim final rule addressing the process for appealing certain SBA loan review decisions under the PPP. On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (Pub. L. 116–142) (Flexibility Act) was signed into law, amending the CARES Act. On June 22, 2020, SBA and Treasury posted an interim final rule that in part revised the Loan Review IFR to incorporate the relevant Flexibility Act amendments, address revisions to the Loan Forgiveness Application (SBA Form 3508), and include a new alternative Loan Forgiveness Application (SBA Form 3508EZ). On July 4, 2020, Public Law 116–147 was enacted, extending the authority for SBA to guarantee PPP loans to August 8, 2020.

As described below, this interim final rule informs PPP borrowers and lenders of the process for a PPP borrower to appeal certain SBA loan review decisions under the PPP to the SBA Office of Hearings and Appeals (OHA) by establishing a new subpart L for 13 CFR part 134, and requests public comment.

II. Comments and Immediate Effective Date

The intent of the CARES Act is that SBA provide relief to America's small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, it is critical to meet lenders' and borrowers' need for clarity concerning the OHA appeal process as rapidly as possible because SBA can review a PPP loan and make determinations as to a borrower's eligibility at any time. This interim final rule supplements the previous regulation on the discrete issues related to SBA's process for reviewing a borrower's eligibility for a PPP loan, the PPP loan amount received, the use of the PPP loan proceeds and/or the PPP loan forgiveness amount claimed by the borrower.

This interim final rule is effective without advance notice and public comment because section 1114 of the CARES Act authorizes SBA to issue regulations to implement title I of the CARES Act without regard to notice requirements. In addition, SBA has determined that there is good cause for dispensing with advance public notice and comment on the ground that it would be contrary to the public interest. Specifically, SBA has determined that advance notice and public comment would delay the ability of PPP borrowers to understand with certainty the process for appealing certain SBA loan review decisions under the PPP. This rule is being issued to allow for immediate implementation of the OHA appeal feature of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of this interim final rule, including section III below. These comments must be submitted on or before September 28, 2020. SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Subpart L—Rules of Practice for Appeals of Certain SBA Loan Review Decisions Under the Paycheck Protection Program

This interim final rule establishes a new subpart L for 13 CFR part 134, establishing rules of practice for appeals of certain SBA loan review decisions under the Paycheck Protection Program (PPP).

Section 134.1201, Scope of rules in this subpart L, provides a process for appeal to OHA of certain SBA loan review decisions under the PPP and any other PPP matter referred to OHA by the Administrator. This subpart defines the term SBA loan review decision as an official written decision by SBA, after SBA completes a review of a PPP loan, that finds a borrower (1) was ineligible for a PPP loan; (2) was ineligible for the PPP loan amount received or used the PPP loan proceeds for unauthorized uses; (3) is ineligible for PPP loan forgiveness in the amount determined by the lender in its full or partial approval decision issued to SBA (except for the deduction of any Economic Injury Disaster Loan advance in accordance with section 1110(e)(6) of the CARES Act); and/or (4) is ineligible for PPP loan forgiveness in any amount when the lender has issued a full denial decision to SBA.

For a PPP loan of any size, SBA may undertake a loan review at any time in SBA's discretion, and this subpart L applies to loan review decisions made by SBA after SBA completes a review of a PPP loan as set forth in Part III.1 and Part III.2c. of the Loan Review IFR, as amended. Only final SBA loan review decisions (as defined in this rule) can be appealed to OHA; a PPP borrower cannot file an OHA appeal of any decision made by a lender concerning a PPP loan. A PPP borrower can request an SBA review of a lender decision to deny the borrower's loan forgiveness application in full, in accordance with Part III.2.b. of the Loan Review IFR, as amended, but that request is for a review by SBA, not an OHA appeal. A borrower may exercise any other rights it has under applicable law against a PPP lender regarding a lender decision.

In addition, this section sets forth other types of decisions and determinations that are not covered by this subpart L, and makes clear that subpart C of this part, Rules of Practice for Appeals From Size Determinations and NAICS Code Designations, is not applicable to appeals from SBA loan review decisions. Lastly, this section sets forth the specific provisions from subpart B of this part, OHA's general Rules of Practice, that are applicable to this subpart L. Other provisions from subpart B of this part do not apply to this subpart L. Because a PPP borrower must begin making payments of principal and interest on the remaining balance of its PPP loan at the end of the loan payment deferral period or when SBA remits the loan forgiveness amount to the PPP lender (or notifies the lender that no loan forgiveness is allowed), an appeal by a PPP borrower of any SBA loan review decision does not extend the deferral period of the PPP loan. Additionally, if SBA remits to the lender the PPP loan forgiveness amount set forth in the decision issued by the lender to SBA (except for the deduction of any Economic Injury Disaster Loan advance), the borrower may not file an appeal with OHA, and the borrower

must begin repayment of any remaining balance of its PPP loan.

Section 134.1202, The appeal petition, provides that an appeal petition must include the following information: (1) The basis for OHA's jurisdiction, including, but not limited to, evidence that the appeal is timely filed in accordance with § 134.1204; (2) A copy of the SBA loan review decision that is being appealed, or a description of that decision if a copy is unavailable; (3) A full and specific statement as to why the SBA loan review decision is alleged to be erroneous, together with all factual information and legal arguments supporting the allegations; (4) The relief being sought; (5) Signed copies of payroll tax filings actually reported to the Internal Revenue Service (IRS), and State quarterly business and individual employee wage reporting and unemployment insurance tax filings actually reported to the relevant state, for the relevant periods of time, if not provided with the PPP Loan Forgiveness Application (SBA Form 3508, SBA Form 3508EZ, or lender's equivalent), or an explanation as to why they are not relevant or not available; (6) Signed copies of applicable federal tax returns actually filed with the IRS with appropriate schedules (*e.g.,* IRS Form 1040 with Schedule C/F) documenting income for self-employed individuals or partners in a partnership, if not provided with the PPP Borrower Application Form (SBA Form 2483 or lender's equivalent), or an explanation as to why they are not relevant or not available; and (7) The name, address, telephone number, email address and signature of the appellant or its attorney. This provision is consistent with OHA's general rules of practice in subpart B, with the addition of the requirement for submission of certain financial information. SBA has determined that submission by the appellant of financial information, or an explanation as to why they are not relevant or not available, is appropriate to support SBA's efforts to assess compliance with the PPP requirements set forth in the statute, rules, and guidance. The appellant must serve a copy of the appeal petition with attachments on the Associate General Counsel for Litigation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416, *OLITService@sba.gov.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d). This section further provides that an appeal petition which does not include the above may be dismissed by the Judge and permits SBA to move for a motion for more definite statement or otherwise comply with the requirements of this section.

Section 134.1203, Standing, provides that only the borrower on a loan for which SBA has issued a final SBA loan review decision has standing to appeal the SBA loan review decision to OHA. Individual owners of a borrower and lenders do not have standing to appeal an SBA loan review decision.

Section 134.1204, Deadline for filing appeal petition, prescribes that an appeal petition must be filed within 30 calendar days after (i) the appellant's receipt of the final SBA loan review decision, or (ii) notification by the lender of the final SBA loan review decision, whichever is earlier.

Section 134.1205, Dismissal, provides that the Judge must dismiss the appeal if: (1) The appeal is beyond OHA's jurisdiction as set forth under § 134.1201; (2) the appellant lacks standing to appeal under § 134.1203; or (3) the appeal is untimely under § 134.1204, or is premature because SBA has not yet made a final SBA loan review decision. This section also provides that the Judge may dismiss the appeal if, among other things, the appeal does not, on its face, allege specific facts that if proven to be true, warrant reversal or remand of the SBA loan review decision.

Section 134.1206, Notice and order, provides that upon receipt of an appeal challenging a final SBA loan review decision, OHA will assign the matter to either an Administrative Law Judge or an Administrative Judge in accordance with § 134.218. Unless the appeal will be dismissed under § 134.1205, the Judge will issue a notice and order establishing a deadline for production of the administrative record and specifying a date for the close of record. Typically, the administrative record will be due 20 calendar days after issuance of the notice and order unless additional time is requested and granted, and the record will close 45 calendar days from the date of OHA's receipt of the appeal unless additional time is requested and granted. With this timeframe, SBA seeks to provide a timely and judicious processing of the appeal petition, while also affording additional time if, for example, the volume of appeals or other matters require additional time for compilation of the administrative record and the close of record.

Section 134.1207, The administrative record, requires that the administrative record shall include relevant documents that SBA considered in making its final decision or that were before SBA at the time of the final decision. The administrative record need not, however, contain all documents pertaining to the appellant. In addition, SBA may claim privilege as to certain materials. The administrative record must be certified and authenticated that it is, to the best of the signatory's knowledge, complete and correct. SBA will file the administrative record with OHA and serve it on appellant. This section permits the appellant to object to the absence of any document from the administrative record that the appellant believes should have been included in the administrative record. An appellant also may object to any claim that documents in the administrative record are privileged. Such objections must be filed with OHA and served on SBA no later than 10 calendar days after appellant's receipt of the administrative record. The Judge will rule upon such objections and may direct or permit that the administrative record be supplemented.

Section 134.1208, Response to an appeal petition, prescribes that only SBA may respond to an appeal and the response should set forth the relevant facts and legal arguments to the issues presented on appeal. Except for good cause shown, a response filed after the close of record established by the Judge will not be considered. SBA must file its response with OHA, and serve a copy of the response upon the appellant and upon each of the persons identified in the certificate of service attached to the appellant's appeal petition. No reply to a response will be permitted unless the Judge directs otherwise.

Section 134.1209, Evidence beyond the record, discovery and oral hearings, provides that, generally, the Judge may not admit evidence beyond the written administrative record or permit any form of discovery. Discovery will be permitted in OHA's appellate proceedings only if the Judge determines that SBA, upon written submission, has made a showing of good cause for discovery. An oral hearing will not be held on an appeal of an SBA loan review decision, unless, following the motion of a party, or at the Judge's own initiative, the Judge orders an oral hearing upon concluding that there is a genuine dispute of material fact that cannot be resolved except by the taking of testimony and the confrontation of witnesses. SBA has determined that allowing an oral hearing under limited circumstances, and allowing discovery by SBA, only upon a showing of good cause, balances SBA's potential need for discovery since it may not have all relevant documents from appellant with the efficient use of limited resources available. If an oral hearing is ordered, the proceeding shall

be conducted in accordance with §§ 134.214 and 134.222 in subpart B of this part as the Judge deems appropriate. All appeals under this subpart L will be decided solely on a review of the written administrative record, the appeal petition, response(s) filed thereto, any admitted evidence, and an oral hearing, if held.

Section 134.1210, Interlocutory appeals, provides that either party may file an interlocutory appeal of a Judge's ruling which decides an issue of privilege. Interlocutory appeals will be decided by the Administrator or a designee. An interlocutory appeal must be filed and served no later than 20 calendar days after issuance of the ruling to which the interlocutory appeal applies. A response to the interlocutory appeal must be filed 10 calendar days after the interlocutory appeal is served. The Judge may stay the proceedings before OHA, in whole or in part, as he or she deems appropriate pending resolution of the interlocutory appeal.

Section 134.1211, Alternative dispute resolution, provides that at any time during the pendency of an appeal, the parties may submit a joint motion requesting that the Judge permit the use of alternative dispute resolution to assist in resolving the matter. If the motion is granted, the Judge will also stay the proceedings before OHA, in whole or in part, as he or she deems appropriate, pending the outcome of the alternative dispute resolution. In addition, the Assistant Administrator for Hearings and Appeals (AA/OHA) or a Judge may designate another Judge or attorney assigned to OHA to serve as a neutral in alternative dispute resolution procedures. If OHA provides the neutral and the mediation fails to resolve all issues in the case, the OHA-provided neutral will not be involved in the adjudication.

Section 134.1212, Standard of review, provides that the standard of review is whether the SBA loan review decision was based on clear error of fact or law. The appellant has the burden of proof, by a preponderance of the evidence.

Section 134.1213, Decision on appeal, provides that the Judge will issue his or her decision within 45 calendar days after the close of record, as practicable. The decision will contain findings of fact and conclusions of law, the reasons for such findings and conclusions, and any relief ordered. The decision will be served on each party. The Judge's decision on the appeal is an initial decision. However, unless a request for review is filed pursuant to § 134.228(a), or a request for reconsideration is filed pursuant to paragraph (c) of § 134.1213, an initial decision shall become the final decision of SBA 30 calendar days after its service. This section allows for a request for reconsideration pursuant to paragraph (c) of § 134.1213 by either party or by the Judge on his or her own initiative. This section also provides for the right to request review by the Administrator pursuant to § 134.228(a), in which case the provisions in § 134.228 will apply. If a request for review pursuant to § 134.228(a) is filed, the decision of the Administrator is a final decision of SBA appealable to federal district court. In order for a borrower to exhaust its administrative remedies and preserve its right to seek judicial review of an SBA final decision in a federal district court, a borrower that disputes the initial decision or reconsidered initial decision must file and serve a request for review of an initial decision or reconsidered initial decision by the Administrator pursuant to § 134.228(a). If the borrower does not request review by the Administrator pursuant to § 134.228(a), the borrower's right to seek review in federal court is waived due to the borrower's failure to exhaust administrative remedies. This section also provides that the final OHA decision creates precedent only for appeals involving the PPP. Any OHA decision pursuant to this subpart L applies only to the PPP and does not apply to SBA's 7(a) Loan Program generally or to any interpretation or application of the regulations in part 120 or part 121 of this title. SBA has determined that this is appropriate because the PPP is governed by the CARES Act, which adds a new temporary program to SBA's 7(a) Loan Program, but does not apply to SBA's 7(a) Loan Program generally. Lastly, this section provides that, consistent with the general OHA rules of practice in subpart B of part 134, OHA decisions are normally published without redactions on OHA's website. A decision may contain confidential business and financial information or personally identifiable information where that information is either decisionally-significant or otherwise necessary for a comprehensible decision. Where no protective order is in place, a party may request a redacted public decision by contacting OHA. Where a protective order is in place, the Judge will usually issue the unredacted decision under the protective order and a redacted version for public release.

Section 134.1214, Effects of the decision, provides that OHA may affirm, reverse, or remand an SBA loan review decision. If remanded, OHA no longer has jurisdiction over the matter unless a new appeal is filed as a result of a new SBA loan review decision.

Section 134.1215, Equal Access to Justice Act (EAJA), provides that a prevailing appellant is not entitled to recover attorney's fees. Appeals to OHA from SBA loan review decisions under the PPP are not proceedings that are required to be conducted by an Administrative Law Judge under § 134.603.

Section 134.1216, Exhaustion of administrative remedies, provides that an appeal to OHA and request for review by the Administrator of a disputed initial decision or reconsidered initial decision are administrative remedies that must be exhausted before judicial review of an SBA loan review decision may be sought in a federal district court.

Section 134.1217, Confidential information and protective order, provides that if a filing or other submission made pursuant to an appeal in this subpart L contains confidential business and financial information; personally identifiable information; source selection sensitive information; income tax returns; documents and information covered under § 120.1060 of this title; or any other exempt information, that information is not available to the public pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552. This provision is consistent with the general rule of practice in subpart B of this part. In addition, this section permits SBA or appellant to seek a protective order over any document or information filed pursuant to an appeal in this subpart L, including any document or information exchanged in discovery if permitted in accordance with § 134.1209.

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this interim final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities. The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

List of Subjects in 13 CFR Part 134

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Organization and function (Government agencies).

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 134 as set forth below:

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 1. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), 657t and 687(c); 38 U.S.C. 8127(f); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart J issued under 38 U.S.C. 8127(f)(8)(B).

Subpart K issued under 38 U.S.C. 8127(f)(8)(A).

Subpart L issued under 15 U.S.C. 636(a)(36); Pub. L. 116–136; Pub. L. 116–139; 116–142; 116–147.

■ 2. Amend § 134.102 by:

■ a. Removing the word ''and'' at the end of paragraph (u);

■ b. Removing the period at the end of paragraph (v) and adding ''; and'' in its place; and

■ c. Adding paragraph (w) to read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(w) Appeals of certain SBA loan review decisions as defined in 13 CFR 134.1201.

■ 3. Add subpart L to read as follows:

Subpart L—Rules of Practice for Appeals of Certain SBA Loan Review Decisions Under the Paycheck Protection Program

Sec.
134.1201 Scope of rules in this subpart L.
134.1202 The appeal petition.
134.1203 Standing.
134.1204 Deadline for filing appeal petition.
134.1205 Dismissal.
134.1206 Notice and order.
134.1207 The administrative record.
134.1208 Response to an appeal petition.
134.1209 Evidence beyond the record, discovery and oral hearings.
134.1210 Interlocutory appeals.
134.1211 Alternative dispute resolution procedures.
134.1212 Standard of review.
134.1213 Decision on appeal.
134.1214 Effects of the decision.
134.1215 Equal Access to Justice Act (EAJA).
134.1216 Exhaustion of administrative remedies.
134.1217 Confidential information and protective order.

Authority: 15 U.S.C. 636(a)(36); Pub. L. 116–136; Pub. L. 116–139; Pub. L. 116–142; Pub. L. 116–147

§ 134.1201 Scope of the rules in this subpart L.

(a) The rules of practice in this subpart L apply to appeals to OHA from certain SBA loan review decisions under the Paycheck Protection Program (PPP) as described in paragraph (b) of this section, and to any other PPP matter referred to OHA by the Administrator of SBA. The PPP was established as a temporary program under section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136).

(b) A final SBA loan review decision that is appealable under this subpart L is an official written decision by SBA, after SBA completes a review of a PPP loan, that finds a borrower:

(1) Was ineligible for a PPP loan;

(2) Was ineligible for the PPP loan amount received or used the PPP loan proceeds for unauthorized uses;

(3) Is ineligible for PPP loan forgiveness in the amount determined by the lender in its full approval or partial approval decision issued to SBA (except for the deduction of any Economic Injury Disaster Loan advance in accordance with section 1110(e)(6) of the CARES Act); and/or

(4) Is ineligible for PPP loan forgiveness in any amount when the lender has issued a full denial decision to SBA.

(c) A borrower cannot file an OHA appeal of any decision made by a lender concerning a PPP loan.

(d) Any determination by SBA's Office of Inspector General concerning a PPP loan is not appealable to OHA.

(e) This subpart L does not create any right to appeal any SBA decision on any 7(a) loans other than PPP loans.

(f) The Rules of Practice for Appeals From Size Determinations and NAICS Code Designations in subpart C of this part do not apply to appeals of SBA loan review decisions or to the PPP.

(g) In addition to the subpart B of this part provisions specifically referenced in this subpart L, the following regulations from subpart B of this part also apply to this subpart L: 13 CFR 134.207 through 134.209, 134.211, 134.212, and 134.217 through 134.221.

§ 134.1202 The appeal petition.

(a) *Contents.* The appeal petition must include the following information:

(1) The basis for OHA's jurisdiction, including, but not limited to, evidence that the appeal is timely filed in accordance with § 134.1204;

(2) A copy of the SBA loan review decision that is being appealed, or a description of that decision if a copy is unavailable;

(3) A full and specific statement as to why the SBA loan review decision is alleged to be erroneous, together with all factual information and legal arguments supporting the allegations;

(4) The relief being sought;

(5) Signed copies of payroll tax filings actually filed with the Internal Revenue Service (IRS), and State quarterly business and individual employee wage reporting and unemployment insurance tax filings actually reported to the relevant state, for the relevant periods of time, if not provided with the PPP Loan Forgiveness Application (SBA Form 3508, SBA Form 3508EZ, or lender's equivalent), or an explanation as to why they are not relevant or not available;

(6) Signed copies of applicable federal tax returns actually filed with the IRS with appropriate schedules (*e.g.,* IRS Form 1040 with Schedule C/F) documenting income for self-employed individuals or partners in a partnership, if not provided with the PPP Borrower Application Form (SBA Form 2483 or lender's equivalent), or an explanation as to why they are not relevant or not available; and

(7) The name, address, telephone number, email address and signature of the appellant or its attorney.

(b) *Format.* The maximum length of an appeal petition (not including attachments) is 20 pages, unless leave is sought by the appellant and granted by the Judge. A table of authorities is required only for petitions citing more than twenty cases, regulations, or statutes.

(c) *Service of the appeal petition.* In addition to filing an appeal with OHA in accordance with § 134.204(b), the appellant must serve a copy of the appeal petition with attachments on the Associate General Counsel for Litigation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416, *OLITService@sba.gov.*

(d) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

(e) *Dismissal.* An appeal petition which does not contain all of the information required by paragraphs (a) through (d) of this section may be dismissed, with or without prejudice, at the Judge's own initiative, or upon motion of SBA.

(f) *Motion for more definite statement.* SBA may, not later than five days after receiving an appeal petition, move for an order to the appellant to provide a more definite appeal petition or otherwise comply with this section. A Judge may order a more definite appeal petition on his or her own initiative.

(1) A motion for a more definite appeal petition stays SBA's time for filing a response. The Judge will establish the time for filing and serving a response and will extend the close of the record as appropriate.

(2) If the appellant does not comply with the Judge's order to provide a more definite appeal petition or otherwise fails to comply with applicable regulations, the Judge may dismiss the petition with prejudice.

(g) *Calculation of a deadline when the time period is given in days.* Do not count the day the time period begins, but do count the last day of the time period. If the last day is Saturday, Sunday, or a Federal holiday, the time period ends on the next business day.

§ 134.1203 Standing.

Only the borrower on a loan for which SBA has issued a final SBA loan review decision has standing to appeal the SBA loan review decision to OHA.

§ 134.1204 Deadline for filing appeal petition.

An appeal petition must be filed with OHA within 30 calendar days after the appellant's receipt of the final SBA loan review decision, or notification by the lender of the final SBA loan review decision, whichever is earlier.

§ 134.1205 Dismissal.

(a) The Judge must dismiss the appeal if:

(1) The appeal is beyond OHA's jurisdiction as set forth under § 134.1201;

(2) The appellant lacks standing to appeal under § 134.1203; or

(3) The appeal is untimely under § 134.1204, or is premature because SBA has not yet made a final SBA loan review decision.

(b) The Judge may dismiss the appeal in accordance with § 134.1202(e) or (f)(2), or if the appeal does not, on its face, allege specific facts that if proven to be true, warrant reversal or remand of the SBA loan review decision.

§ 134.1206 Notice and order.

Upon receipt of an appeal challenging a final SBA loan review decision, OHA will assign the matter to either an Administrative Law Judge or an Administrative Judge in accordance with § 134.218. Unless the appeal is dismissed under § 134.1205, the Judge will issue a notice and order establishing a deadline for production of the administrative record and specifying a date for the close of record. The notice and order will be served upon all known parties (or their attorneys). Typically, the administrative record will be due 20 calendar days after issuance of the notice and order unless additional time is requested and granted, and the record will close 45 calendar days from the date of OHA's receipt of the appeal unless additional time is requested and granted.

§ 134.1207 The administrative record.

(a) *Contents.* The administrative record shall include relevant documents that SBA considered in making its final decision or that were before SBA at the time of the final decision. The administrative record need not, however, contain all documents pertaining to the appellant. In addition, SBA may claim privilege as to certain materials. The administrative record must be certified and authenticated that it is, to the best of the signatory's knowledge, complete and correct.

(b) *Filing.* SBA will file the administrative record with OHA and serve it on appellant.

(c) *Objection.* The appellant may object to the absence of any document from the administrative record that the appellant believes should have been included in the administrative record. An appellant also may object to any claim that documents in the administrative record are privileged. Such objections must be filed with OHA and served on SBA no later than 10 calendar days after the appellant's receipt of the administrative record. The Judge will rule upon such objections

and may direct or permit that the administrative record be supplemented.

§ 134.1208 Response to an appeal petition.

(a) *Who may respond.* Only SBA may respond to an appeal. The response should set forth the relevant facts and legal arguments to the issues presented on appeal.

(b) *Time limit.* Except for good cause shown, a response filed after the close of record established by the Judge will not be considered.

(c) *Service.* The SBA must file its response with OHA, and serve a copy of the response upon the appellant and upon each of the persons identified in the certificate of service attached to the appeal petition pursuant to § 134.1202(d).

(d) *Reply to a response.* No reply to a response will be permitted unless the Judge directs otherwise.

§ 134.1209 Evidence beyond the record, discovery and oral hearings.

(a) *General Rule.* Generally, the Judge may not admit evidence beyond the written administrative record or permit any form of discovery.

(b) *Discovery.* Discovery will be permitted only if the Judge determines that SBA, upon written submission, has made a showing of good cause for discovery.

(c) *Oral hearings.* Oral hearings will not be held on an appeal of an SBA loan review decision, unless, following the motion of a party, or at the Judge's own initiative, the Judge orders an oral hearing upon concluding that there is a genuine dispute of material fact that cannot be resolved except by the taking of testimony and the confrontation of witnesses. If an oral hearing is ordered, the proceeding shall be conducted in accordance with §§ 134.214 and 134.222 in subpart B of this part as the Judge deems appropriate.

(d) *The record.* All appeals under this subpart L will be decided solely on a review of the written administrative record, the appeal petition, and response(s) filed thereto, any admitted evidence, and an oral hearing, if held.

§ 134.1210 Interlocutory appeals.

(a) *General.* Either party may file an interlocutory appeal of a Judge's ruling which decides an issue of privilege. Interlocutory appeals will be decided by the Administrator of SBA or a designee.

(b) *Procedures.* An interlocutory appeal must be filed and served no later than 20 calendar days after issuance of the ruling to which the interlocutory appeal applies. A response to the interlocutory appeal must be filed 10 calendar days after the interlocutory appeal is served. The Judge may stay the proceedings before OHA, in whole or in part, as he or she deems appropriate pending resolution of the interlocutory appeal.

§ 134.1211 Alternative dispute resolution.

(a) *Joint Motion.* At any time during the pendency of an appeal, the parties may submit a joint motion requesting that the Judge permit the use of alternative dispute resolution to assist in resolving the matter.

(b) *Procedures.* If the motion is granted, the Judge will also stay the proceedings before OHA, in whole or in part, as he or she deems appropriate, pending the outcome of the alternative dispute resolution. In addition, the AA/OHA or a Judge may designate another Judge or attorney assigned to OHA to serve as a neutral in alternative dispute resolution procedures. If OHA provides the neutral and the mediation fails to resolve all issues in the case, the OHA-provided neutral will not be involved in the adjudication.

§ 134.1212 Standard of review.

The standard of review is whether the SBA loan review decision was based on clear error of fact or law. The appellant has the burden of proof, by a preponderance of the evidence.

§ 134.1213 Decision on appeal.

(a) *Time limits and contents.* The Judge will issue his or her decision within 45 calendar days after the close of record, as practicable. The decision will contain findings of fact and conclusions of law, the reasons for such findings and conclusions, and any relief ordered. The decision will be served on each party.

(b) *Initial decision.* The Judge's decision on the appeal is an initial decision. However, unless a request for review is filed pursuant to § 134.228(a), or a request for reconsideration is filed pursuant to paragraph (c) of this section, an initial decision shall become the final decision of SBA 30 calendar days after its service. The final OHA decision creates precedent only for appeals involving the PPP. Any OHA decision pursuant to this subpart L applies only to the PPP and does not apply to SBA's 7(a) Loan Program generally or to any interpretation or application of the regulations in part 120 or part 121 of this title.

(c) *Reconsideration.* An initial decision of the Judge may be reconsidered. Either SBA or the appellant may request reconsideration by filing with the Judge and serving a petition for reconsideration within 10 calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative within 20 calendar days after service of the written decision.

(d) *Request for review.* Within 30 calendar days after the service of an initial decision or a reconsidered initial decision of a Judge, any party, or SBA's Office of General Counsel, may file and serve a request for review by the Administrator pursuant to § 134.228(a). In order for a borrower to exhaust its administrative remedies and preserve its right to seek judicial review of an SBA final decision in a federal district court, a borrower that disputes an initial decision or reconsidered initial decision must file and serve a request for review of the initial decision or reconsidered initial decision by the Administrator pursuant to § 134.228(a). If a request for review is filed pursuant to § 134.228(a), the provisions in § 134.228 will apply.

(e) *Publication.* OHA decisions are normally published without redactions on OHA's website. A decision may contain confidential business and financial information or personally identifiable information where that information is either decisionally-significant or otherwise necessary for a comprehensible decision. Where no protective order is in place, a party may request a redacted public decision by contacting OHA. Where a protective order is in place, the Judge will usually issue the unredacted decision under the protective order and a redacted version for public release.

§ 134.1214 Effects of the decision.

OHA may affirm, reverse, or remand an SBA loan review decision. If remanded, OHA no longer has jurisdiction over the matter unless a new appeal is filed as a result of a new SBA loan review decision.

§ 134.1215 Equal Access to Justice Act (EAJA), 5 U.S.C. 504.

A prevailing appellant is not entitled to recover attorney's fees. Appeals to OHA from SBA loan review decisions under the PPP are not proceedings that are required to be conducted by an Administrative Law Judge under § 134.603.

§ 134.1216 Exhaustion of administrative remedies.

An appeal to OHA and request for review by the Administrator of a disputed initial decision or reconsidered initial decision are administrative remedies that must be exhausted before judicial review of an

SBA loan review decision may be sought in a federal district court.

§ 134.1217 Confidential Information and Protective Order.

(a) If a filing or other submission made pursuant to an appeal in this subpart L contains confidential business and financial information; personally identifiable information; source selection sensitive information; income tax returns; documents and information covered under § 120.1060 of this title; or any other exempt information, that information is not available to the public pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552.

(b) SBA or appellant may seek a protective order over any document or information exchanged in discovery if permitted in accordance with § 134.1209 and any document or information filed pursuant to an appeal in this subpart L.

Jovita Carranza,

Administrator.

[FR Doc. 2020–17895 Filed 8–25–20; 11:15 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0786; Project Identifier AD–2020–00914–R; Amendment 39–21229; AD 2020–18–08]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–12–18 for Robinson Helicopter Company (Robinson) Model R44 II helicopters. AD 2019–12–18 required inspecting certain engine air induction hoses (hoses) and replacing any hose that was not airworthy. AD 2019–12–18 also prohibited the installation of certain hoses. This AD continues to require inspecting those previously affected hoses and amends the applicability, clarifies an inspection requirement, adds a requirement to repeat the inspection, and expands the installation prohibition. This AD was prompted by an additional report of separation between the outer and inner hose layers. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 27, 2020.

The FAA must receive any comments on this AD by October 13, 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 service information identified in this final rule, contact Robinson Helicopter Company, 2901 Airport Drive, Torrance, CA 90505; telephone 310–539–0508; fax 310–539–5198; or at *https://robinsonheli.com/.* 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.

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–2020–0786; 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 street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Roger Gretler, Aerospace Engineer, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; phone 562–627–5251; email *roger.gretler@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued AD 2019–12–18, Amendment 39–19673 (84 FR 32028, July 5, 2019) (''AD 2019–12–18''), for Robinson Model R44 II helicopters. AD 2019–12–18 required, for helicopter serial numbers (S/Ns) 14248 through 14268 and 14270 through 14286 and helicopters with a hose part number (P/N) A785–31 installed after April 30, 2018, inspecting the inside of the hose for separation between the outer and inner layers and flexing the hose in all directions while listening for a crinkling sound, which is an indication of separation. If there was any separation or a crinkling sound, AD 2019–12–18 required replacing the hose before further flight. If there was no separation and no crinkling sound, AD 2019–12–18 required replacing the hose within 50 hours time-in-service (TIS). Finally, AD 2019–12–18 prohibited installing hose P/N A785–31 marked with code 1Q18 on any helicopter.

AD 2019–12–18 resulted from 12 reports, including an accident on April 4, 2019, of separation between the outer and inner layers of the orange silicone hose out of a suspected population of 100 hoses traced to a specific manufacturing batch marked by code 1Q18 (1st quarter of 2018). The separation of the silicone layers, if not addressed, could result in blockage of air flow to the engine, engine stoppage, and subsequent loss of control of the helicopter. Accordingly, the FAA issued AD 2019–12–18 to address the unsafe condition on these products.

Actions Since AD 2019–12–18 Was Issued

Since the FAA issued AD 2019–12–18, an NTSB report of October 2019 concluded from the accident aircraft's orange silicone hose marked by code 1Q18, that contamination was introduced during the manufacturing process between the silicone layers that prevented a satisfactory bond.

In addition, a helicopter accident occurred on April 6, 2020, and preliminary investigation indicated that separation between the outer and inner layers of the orange silicone hose P/N A785–31 occurred. This hose was traced to the manufacturing batch marked by code 3Q17 (3rd quarter of 2017).

Subsequently, the FAA determined that any helicopter with an improved black neoprene hose P/N A785–31 installed should not be affected by this AD. The FAA has also determined that, for helicopters with an orange silicone hose, repeating the inspection is necessary. Accordingly, the FAA is superseding AD 2019–12–18 to amend the applicability from all Robinson Model R44 II helicopters to Model R44 II helicopters with an orange silicone hose P/N A785–31 installed. This AD also clarifies that the hose must be removed to perform the inspection, adds a requirement to repeat the inspection, and expands the installation prohibition

to include any orange silicone hose P/N A785–31 marked with code 3Q17 or with an illegible code marking.

Comments to AD 2019–12–18

After AD 2019–12–18 was published, the FAA received a comment from one commenter.

Request

An anonymous commenter requested the FAA clarify which hose P/N A785–31 must be replaced within 50 hours TIS. The commenter stated that, as written, AD 2019–12–18 requires that any hose P/N A785–31 installed after April 30, 2018, must be replaced within 50 hours TIS regardless of its code. The commenter asked whether this is correct, or if instead whether only P/N A785–31 hoses with code 1Q18 need to be replaced.

The commenter is correct that AD 2019–12–18 required replacement of any hose P/N A785–31 installed after April 30, 2018, regardless of its code. The FAA intended this requirement in the event the manufacturing code becomes illegible during service. However, the FAA agrees that instead only P/N A785–31 hoses marked with code 1Q18 (with no separation and no crinkling sound) must be replaced within 50 hours TIS. The FAA has changed this final rule accordingly.

Related Service Information

The FAA reviewed Robinson Helicopter Company R44 Service Bulletin SB–97, dated April 11, 2019 (SB–97). This service information applies to Robinson Model R44 II helicopters S/Ns 14248 through 14286, except 14269, and to any P/N A785–31 hoses shipped as spares from May through November 2018. This service information specifies, within 1 flight hour or prior to further flight if engine roughness or power loss is, or has been encountered, visually inspecting the hose for separation, flexing the hose to listen for a crinkling sound, which is an indication of separation, and replacing any hose that shows indication of separation. This service information also specifies replacing or discarding all affected hoses by June 30, 2019.

The FAA also reviewed Robinson Helicopter Company R44 Service Bulletin SB–100, dated July 3, 2019 (SB–100). This service information applies to Robinson Model R44 II helicopters S/Ns 10001 through 14314, except 14269, 14287, 14299, and 14304, and to any P/N A785–31 hoses shipped as spares through March 2019. This service information specifies the same inspection procedures as SB–97, except with a compliance time of within 100 hours TIS or by August 31, 2019, whichever occurs first, and replacing the hose only if there is any indication of separation. This service information also specifies returning the hose to Robinson or discarding a hose with any indication of separation.

FAA's Determination

The FAA is issuing this AD after evaluating all the relevant information and determining the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires:

- For Robinson Model R44 II helicopters with S/Ns 14168 through 14314 inclusive (except S/Ns 14269, 14287, 14299, and 14304), or with an orange silicone hose P/N A785–31 installed after October 1, 2017, and before the effective date of this AD, within 10 hours TIS after the effective date of this AD, inspecting the inside of the hose for separation between the outer and inner layers, and flexing the hose in all directions while listening for a crinkling sound. This inspection must be done with the hose removed.
- If there is any separation or a crinkling sound, removing the hose from service before further flight.
- If there is no separation and no crinkling sound, and the hose is marked with code 3Q17 or 1Q18 or the code marking is illegible, removing the hose from service within 50 hours TIS.
- For all Robinson Model R44 II helicopters with an orange silicone hose P/N A785–31 installed, performing the inspection of the inside of the hose at intervals not to exceed 100 hours TIS or at each annual inspection after the effective date of this AD, whichever occurs first. If there is any separation or a crinkling sound, removing the hose from service before further flight.

This AD prohibits installing an orange silicone hose P/N A785–31 marked with code 1Q18 or 3Q17, or with an illegible code marking, on any helicopter.

Because this AD only applies to Model R44 II helicopters with an orange silicone hose P/N A785–31 installed, operators do not have to comply with this AD if they have replaced the orange silicone hose installed on their helicopter with a black neoprene hose P/N A785–31.

Differences Between This AD and the Service Information

SB–97 and SB–100 apply to Robinson Model R44 II helicopters with certain S/Ns and certain spare hoses. This AD applies to Robinson Model R44 II helicopters with an orange silicone hose P/N A785–31 installed instead. SB–97 specifies inspecting the hose within one flight hour or prior to further flight if engine roughness or power loss has been encountered, and SB–100 specifies inspecting the hose within 100 hours TIS or by August 31, 2019, whichever occurs first. For certain helicopters, this AD requires inspecting the hose within 10 hours TIS, and for all other helicopters, within 100 hours TIS or at the next annual inspection, whichever occurs first. This AD requires repeating the inspection, whereas SB–97 and SB–100 do not. SB–97 specifies replacing all affected hoses, even if they pass the inspection, by June 30, 2019, and SB–100 specifies only replacing a hose if the hose has any indication of separation. This AD requires removing from service all hoses with any separation or a crinkling sound, as well as hoses marked with code 3Q17, 1Q18, or an illegible code, even if they pass the inspection.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C.) 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 seeking comment prior to the rulemaking.

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 corrective actions must be completed within 10 hours TIS and within 100 hours TIS, a time period of up to four months based on the average flight-hour utilization rates of these helicopters. Therefore, notice and opportunity for prior public comment are impracticable and contrary to public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reasons stated above, 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.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not provide you with notice and an opportunity to provide your comments prior to it becoming

effective. However, the FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time.

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 file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. The FAA will consider all the comments received and may conduct additional rulemaking based on those comments.

Confidential Business Information

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 final rule 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 final rule, 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 final rule. Submissions containing CBI should be sent to Roger Gretler, Aerospace Engineer, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; phone 562–627–5251; email *roger.gretler@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

The requirements of the Regulatory Flexibility Act (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 up to 187 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting a hose takes about 0.5 work-hour for an estimated cost of $43 per helicopter and $8,041 for the U.S. fleet per inspection cycle. Replacing a hose takes about 0.5 work-hour and parts cost about $151 for an estimated cost of $194 per helicopter.

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, 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 part 39 of the Federal Aviation Regulations (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) 2019–12–18, Amendment 39–19673 (84 FR 32028, July 5, 2019); and

■ b. Adding the following new AD:

2020–18–08 Robinson Helicopter Company: Amendment 39–21229; Docket No. FAA–2020–0786; Project Identifier AD–2020–00914–R.

(a) Effective Date

This AD is effective August 27, 2020.

(b) Affected ADs

This AD replaces AD 2019–12–18, Amendment 39–19673 (84 FR 32028, July 5, 2019) (''AD 2019–12–18'').

(c) Applicability

This AD applies to Robinson Helicopter Company Model R44 II helicopters, certificated in any category, with an orange silicone engine air induction hose (hose) part number (P/N) A785–31 installed. This AD does not apply to helicopters with a black neoprene hose P/N A785–31 installed.

(d) Subject

Joint Aircraft System Component (JASC): 7160, Engine Air Intake System.

(e) Unsafe Condition

This AD was prompted by reports of separation between the outer and inner layers of a hose. The FAA is issuing this AD to prevent blockage of air flow to the engine, engine stoppage, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) For helicopters with serial numbers (S/Ns) 14168 through 14314 inclusive (except S/Ns 14269, 14287, 14299, and 14304), or with an orange silicone hose P/N A785–31 installed after October 1, 2017, and before the effective date of this AD, within 10 hours time-in-service (TIS) after the effective date of this AD:

(i) With the hose removed, inspect the inside of the hose for separation between the outer and inner layers, and flex the hose in all directions while listening for a crinkling sound, which is an indication of separation.

(ii) If there is any separation or a crinkling sound, before further flight, remove the hose from service.

(iii) If there is no separation and no crinkling sound, and the hose is marked with

code 3Q17 or 1Q18 or an illegible code, within 50 hours TIS, remove the hose from service.

(2) For all helicopters identified in paragraph (c) of this AD, accomplish the inspection required by paragraph (g)(1)(i) of this AD within 100 hours TIS after the effective date of this AD or at the next annual inspection after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS or at each annual inspection, whichever occurs first. If there is any separation or a crinkling sound, before further flight, remove the hose from service.

(3) As of July 5, 2019 (the effective date of AD 2019–12–18), do not install on any helicopter an orange silicone hose P/N A785–31 marked with code 1Q18.

(4) As of the effective date of this AD, do not install on any helicopter an orange silicone hose P/N A785–31 marked with code 3Q17 or an illegible code.

(h) 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 (i) 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) AMOCs approved for AD 2019–12–18 are approved as AMOCs for the corresponding provisions of this AD.

(i) Related Information

For more information about this AD, contact Roger Gretler, Aerospace Engineer, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; phone 562–627–5251; email *roger.gretler@faa.gov.*

Issued on August 21, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–18829 Filed 8–26–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0215; Product Identifier 2018–SW–088–AD; Amendment 39–21181; AD 2020–15–18]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to certain Leonardo S.p.A. (Leonardo) Model AB139, AW139, AW169, and AW189 helicopters. As published, one service bulletin reference in the AD is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This correction is effective September 3, 2020. The effective date of AD 2020–15–18 remains September 3, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 3, 2020 (85 FR 45773, July 30, 2020).

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 referenced 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–2020–0215.

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–2020–0215; 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: Kristi Bradley, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5485; email *Kristin.Bradley@faa.gov.*

SUPPLEMENTARY INFORMATION: AD 2020–15–18, Amendment 39–21181 (85 FR 45773, July 30, 2020) (AD 2020–15–18), currently requires removal of affected shape memory alloy (SMA) inflation systems and installation of serviceable SMA inflation systems. That AD applies to certain Leonardo S.p.A. (Leonardo) Model AB139, AW139, AW169, and AW189 helicopters.

Need for the Correction

As published, paragraph (g) of the regulatory text of AD 2020–15–18 contains an error in a reference to the service information. Paragraph (g) of the AD incorrectly identifies the service information ''Alert Service Bulletin (ASB) No. 139–533, dated August 30, 2018 (ASB–139–153)''. The second parenthetical reference to ''ASB–139–153'' is incorrect.

Related Service Information Under 1 CFR Part 51

Leonardo Helicopters has issued Alert Service Bulletin (ASB) No. 139–533, dated August 30, 2018; ASB No. 169–099, dated August 30, 2018; and ASB No. 189–195, dated August 30, 2018. This service information describes procedures for removal of affected SMA inflation systems and installation of serviceable SMA inflation systems (including correcting the SMA inflation system by performing a reset procedure). These documents are distinct since they apply to different helicopter models. 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.

Correction of Publication

This document corrects an error and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, the FAA is publishing the entire rule in the **Federal Register**.

The effective date of this AD remains September 3, 2020.

Good Cause for Adoption Without Prior Notice

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'' find that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d)(3) of the APA requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.

Since this action only corrects a typographical error in a service bulletin reference, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public comment procedures under 5 U.S.C. 553(b) are unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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 [Corrected]

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

2020–15–18 Leonardo S.p.A.: Amendment 39–21181; Docket No. FAA–2020–0215; Product Identifier 2018–SW–088–AD.

(a) Effective Date

This AD is effective September 3, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Leonardo S.p.A. helicopters identified in paragraphs (c)(1) through (3) of this AD, certificated in any category.

(1) Model AB139 and AW139 helicopters, all serial numbers, equipped with an emergency flotation system (EFS) float assembly having part number (P/N) 3G9560V00332, 3G9560V00432, 3G9560V01432, or 3G9560V01532.

(2) Model AW169 helicopters, all serial numbers, equipped with an EFS float assembly having any part number.

(3) Model AW189 helicopters, all serial numbers, equipped with an EFS float assembly having P/N 8G9560V00331 or 8G9560V00431.

(d) Subject

Joint Aircraft Service Component (JASC) Code 3212, Emergency Flotation Section.

(e) Reason

This AD was prompted by reports of uncommanded deployment of the EFS due to improper accomplishment of the reset procedure of the shape memory alloy (SMA) inflation system actuation device. The FAA is issuing this AD to address uncommanded EFS deployment, which could result in reduced control of the helicopter.

(f) Compliance

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

(g) Definitions

(1) An ''affected part'' is an SMA inflation system having P/N 3G9560V01052 (Model AB139 and AW139 helicopters), P/N 6F9560V00551 (Model AW169 helicopters), or P/N 8G9560V01751 (Model AW189 helicopters), as applicable, with a serial number specified in Figure 1 to paragraph (g)(1) of this AD except those which have been corrected in accordance with the Accomplishment Instructions of Leonardo Helicopters Alert Service Bulletin (ASB) No. 139–533, dated August 30, 2018 (ASB 139–533); Leonardo Helicopters ASB No. 169–099, dated August 30, 2018 (ASB 169–099); or Leonardo Helicopters ASB No. 189–195, dated August 30, 2018 (ASB 189–195); as applicable.

Figure 1 to paragraph (g)(1) – *Affected parts*

Helicopter model	Affected part/serial numbers (s/n)
AB139 and AW139	Up to s/n 1801 inclusive, except s/n 1783 and s/n 1784
AW169	Up to s/n 67 inclusive
AW189	Up to s/n 182 inclusive, except s/n 117

(2) A ''serviceable part'' is an affected part that has been corrected in accordance with the Accomplishment Instructions of ASB 139–533; ASB 169–099; or ASB 189–195; as applicable; or a part that is not affected.

(h) Removal and Installation

At the applicable compliance time specified in Figure 2 to paragraph (h) of this AD, remove each affected part from the helicopter and install a serviceable part. This may be done in accordance with the Accomplishment Instructions of ASB 139–533; ASB 169–099; or ASB 189–195; as applicable.

Figure 2 to paragraph (h) – *Removal and installation compliance times*

Helicopter model	Compliance time (after the effective date of this AD)
AB139 and AW139	100 hours time-in-service (TIS)
AW169	45 hours TIS
AW189	

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install an affected part on any helicopter.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Kristi Bradley, Aerospace Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, notify your principal inspector or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(k) Related Information

(1) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2018–0208, dated September 20, 2018. This EASA AD may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0215.

(2) For more information about this AD, contact Kristi Bradley, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5485; email *Kristin.Bradley@faa.gov.*

(l) 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 September 3, 2020 (85 FR 45773, July 30, 2020).

(i) Leonardo Helicopters Alert Service Bulletin No. 139–533, dated August 30, 2018.

(ii) Leonardo Helicopters Alert Service Bulletin No. 169–099, dated August 30, 2018.

(iii) Leonardo Helicopters Alert Service Bulletin No. 189–195, dated August 30, 2018.

(4) For service information identified in this AD, 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.*

(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 August 19, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–18620 Filed 8–26–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0106; Product Identifier 2020–NM–005–AD; Amendment 39–21184; AD 2020–15–21]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–200, –200 Freighter, and –300 series airplanes. This AD was prompted by a determination that certain inspection procedures specified an incorrect inspection area. This AD requires repetitive detailed inspections of a certain stringer location, and applicable corrective actions if necessary, as specified in European Union Aviation Safety Agency (EASA) AD 2019–0315, dated December 23, 2019, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 1, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 1, 2020.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; 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–2020–0106.

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–2020–0106; 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: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229; email: *vladimir.ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0315, dated December 23, 2019 (''EASA AD 2019–0315'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–200 series airplanes, Model A330–200 Freighter series airplanes, and Model A330–300 series airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–200, –200 Freighter, and –300 series airplanes. The NPRM published in the **Federal Register** on March 9, 2020 (85 FR 13583). The NPRM was prompted by a determination that certain inspection procedures specified an incorrect inspection area. The NPRM proposed to require repetitive detailed inspections of a certain stringer location, and applicable corrective actions if necessary, as specified in an EASA AD.

The FAA is issuing this AD to address potential undetected damage, which could affect the structural integrity of the affected area, leading to potential in-flight loss of the bulk cargo door, and possible consequent damage to 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 following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

Jackson Ritchie expressed support for the NPRM and increased inspections as a method to improve airline safety.

Request To Reference the Relationship Between AD 2019–23–02 and the NPRM

Delta Air Lines (DAL) requested that the FAA reference the relationship between AD 2019–23–02, Amendment 39–19795 (84 FR 64725, November 25, 2019) (''AD 2019–23–02'') and the NPRM. DAL pointed out that AD 2019–23–02 mandates revision of the existing maintenance or inspection program by incorporating the information specified in Airbus Airworthiness Limitation Section (ALS) Part 2. ALS Part 2 mandates accomplishment of certain inspections of the bulk cargo door at 13,400 flight cycles since the date of manufacture, and that EASA AD 2019–0315, specified in this AD, requires certain inspections of the bulk cargo door at 22,200 flight cycles since the date of manufacture. These inspections are to be performed in accordance with Airbus Non-destructive Testing Manual (NTM) procedure specified in NTM task 53–40–17. In certain cases, the ALS mandated inspections, with the incorrect inspection area specified in NTM task 53–40–17, may be performed prior to the inspection required by this AD. DAL explained that EASA AD 2019–0315 allows the inspections specified in the corrected NTM task 53–40–17 with the corrected inspection area as an alternative to the required actions. EASA AD 2019–0315 also specifies that the ALS Part 2 tasks remain unchanged, thus causing certain bulk cargo door inspections specified in ALS Part 2, if accomplished in accordance with the NTM procedure containing the corrected inspection area, to be compliant with the required initial and repetitive inspections of this AD. DAL mentioned that referencing this relationship will provide clarification to operators and enable them to proactively implement the correct NTM inspection procedures prior to the Airbus ALS Part 2 mandated inspection thresholds, with the result of better quality inspections and avoiding unnecessary re-inspection.

The FAA agrees for the reasons provided and has included an explanation under the ''Relationship Between AD 2019–23–02 and this AD'' heading in the preamble of this final rule describing the relationship between AD 2019–23–02 and this AD.

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 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.

Relationship Between AD 2019–23–02 and This AD

AD 2019–23–02 requires revision of the existing maintenance or inspection program by incorporating the information specified in Airbus ALS Part 2. Among other actions, Airbus ALS Part 2 specifies certain inspections of the bulk cargo door to be accomplished at 13,400 flight cycles since the date of airplane manufacture. These inspections are to be performed in accordance with the Airbus NTM procedure specified in NTM task 53–40–17, which may contain a figure that specifies an incorrect inspection area. This AD requires the actions specified in EASA AD 2019–0315, which specifies certain inspections of the bulk cargo door at 22,200 flight cycles since the date of manufacture using service information containing the corrected inspection area. EASA AD 2019–0315 allows the NTM procedure specified in the ALS Part 2 required in AD 2019–23–02 with the corrected inspection area as an alternative to the required actions. EASA AD 2019–0315 also specifies that the ALS Part 2 tasks remain unchanged, thus causing certain bulk cargo door inspections, if accomplished in accordance with the NTM procedure containing the corrected inspection area, to be compliant with the required initial and repetitive inspections of this AD. Therefore, accomplishing the requirements of AD 2019–23–02 with the corrected inspection area also meets the requirements of this AD.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0315 describes procedures for repetitive detailed inspections of stringer 44 right-hand at fuselage frame (FR) 67 for discrepancies (such as cracking), and applicable corrective actions. Corrective actions might include repair. 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 113 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
1 work-hour × $85 per hour = $85	$0	$85	$9,605

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

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

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):

2020–15–21 Airbus SAS: Amendment 39–21184; Docket No. FAA–2020–0106; Product Identifier 2020–NM–005–AD.

(a) Effective Date

This AD is effective October 1, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes specified in paragraphs (c)(1) through (3) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus SAS Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Airbus SAS Model A330–223F and –243F airplanes.

(3) Airbus SAS Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that certain inspection procedures specified the inspection area as stringer (STR) 43 right-hand (RH) at fuselage frame (FR) 67 instead of STR 44 RH at fuselage FR 67. The FAA is issuing this AD to address potential undetected damage, which could affect the structural integrity of the affected area, leading to potential in-flight loss of the bulk cargo door, and possible consequent damage to 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, European Union Aviation Safety Agency (EASA) AD 2019–0315, dated December 23, 2019 (''EASA AD 2019–0315'').

(h) Exceptions to EASA AD 2019–0315

(1) Where EASA AD 2019–0315 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0315 does not apply to this AD.

(3) Where EASA AD 2019–0315 specifies to comply with ''the instructions of the AOT,'' this AD requires compliance with the procedures marked as required for compliance (RC) in the alert operators transmission (AOT).

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0315 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) 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 (k) 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 2019–0315 that contains RC procedures and tests: Except as required by paragraph (j)(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.

(k) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229; email: *vladimir.ulyanov@faa.gov.*

(l) 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 2019–0315, dated December 23, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0315, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; 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–2020–0106.

(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 20, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–18820 Filed 8–26–20; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 200824–0225]

RIN 0694–AI11

Addition of Entities to the Entity List, and Revision of Entries on the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding sixty entities, under a total of sixty-one entries, to the Entity List. These sixty entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These entities will be listed on the Entity List under the destinations of the People's Republic of China (China), France, Hong Kong, Indonesia, Malaysia, Oman, Pakistan, Russia, Switzerland and the United Arab Emirates (U.A.E.). This rule also revises five existing entries on the Entity list, one each under the destinations of Canada, Germany, Hong Kong, Iran, and the U.A.E.

DATES: This rule is effective August 27, 2020.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to part 744 of the Export Administration Regulations (EAR)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. The EAR (15 CFR parts 730–774) impose additional license requirements on, and limit the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities. The license review policy for each listed entity is identified in the ''License review policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** notice adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

Under § 744.11(b) (Criteria for revising the Entity List) of the EAR, entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, and those acting on behalf of such entities, may be added to the Entity List. Paragraphs (b)(1) through (5) of § 744.11 provide an illustrative list of activities that could be considered contrary to the national security or foreign policy interests of the United States.

This rule implements the decision of the ERC to add sixty entities, under a total of sixty-one entries, to the Entity List; one of these entities is being added under two entries. These sixty entities will be listed on the Entity List under the destinations of, as applicable, China, France, Hong Kong, Indonesia, Malaysia, Oman, Pakistan, Russia, Switzerland, and the U.A.E. The ERC made the decision to add each of the sixty entities described below under the

standard set forth in § 744.11(b) of the EAR.

The ERC determined to add Travcon Aviation Group and its employee Phillip Zurcher; Quantum Aviation and Supply SDN BHD and its employee Zulkefli bin Yusuf; Maxwell Prima-Ventures SDN BHD and its employee Mohd Zamri bin Mazleh; PT. Kuantum Tekno Kreatif and its employee Nur Rochman Achmad; Kish Motor Jahan Technic; and Hejaif Alhadeetha Trading Company, under the destinations, as applicable, of France, Indonesia, Malaysia, Oman, and Switzerland, because the ERC has reasonable cause to believe they were instrumental in the attempted diversion of controlled U.S.-origin aircraft parts to Iran, in violation of the Iranian Transactions and Sanctions Regulations and the EAR.

The ERC determined to add KK International Traders (KKIT); Sayyed Brothers Engineering Co. (SBEC); and QTech under the destination of Pakistan, because of their contributions to unsafeguarded nuclear activities. The ERC also determined to add Blue Chip International and Sci-Tech Global under the destination of Pakistan, as well as Sci Box Scientific and Laboratory Equipment Trading, LLC under the destination of the U.A.E., because of their contributions to unsafeguarded nuclear activities.

The ERC determined to add MTech Industrial Limited because it has contributed to unsafeguarded nuclear activities and missile proliferation activities. The ERC determined to add Taihe Electric (Hong Kong) Limited under the destinations of China and Hong Kong because it has contributed to unsafeguarded nuclear activities.

The ERC determined to add PNPI Group SDN BHD; Sam Johnson; John Tan; HAT Logistics SDN BHD; Donny Lee; and Sky Marine and Oil SDN BHD under the destination of Malaysia, because there is reasonable cause to believe that these entities were involved in a scheme to falsify information submitted in support of BIS license applications in order to divert U.S.-origin items to Iran without the required U.S. Government authorization.

The ERC determined to add Peaceful Vision (Lianyungang) Electronic Co., Ltd.; and Shanghai Fengjin Electronic Technology Co., Ltd. under the destination of China and to add Peaceful Vision Co., Ltd under the destination of Hong Kong, because there is reasonable cause to believe that there is an unacceptable risk that U.S.-origin items exported, reexported, or transferred (in-country) to these entities will be used in military end-use activities in China.

The ERC has determined to add 33rd Scientific Research and Testing Institute; 48th Central Scientific Research Institute, Kirov; 48th Central Scientific Research Institute, Sergiev Posad; 48th Central Scientific Research Institute, Yekaterinburg; and State Scientific Research Institute of Organic Chemistry and Technology under the destination of Russia, based on their involvement with the Russian military. Specifically, the ERC has reasonable cause to believe that 33rd Scientific Research and Testing Institute is a Ministry of Defense facility associated with the Russian chemical program and chemical weapons testing range, and that State Scientific Research Institute of Organic Chemistry and Technology is a Russian Ministry of Defense facility associated with the Russian chemical weapons program. The ERC also has reasonable cause to believe that 48th Central Scientific Research Institute, Kirov; 48th Central Scientific Research Institute, Sergiev Posad; and 48th Central Scientific Research Institute, Yekaterinburg are Ministry of Defense facilities associated with the Russian biological weapons program.

The ERC determined to add Xi'an Overland Science and Technology Co., Ltd. under the destination of China, because the ERC has obtained evidence of its acquisition and attempted acquisition of U.S.-origin items for a person on the Entity List and in support of programs for the People's Liberation Army.

The ERC determined to add Raneen Wireless Development Systems Company (RWDS, LLC); Sky Gulf Electronic Devices Industries; and the associated individual Ali Al-Dhaheri to the Entity List under the destination of the U.A.E. for engaging in activities contrary to U.S. national security or foreign policy interests. Specifically, the ERC has reasonable cause to believe that Raneen Wireless Development Systems Company (RWDS, LLC) and Sky Gulf Electronic Devices Industries are affiliates of AdCom Systems, which was added to the Entity List as of March 21, 2016 (81 FR 14958), and were established by Al-Dhaheri following AdCom Systems' listing in order to continue proliferation activities that are contrary to U.S. national security and foreign policy interests.

The ERC determined to add China Communications Construction Company Dredging Group Co. Ltd.; China Communications Construction Company Guangzhou Waterway Bureau; China Communications Construction Company Second Navigation Engineering Bureau; China Communications Construction Company Shanghai Waterway Bureau; and China Communications Construction Company Tianjin Waterway Bureau to the Entity List under the destination of China for engaging in activities contrary to U.S. national security interests. Specifically, the ERC has taken account of evidence that these entities enabled China to reclaim and militarize disputed outposts in the South China Sea. In particular, these entities have engaged in reclaiming land at Mischief Reef, which per a July 12, 2016 ruling by an Arbitral Tribunal convened under the 1982 Law of the Sea Convention was determined to be part of the Philippines' exclusive economic zone and continental shelf.

The ERC also determined to add Beijing Huanjia Telecommunication Co., Ltd.; Changzhou Guoguang Data Communications Co., Ltd.; China Electronics Technology Group Corporation, 7th Research Institute (CETC–7); China Electronics Technology Group Corporation, 30th Research Institute (CETC–30); China Shipbuilding Group 722nd Research Institute; Chongxin Bada Technology Development Co., Ltd.; Guangzhou Guangyou Communications Equipment Co., Ltd.; Guangzhou Haige Communication Group Co., Ltd.; Guangzhou Hongyu Technology Co., Ltd. (a subordinate institute of CETC–7); Guangzhou Tongguang Communication Technology Co., Ltd. (a subordinate institute of CETC–7); Guilin Changhai Development Co., Ltd.; Hubei Guangxing Communications Technology Co., Ltd.; Shaanxi Changling Electronic Technology Co., Ltd.; Shanghai Cable Offshore Engineering Co., Ltd.; Telixin Electronics Technology Co., Ltd.; Tianjin 764 Avionics Technology Co., Ltd.; Tianjin 764 Communication and Navigation Technology Co., Ltd.; Tianjin Broadcasting Equipment Co., Ltd.; and Wuhan Mailite Communication Co., Ltd. to the Entity List for engaging in activities contrary to U.S. national security interests. Specifically, these entities similarly have been involved in the PRC's land reclamation efforts in the South China Sea.

Pursuant to § 744.11(b), the ERC determined that the conduct of the above-described sixty entities raises sufficient concerns that prior review, via the imposition of a license requirement, of exports, reexports, or transfers (in-country) of all items subject to the EAR involving these entities, and the possible issuance of license denials or the possible imposition of license conditions on shipments to these entities, will enhance BIS's ability to

prevent violations of the EAR or otherwise protect U.S. national security or foreign policy interests.

For the sixty entities added to the Entity List in this final rule, BIS imposes a license requirement that applies to all items subject to the EAR. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule.

For eight of the sixty entities—Blue Chip International; KK International Traders (KKIT); MTech Industrial Limited; QTech; Sayyed Brothers Engineering Co. (SBEC); Sci-Tech Global; Sci Box Scientific and Laboratory Equipment Trading, LLC; and Taihe Electric (Hong Kong) Limited—BIS imposes the license review policy set forth in § 744.2(d) of the EAR (for license applications for certain nuclear end uses).

For HAT Logistics SDN BHD, the license review policy imposed by BIS is case-by-case review.

For the other fifty-one entities added to the Entity List by this rule, BIS imposes a license review policy of a presumption of denial.

The acronym ''a.k.a.'' (also known as) is used in entries on the Entity List to identify aliases, thereby assisting exporters, reexporters, and transferors in identifying entities on the Entity List.

For the reasons described above, this final rule adds the following sixty entities, under a total of sixty-one entries, to the Entity List:

China

- Beijing Huanjia Telecommunication Co., Ltd.;
- Changzhou Guoguang Data Communications Co., Ltd.;
- China Communications Construction Company Dredging Group Co. Ltd.;
- China Communications Construction Company Guangzhou Waterway Bureau;
- China Communications Construction Company Second Navigation Engineering Bureau;
- China Communications Construction Company Shanghai Waterway Bureau;
- China Communications Construction Company Tianjin Waterway Bureau;
- China Electronics Technology Group Corporation, 7th Research Institute (CETC–7);
- China Electronics Technology Group Corporation, 30th Research Institute (CETC–30);
- China Shipbuilding Group 722nd Research Institute;
- Chongxin Bada Technology Development Co., Ltd.;
- Guangzhou Guangyou Communications Equipment Co., Ltd.;
- Guangzhou Haige Communication Group Co., Ltd.;
- Guangzhou Hongyu Technology Co., Ltd. (a subordinate institute of CETC–7);
- Guangzhou Tongguang Communication Technology Co., Ltd. (a subordinate institute of CETC–7);
- Guilin Changhai Development Co., Ltd.;
- Hubei Guangxing Communications Technology Co., Ltd.;
- MTech Industrial Limited;
- Peaceful Vision (Lianyungang) Electronic Co., Ltd.;
- Shanghai Fengjin Electronic Technology Co., Ltd.;
- Shaanxi Changling Electronic Technology Co., Ltd.;
- Shanghai Cable Offshore Engineering Co., Ltd.;
- Taihe Electric (Hong Kong) Limited;
- Telixin Electronics Technology Co., Ltd.;
- Tianjin 764 Avionics Technology Co., Ltd.;
- Tianjin 764 Communication and Navigation Technology Co., Ltd.;
- Tianjin Broadcasting Equipment Co., Ltd.;
- Wuhan Mailite Communication Co., Ltd.; *and*
- Xi'an Overland Science and Technology Co., Ltd.

France

- Kish Motor Jahan Technic.

Hong Kong

- Peaceful Vision Co., Ltd.; *and*
- Taihe Electric (Hong Kong) Limited.

Indonesia

- PT. Kuantum Tekno Kreatif.

Malaysia

- Donny Lee;
- HAT Logistics SDN BHD;
- John Tan;
- Maxwell Prima-Ventures SDN BHD;
- Mohd Zamri bin Mazleh;
- Nur Rochman Achmad;
- PNPI Group SDN BHD;
- Quantum Aviation and Supply SDN BHD;
- Sam Johnson;
- Sky Marine and Oil SDN BHD; *and*
- Zulkefli bin Yusuf.

Oman

- Hejaif Alhadeetha Trading Company.

Pakistan

- Blue Chip International;
- KK International Traders (KKIT);
- QTech;
- Sayyed Brothers Engineering Co. (SBEC); *and*
- Sci-Tech Global.

Russia

- 33rd Scientific Research and Testing Institute;
- 48th Central Scientific Research Institute, Kirov;
- 48th Central Scientific Research Institute, Sergiev Posad;
- 48th Central Scientific Research Institute, Yekaterinburg; *and*
- State Scientific Research Institute of Organic Chemistry and Technology.

Switzerland

- Phillip Zurcher; *and*
- Travcon Aviation Group.

United Arab Emirates

- Ali Al-Dhaheri;
- Raneen Wireless Development Systems Company (RWDS, LLC);
- Sci Box Scientific and Laboratory Equipment Trading, LLC; *and*
- Sky Gulf Electronic Devices Industries.

Revisions to the Entity List

This final rule revises five existing entries, under each of the destinations of Canada, Germany, Hong Kong, Iran and the U.A.E., as follows:

This rule implements a revision to three existing entries for Saeed Talebi, first added to the Entity List under the destinations of Canada, Iran, and the U.A.E. on December 12, 2013 (78 FR 75463). BIS is revising the existing entries under Canada, Iran, and the U.A.E. by removing one of the two aliases. Specifically, BIS is revising the existing entries to modify the three entries for Saeed Talebi to remove the alias ''Al'' from the three entries.

Corrections to the Entity List

This rule also implements a correction to one existing entry for Huawei OpenLab Munich, first added to the Entity List under the destination of Germany, on August 17, 2020 in a final rule published on August 20 2020 (85 FR 51596), and a correction to one existing entry for Huawei Cloud Hong Kong, also first added to the Entity List in the same final rule. BIS is revising the License review policy column for both of these entries, so it correctly reads presumption of denial for consistency with description of the license review policy that was included in the Background section of the August 20 rule that specified the license review policy was presumption of denial for all thirty-eight entities added to the Entity List.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on August 27, 2020, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. Sections 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 42.5 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or online at *https://www.reginfo.gov/public/do/PRAMain.*

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4801–4852), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2019, 84 FR 49633, 3 CFR, 2019 Comp., p. 468; Notice of November 12, 2019, 84 FR 61817, 3 CFR, 2019 Comp., p. 479.

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By revising the Canada entity ''Saeed Talebi'';

■ b. By adding, in alphabetical order, the China, People's Republic Of entities ''Beijing Huanjia Telecommunication Co., Ltd.,'' ''Changzhou Guoguang Data Communications Co., Ltd.,'' ''China Communications Construction Company Dredging Group Co. Ltd.,'' ''China Communications Construction Company Guangzhou Waterway Bureau,'' ''China Communications Construction Company Second Navigation Engineering Bureau,'' ''China Communications Construction Company Shanghai Waterway Bureau,'' ''China Communications Construction Company Tianjin Waterway Bureau,'' ''China Electronics Technology Group Corporation, 7th Research Institute (CETC–7),'' ''China Electronics Technology Group Corporation, 30th Research Institute (CETC–30),'' ''China Shipbuilding Group 722nd Research Institute,'' ''Chongxin Bada Technology Development Co., Ltd.,'' ''Guangzhou Guangyou Communications Equipment Co., Ltd.,'' ''Guangzhou Haige Communication Group Co., Ltd.,'' ''Guangzhou Hongyu Technology Co., Ltd. (a subordinate institute of CETC–7),'' ''Guangzhou Tongguang Communication Technology Co., Ltd. (a subordinate institute of CETC–7),'' ''Guilin Changhai Development Co., Ltd.,'' ''Hubei Guangxing Communications Technology Co., Ltd.,'' ''MTech Industrial Limited,'' ''Peaceful Vision (Lianyungang) Electronic Co., Ltd.,'' ''Shaanxi Changling Electronic Technology Co., Ltd.,'' ''Shanghai Cable Offshore Engineering Co., Ltd.,'' ''Shanghai Fengjin Electronic Technology Co., Ltd.,'' ''Taihe Electric (Hong Kong) Limited,'' ''Telixin Electronics Technology Co., Ltd.,'' ''Tianjin 764 Avionics Technology Co., Ltd.,'' ''Tianjin 764 Communication and Navigation Technology Co., Ltd.,'' ''Tianjin Broadcasting Equipment Co., Ltd.,'' ''Wuhan Mailite Communication Co., Ltd.,'' and ''Xi'an Overland Science and Technology Co., Ltd.'';

■ c. By adding, in alphabetical order, the France entity ''Kish Motor Jahan Technic'';

■ d. By revising the German entity ''Huawei OpenLab Munich'';

■ e. Under HONG KONG:

■ i. By revising the entity ''Huawei Cloud Hong Kong''; and

■ ii. By adding, in alphabetical order, the entities ''Peaceful Vision Co., Ltd.'' and ''Taihe Electric (Hong Kong) Limited'';

■ f. By adding, in alphabetical order, the Indonesia entity ''PT. Kuantum Tekno Kreatif'';

■ g. By revising the Iran entity ''Saeed Talebi'';

■ h. By adding in alphabetical order, the Malaysia entities ''Donny Lee,'' ''HAT Logistics SDN BHD,'' ''John Tan,'' ''Maxwell Prima-Ventures SDN BHD,'' ''Mohd Zamri bin Mazleh,'' ''Nur

Rochman Achmad,'' ''PNPI Group SDN BHD,'' ''Quantum Aviation and Supply SDN BHD,'' ''Sam Johnson,'' ''Sky Marine and Oil SDN BHD,'' and ''Zulkefli bin Yusuf'';

■ i. By adding, in alphabetical order, the Oman entity ''Hejaif Alhadeetha Trading Company'';

■ j. By adding in alphabetical order, the Pakistan entities ''Blue Chip International,'' ''KK International Traders (KKIT),'' ''QTech,'' ''Sayyed Brothers Engineering Co. (SBEC),'' and ''Sci-Tech Global'';

■ k. By adding, in alphabetical order, the Russia entities ''33rd Scientific Research and Testing Institute,'' ''48th Central Scientific Research Institute, Kirov,'' ''48th Central Scientific Research Institute, Sergiev Posad,'' ''48th Central Scientific Research Institute, Yekaterinburg,'' and ''State Scientific Research Institute of Organic Chemistry and Technology'';

■ l. By adding, in alphabetical order, the Switzerland entities ''Phillip Zurcher'' and ''Travcon Aviation Group''; and

■ m. Under UNITED ARAB EMIRATES:

■ i. By adding, in alphabetical order, the entities ''Ali Al-Dhaheri'' and ''Raneen Wireless Development Systems Company (RWDS, LLC)'';

■ ii. By revising the entity, ''Saeed Talebi''; and

■ iii. By adding, in alphabetical order, the entities ''Sci Box Scientific and Laboratory Equipment Trading, LLC'' and ''Sky Gulf Electronic Devices Industries''.

The additions and revisions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
CANADA	*	*	*	*
	Saeed Talebi, a.k.a., the following one alias: —Allen Talebi. P.O. Box 626, Gormley, ONT LOH 1G0 Canada (See alternate addresses under Iran and U.A.E.).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463 12/12/13. 85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	*	*	*	*
*	*	*	*	*
CHINA, PEOPLE'S REPUBLIC OF.	*	*	*	*
	Beijing Huanjia Telecommunication Co., Ltd., a.k.a., the following one alias: —Beijing Huanjia Communication Co., Ltd. No. 2A Shuangquanpu, Deshengmenwai, Chaoyang District, Beijing, China; *and* Room 3–012, Building 1, Dahua Radio Instrument Factory, No. 5A Xueyuan Road, Haidian District, Beijing, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	*	*	*	*
	Changzhou Guoguang Data Communications Co., Ltd., Block C, No. 52 Songtao Rd, Zhonglou Economic Development Zone, Changzhou, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	*	*	*	*
	China Communications Construction Company Dredging Group Co. Ltd., a.k.a., the following two aliases: —CCCC Dredging (Group); *and* —CCCC Dredging. Zhongjiao Building, Block A Desheng, International Beijing, 100088 China; *and* Room 201, 1296 Xuchang Road, Yangpu District, Shanghai, China; *and* China Communications Building, Block A, Desheng International, No. 85 Deshengmenwai Street, Xicheng District, Beijing, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	China Communications Construction Company Guangzhou Waterway Bureau, a.k.a., the following two aliases: —CCCC Guangzhou Waterway Bureau; *and* —CCCC Guangzhou Dredging Company. 29th Floor, No. 298 Lijiao Road, Haizhu District, Guangzhou, China; *and* No. 298, Lijiao Road, Haizhu District, Guangzhou, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.

Country	Entity	License requirement	License review policy	Federal Register citation
	China Communications Construction Company Second Navigation Engineering Bureau, a.k.a., the following three aliases: —CCCC Second Navigation Engineering Bureau; —China Communications Second Navigation Engineering Bureau; *and* —CCCC Second Aviation Engineering Bureau. 11 Jinyinhu Road, Dongxihu District, Wuhan City, Hubei Province, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	China Communications Construction Company Shanghai Waterway Bureau, a.k.a., the following two aliases: —CCCC Shanghai Waterway Bureau; *and* —CCCC Shanghai Dredging Company. No. 13, Zhongshan East First Road, Huangpu District, Shanghai, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	China Communications Construction Company Tianjin Waterway Bureau, a.k.a., the following two aliases: —CCCC Tianjin Waterway Bureau; *and* —CCCC Tianjin Dredging Company. Building 9, Shipping Service Center, Yuejin Road, Tianjin Port Free; *and* No.41 Taierzhuang Road, Hexi District, Tianjin.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
*	*	*	*	*
	China Electronics Technology Group Corporation, 7th Research Institute (CETC–7), a.k.a., the following one alias: —Guangzhou Institute of Communications. No. 381, Xingang Middle Road, Haizhu District, Guangzhou, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
*	*	*	*	*
	China Electronics Technology Group Corporation, 30th Research Institute (CETC–30), a.k.a., the following one alias: —Southwest Communication Research Institute. No. 6, Chuangyue Road, High-Tech Zone of Xiaojiahe Street, Chengdu, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
*	*	*	*	*
	China Shipbuilding Group 722nd Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Corporation (CSIC) 722 Institute; *and* —Wuhan Ship Communication Research Institute. No. 312 Luoyu Road, Hongshan District, Wuhan, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
*	*	*	*	*
	Chongxin Bada Technology Development Co., Ltd., No. 13 Hangfeng Road, Science City, Fengtai, Beijing, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Guangzhou Guangyou Communications Equipment Co., Ltd., a.k.a., the following one alias: —Guangzhou Guangyou Communication Technology Co., Ltd. No. 13 Yiyuan Road, Haizhu District, Guangzhou, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	Guangzhou Haige Communication Group Co., Ltd., a.k.a., the following three aliases: —Haige Communications; —Guangzhou Radio Factory; *and* —State-owned 750 Factory. No. 88 Nan Yun Er Road, Guangzhou, China; *and* No. 88 Haiyun Rd, Guangzhou, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	Guangzhou Hongyu Technology Co., Ltd. (a subordinate institute of CETC–7), Building 1, No. 381, Xingang Middle Road, Haizhu District, Guangzhou, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	Guangzhou Tongguang Communication Technology Co., Ltd. (a subordinate institute of CETC–7), No. 381, Xingang Middle Road, Haizhu District, Guangzhou, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Guilin Changhai Development Co., Ltd., a.k.a., the following two aliases: —Changhai Machinery Factory; *and* —State-owned 722 Factory. No. 3 Changhai Road, Guilin, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Hubei Guangxing Communications Technology Co., Ltd., a.k.a., the following one alias: —State-owned 711 Factory. No. 287 Jiangjin West Road, Jingzhou City, Hubei, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	MTech Industrial Limited, 1802, No. 26 Building, TianSheng Garden, Longwangshan Road, Huzhou, Zhejiang, China.	All items subject to the EAR. (See § 744.11 of the EAR).	See § 744.2(d) of the EAR	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Peaceful Vision (Lianyungang) Electronic Co., Ltd., a.k.a., the following one alias: —Hangxing Electronics (Lianyungang) Co., Ltd. No. 1 Changxing Road, Song Economic High-tech Zone, Lianyungang, Jiangsu, China; *and* No. 1 Changxing Road, Songtiao Hi-Tech Industrial Development Zone, Lianyungang, Jiangsu, China; *and* 20K, West Building, Science and Technology Capital, 668 Beijing East Road, Huangpu District, Shanghai, China; *and* Room 601, Unit 4, Building 5, Yufu Jiayuan, Yuquan Road, Haidian District, Beijing, China; *and* 4201A, 42/F, SEG Plaza, Shennan Middle Road, Shenzhen, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Shaanxi Changling Electronic Technology Co., Ltd., a.k.a., the following one alias: —State-owned 782 Factory. No.75 Qingjiang Road, Weibin District, Baoji City, Shaanxi Province, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Shanghai Cable Offshore Engineering Co., Ltd., Room 910, 9th/10th Floor, No. 825 Yingkou Road, Yangpu District, Shanghai, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	Shanghai Fengjin Electronic Technology Co., Ltd., Room 301–331, 3/F, Building 1, No. 400 Fangchun Road, China (Shanghai) Pilot Free Trade Zone, Shanghai, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Taihe Electric (Hong Kong) Limited, Room No. 2002, 20th Floor, Building B, Jinsha Winera Plaza, No. 1, Shujin Road, Qingyang District, Chengdu, Sichuan, 610091, P.R. China. (See alternate addresses under Hong Kong).	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.2(d) of the EAR	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Telixin Electronics Technology Co., Ltd., Building 1, Jianxiang Garden, No., 209 North Fourth Ring Middle Road, Haidian, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Tianjin 764 Avionics Technology Co., Ltd., Room 1002–2, No. 88 Haibin 8th Road, Tianjin Pilot Free Trade Zone (Tianjin Port Free Trade Zone), China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	Tianjin 764 Communication and Navigation Technology Co., Ltd., Room 401, Door 1, Block F, No. 6 Erwei Road, Huayuan Industrial Zone, Tianjin, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	Tianjin Broadcasting Equipment Co., Ltd., a.k.a., the following two aliases: —Tianjin Communications and Guidance Technology Co., Ltd.; *and* —State-owned 764 Factory. No. 882 Dagu South Road, Hexi District, Tianjin.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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Country	Entity	License requirement	License review policy	Federal Register citation
	Wuhan Mailite Communication Co., Ltd., a.k.a., the following three aliases: —Mailite Communications Co., Ltd.; —Wuhan Melite Communication Co. Ltd.; *and* —Wuhan Melit Communication Co. Ltd. No. 999 Gaoxin Avenue, Wuhan, China; *and* No. 312 Luoyu Road, Hongshan District, Wuhan, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Xi'an Overland Science and Technology Co., Ltd., a.k.a., the following one alias: —Xi'an Wolan Science and Technology Co., Ltd. No. 127 Youyi Xi Road, Xi'an, China; *and* No 17 Laodong South Rd., Xi'an, China; *and* Room 1–202, No. 18 Science and Technology Road, High-tech Zone, Xi'an, China; *and* Room 1–202, Keji Wu Rd, Gaoxin District, Xi'an, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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FRANCE	* *	*	* *	*
	Kish Motor Jahan Technic, a.k.a., the following one alias: —Kisk Motor Jahan Technic. 3, Route De Cessey Road, 25440 Charnay, Franche-Comte, France.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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GERMANY	* *	*	* *	*
	Huawei OpenLab Munich, a.k.a., the following one alias, —Huawei Munich OpenLab. Huawei Germany Region R&D Centre Riesstr. 22 80992 Munich, Germany; *and* Huawei Germany Region R&D Centre Riesstr. 12 80992 Munich, Germany.	For all items subject to the EAR, see § 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER], 8/17/20. 85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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HONG KONG	* *	*	* *	*
	Huawei Cloud Hong Kong, Hong Kong.	For all items subject to the EAR, see § 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER], 8/17/20. 85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Peaceful Vision Co., Ltd., Room 813 8/F Hung Hom Commercial Center Block A. 39 Ma Tau Wai Road, Hung Hom, Kowloon, Hong Kong.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Taihe Electric (Hong Kong) Limited, MOWA 2188, Rm. 1007, 10/F., Ho King Ctr., No. 2–16 Fa Yuen Street, Mongkok, Hong Kong. (See alternate address under China).	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.2(d) of the EAR	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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INDONESIA	* *	*	* *	*
	PT. Kuantum Tekno Kreatif, Jl. Sarirasa No. 113 Blok 4 Sanijadi, Kec. Sukasari, Bandung, Indonesia, 40151.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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IRAN	* *	*	* *	*
	Saeed Talebi, a.k.a., the following one alias: —Allen Talebi. No. 27, Zarif Nia, Pesyan Valley, Tehran, Iran; *and* No. 3, West Saeb Tabrizi Lane, North Sheikh Bahaee Street, Tehran, Iran (See alternate addresses under Canada and U.A.E.).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463, 12/12/13. 85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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MALAYSIA	* *	*	* *	*
	Donny Lee, 34 Sultan Ismael, Kuala Lumpur, Malaysia 50350.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	HAT Logistics SDN BHD, Lot Fl-37, Block A, Klas Cargo Complex, Sepang, Sengalor, Malaysia; *and* No. 27A, Jalan PJS 10/24, Bandar Sri Subang, 46150 Petaling Jaya, Selangor, Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	John Tan, Menara City One Condominium, Jalan Munshi Abdullah, City Centre, 50100 Kuala Lumpur, Malaysia; *and* Level 5, Manara City One, Letter Box CP5–01, No. 3, Jalan Munshi Abdullah, 50100 Kuala Lumpur, Wilayah Persekutuan, Malaysia; *and* Lot Fl-37, Block A, Freight Forwarders Building Klas Cargo Complex, KLIA, 64000 Sepang, Selangor, Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Maxwell Prima-Ventures SDN BHD, No. 12–20, Level 12, Duple Office, Plaza Azalea, Persiaran Bandaraya, Seksyen 14, 40000 Shah Alam, Selangor, Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Mohd Zamri bin Mazleh, No 55, Jalan USJ 11/4M UEP Subang Jaya 47620 Subang Jaya, Selangor, Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Nur Rochman Achmad, No. 12–20, Level 12, Duple Office, Plaza Azalea, Persiaran Bandaraya, Seksyen 14, 40000 Shah Alam, Selangor, Malaysia; *and* Lot 204 CSC Building, KLAS Cargo Complex, KLIA 64000 Sepang, Selangor Darul Ehsan Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	PNPI Group SDN BHD, Menara City One Condominium, Jalan Munshi Abdullah, City Centre, 50100 Kuala Lumpur, Malaysia; *and* Level 5, Manara City One, Letter Box CP5–01, No. 3, Jalan Munshi Abdullah, 50100 Kuala Lumpur, Wilayah Persekutuan, Malaysia; *and* Lot Fl-37, Block A, Freight Forwarders Building Klas Cargo Complex, KLIA, 64000 Sepang, Selangor, Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.

Country	Entity	License requirement	License review policy	Federal Register citation
	Quantum Aviation and Supply SDN BHD, No. 12–20, Level 12, Duple Office, Plaza Azalea, Persiaran Bandaraya, Seksyen 14, 40000 Shah Alam, Selangor, Malaysia; *and* Lot 204 CSC building, KLAS Cargo complex, KLIA 64000 Sepang, Selangor Darul Ehsan, Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	Sam Johnson, Menara City One Condominium, Jalan Munshi Abdullah, City Centre, 50100 Kuala Lumpur, Malaysia; *and* Level 5, Manara City One, Letter Box CP5–01, No. 3, Jalan Munshi Abdullah, 50100 Kuala Lumpur, Wilayah Persekutuan, Malaysia; *and* Lot Fl-37, Block A, Freight Forwarders Building Klas Cargo Complex, KLIA, 64000 Sepang, Selangor, Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	Sky Marine and Oil SDN BHD, a.k.a., the following three aliases: —Sky Marine & Oil SDN BHD; —Sky Marine and Oil; *and* —Sky Marine & Oil. Lot 210, 2nd Floor CSC Building, Klas, Sepang, Selangor, Malaysia 64000; *and* 34 Sultan Ismael, Kuala Lumpur, Malaysia 50350; *and* Level 5, Manara City One, Letter Box CP5–01, No. 3, Jalan Munshi Abdullah, 50100 Kuala Lumpur, Wilayah Persekutuan, Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Zulkefli bin Yusuf, a.k.a., the following one alias: —Zulkefli Yusof. No. 12–20, Level 12, Duple Office, Plaza Azalea, Persiaran Bandaraya, Seksyen 14, 40000 Shah Alam, Selangor, Malaysia; *and* Lot 204 CSC building, KLAS Cargo complex, KLIA 64000 Sepang, Selangor Darul Ehsan, Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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OMAN	Hejaif Alhadeetha Trading Company, P.O. Box 997 PC512, Oman.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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PAKISTAN	* *	*	* *	*
	Blue Chip International, House No. 19 Central Avenue, Fazaia Housing, Rawalpindi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.2(d) of the EAR	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	KK International Traders (KKIT), House No. 19 Central Avenue, Fazaia Housing, Rawalpindi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.2(d) of the EAR	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	QTech, West Land Trade Centre, Suite 615–B, 6th Floor C/5, Block 7 & 8, Commercial Area, KCHS, Shaheed-e-Millat Road, Karachi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.2(d) of the EAR	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Sayyed Brothers Engineering Co. (SBEC), House No. 805, Street No. 80–C, I–8/4, Islamabad, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.2(d) of the EAR	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	Sci-Tech Global, House No. 533, Street 66, Pakistan Town Phase-I, Islamabad 45720, Pakistan; *and* 1st Floor, The British School Building, 252–A, Pakistan Town Phase I, Korang Town Link Road, Islamabad, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.2(d) of the EAR	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
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RUSSIA	33rd Scientific Research and Testing Institute, a.k.a., the following one alias: —33rd TsNIII. 1 Ulitsa Krasnoznamennaya, Volsk-18/ Shikhany, Saratov Oblast, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	48th Central Scientific Research Institute, Kirov, a.k.a., the following three aliases: —48th TsNII Kirov; —Scientific Research Institute of Microbiology; *and* —Scientific Research Institute of Epidemiology and Hygiene. 119 Oktyabrsky Prospekt, Kirov, Kirov Oblast, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	48th Central Scientific Research Institute, Sergiev Posad, a.k.a., the following four aliases: —48th TsNII Sergiev Posad; —Zargorsk Institute; —Scientific Research Institute of Medicine; *and* —The Virology Center. 11 Ulitsa Oktyabrskaya, Sergiev Posad, Moscow Oblast, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
	48th Central Scientific Research Institute, Yekaterinburg, a.k.a., the following three aliases: —48th TsNII Yekaterinburg; —Military Technical Scientific Research Institute; *and* —Center for Military Technical Problems of Biological Defense. 1 Ulitsa Zvezdnaya, Yekaterinburg, Sverdlovsk Oblast, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	State Scientific Research Institute of Organic Chemistry and Technology, a.k.a., the following one alias: —GosNIIOKhT. Shosse Entuziastov 23, Moscow, Moscow Oblast, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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SWITZERLAND	* *	*	* *	*
	Phillip Zurcher, P.O. Box 117, CH–9242 Oberuzwil, Switzerland.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Travcon Aviation Group, P.O. Box 117, CH–9242 Oberuzwil, Switzerland.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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UNITED ARAB EMIRATES.	* *	*	* *	*
	Ali Al-Dhaheri, Building No. H03, 6 Abu Dhabi Heights Street, Abu Dhabi, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Raneen Wireless Development Systems Company (RWDS, LLC), Abu Dhabi -Mussaffah-ICAD I-(I 01AI3, 104AI 3, 105A13, 100A13, 103A13, 102A13) 40 Abu Dhabi, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Saeed Talebi, a.k.a., the following one alias: —Allen Talebi. No. 28 Street 6, Phase Springs 10, Emirates Hills, Dubai, U.A.E., (See alternate addresses under Canada and Iran).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463 12/12/13. 85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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	Sci Box Scientific and Laboratory Equipment Trading, LLC, P.O. Box 183312, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.2(d) of the EAR	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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Country	Entity	License requirement	License review policy	Federal Register citation
	Sky Gulf Electronic Devices Industries, Industrial City of Abu Dhabi (ICAD) Zone 1 plots 104A 13 and 105A13 Abu Dhabi, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER] 8/27/20.
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Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–18909 Filed 8–26–20; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 408, and 416

[Docket No. SSA–2020–0045]

RIN 0960–AI51

Waiver of Recovery of Certain Overpayment Debts Accruing During the COVID–19 Pandemic Period

AGENCY: Social Security Administration.

ACTION: Interim final rule; request for comments.

SUMMARY: We are issuing this interim final rule with request for comments to revise our regulations on how we waive the recovery of certain overpayment debts. We will apply this interim final rule when an affected beneficiary requests waiver of certain overpayment debts that accrued during a portion of the COVID–19 pandemic period. Under this rule, we may waive recovery of these overpayment debts using a streamlined internal process. Since the overpayment debts at issue occurred because of the circumstances surrounding the COVID–19 national public health emergency, we can assume that these debts are not the fault of the affected beneficiaries due directly to our strategic decision to reprioritize workloads to stop manually processing certain actions, and it would be against equity and good conscience to collect them. In particular, qualifying overpayment debts include those incurred between March 1 to September 30, 2020 that we did not manually process as a result of our cession of certain activities, and that we identified by December 31. We expect that this interim final rule will allow us to maintain effective stewardship of the Social Security programs, while simultaneously ensuring that affected beneficiaries are not disadvantaged by our actions during this unprecedented national public health emergency.

DATES: *Effective date:* This interim final rule is effective on August 27, 2020.

Comment date: We invite written comments. Comments must be submitted on or before October 26, 2020.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2020–0045 so that we may associate your comments with the correct rule.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the search function to find docket number SSA–2020–0045. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified in **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Edward Sosar, Office of Regulations and Reports Clearance, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–2341. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

Beginning on March 17, 2020, we took unprecedented measures to protect both the public and our employees during the COVID–19 national public health emergency. These measures included closing our more than 1,200 field offices to in-person service, maximizing our employees' use of telework, and reprioritizing certain manual workloads to stop actions that could, under normal circumstances, have resulted in a reduction, suspension, or termination of benefits or payments under titles II, VIII, or XVI of the Social Security Act (Act).

For example, we suspended the completion of title XVI redeterminations, a periodic review of an individual's or couple's non-medical eligibility factors such as income, resources, and living arrangement, during which our staff ensures that a recipient or couple is still eligible for Supplemental Security Income (SSI) payments and is receiving the correct amount of SSI payments.[1] Moreover, in some instances, we may have had information in our files to indicate an individual's benefits or payments may not have been correct, but we did not take action on that information to protect beneficiaries' income and healthcare coverage during the COVID–19 pandemic period.[2] Because we suspended certain actions due to the pandemic, we did not establish some overpayment debts as timely as we would have if our offices had been operating normally. We note that we would have processed manually the debts impacted by this action. Due to our focus on prioritizing other more

[1] See 20 CFR 416.204.

[2] For the purposes of this rule, whenever we cite the ''pandemic period,'' we are referring only to the established period of March 1, 2020 through September 30, 2020.

urgent workloads and reducing stress on the people we serve during the beginning of the pandemic, we did not take action on these types of overpayment debts. For example, some of these overpayment debts consist of routine monthly reports of changes such as income, resources, and living arrangements that would otherwise result in a reduction, suspension, or termination of benefits. Under normal circumstances, the agency would manually process the changes and benefits would be timely reduced. However, by holding these periodic reports of changes, we have created overpayments within the pandemic period, and therefore the resulting overpayment debts are subject to relief under this interim final rule.

In contrast, overpayment debts that we identified through our automated processes, such as computer interfaces with the Department of Veteran Affairs (VA) and (for dually entitled SSI recipients) Social Security benefit systems, were not affected by the suspension of certain actions during the pandemic period, even if beneficiaries incurred the debts during the pandemic period and in the same manner as some in the manually processed group. Therefore, these overpayment debts will be subject to our existing overpayment debt waiver process. For example, an SSI recipient failed to timely report receipt of VA compensation (not based on need) that began in March 2020, during the pandemic period. In July 2020, we identified the receipt VA compensation through our automated processes and updated to the SSI record, creating an overpayment in the pandemic period. In this example, the overpayment debt will be subject to our existing overpayment debt waiver process.

Beginning on August 31, 2020, we intend to resume workloads that we suspended beginning in mid-March 2020. As we process the suspended workloads, we anticipate identifying a number of overpayments that we would have identified and acted on earlier had it not been for our response to the COVID–19 pandemic. Because of our delay in acting, it is probable that the resulting overpayment debts may be larger in amount and greater in number than they would otherwise have been through no fault of the affected beneficiaries.

Overpayment debts incurred during the pandemic period between March 1, 2020 and September 30, 2020 may be directly the result of the COVID–19 national public health emergency and our unprecedented response to it: Our suspension of manually processing and collecting certain overpayment debts. The combination of the pandemic and our necessary response to it has created a set of circumstances unlike any other in the history of our programs. This unique situation affects a number of our beneficiaries and, more importantly, affects them in a uniformly detrimental manner primarily due to our reprioritizing workloads to suspend the manual processing of certain actions.

Because of the unique nature of the COVID–19 pandemic, our unprecedented response to it, and its uniform impact on this group of beneficiaries, we are revising our rules to use a simplified waiver process for affected beneficiaries who request waiver of recovery of a qualifying overpayment debt. A qualifying overpayment debt is one that accrued at any point between March 1, 2020 through September 30, 2020 and was directly impacted by our actions to defer and suspend certain workloads between March 17, 2020 and August 31, 2020. We designed this simplified waiver process to handle requests for waiver of overpayment debts efficiently and fairly, and to preserve our agency resources for mission-critical workloads. By implementing a streamlined process for this subset of overpayment debts, we can more efficiently administratively process qualifying overpayment debts and provide relief in a timely fashion to those directly impacted by our actions.

Summary of the Change

For qualifying overpayment debts—that is, those that that relate to debts incurred during the period from March 1, 2020, through September 30, 2020 (the ''pandemic period''); that resulted because of our decision to defer action and suspend certain workloads; for which the beneficiary requests waiver and that we identify by December 31, 2020—we will:

- Presume overpaid individuals are without fault in having caused the qualifying overpayment debt;
- determine that recovery of the portion of the qualifying overpayment debt incurred during the pandemic period would be against equity and good conscience; and
- waive recovery of the portion of a qualifying overpayment debt incurred during the pandemic period.

For purposes of this interim final rule, we ''identify'' an overpayment debt when we discover the overpayment debt and initiate action to recover it.

We will not apply this streamlined waiver process to overpayment debts resulting from fraud or similar fault or involving misuse of benefits by a representative payee.

As we previously stated, actions that we took based on our automated processes will not qualify for this streamlined waiver process. In such cases, since we were not the cause of a delay in overpayment debts being assessed, and since we did not thus cause an increase in the amount of the overpayment debt, we are not including such actions in this special streamlined waiver process. However, in these cases, beneficiaries may request waiver of recovery of the overpayment debts through our existing processes, and we will develop the financial and other information needed to determine whether the individual qualifies for waiver under our existing regulations.[3]

We chose these dates for several reasons. SSA began its pandemic response activities in mid-March 2020, but we are using March 1, 2020, as the start date for the waiver period, as we assess actions on a monthly basis. Accordingly, if SSA stopped certain actions in mid-March 2020, it actually affects payments for the entire month of March 2020. We are resuming normal workload processing on August 31, but the systems cutoff date to affect September payments occurs the third week of August. Since the agency will resume workload processing on August 31, overpayments will have already accrued for the month of September, so it is appropriate for the period of this regulation's waiver to extend through September 30.

If the overpayment debt relates to a period that began before March 1, 2020 or after September 30, 2020 and includes all or part of the pandemic period, only the portion of the qualifying overpayment debt attributable to months during the pandemic period qualifies for the streamlined waiver process under this interim final rule. For the remainder of the overpayment debt, the individual retains the right to appeal our determination regarding the fact and amount of the overpayment, or request waiver of recovery of the overpayment debt under our existing regulations.

Additionally, auxiliary beneficiaries under our title II programs may also be eligible for streamlined waiver of overpayment debts during the pandemic period, even if the primary beneficiary incurred an overpayment debt that is not eligible for streamlined waiver. For example, if a primary beneficiary incurred an overpayment debt due to what is found to be fraud, that person would not be eligible for a streamlined waiver under this interim final rule. However, if that person had an auxiliary

[3] See 20 CFR 404.506(c), 408.910, and 416.550.

beneficiary, the auxiliary beneficiary, unlike the primary beneficiary, may be eligible for this overpayment waiver.

Finally, under this interim final rule, we will not issue refunds outside of our normal debt waiver processes for overpayment debt recoveries that occurred during the pandemic period. If a beneficiary or recipient had benefits withheld during the pandemic period, or if we have already begun to withhold benefits due to an overpayment debt that accrued in part or in whole during the pandemic period, we will not issue refunds under this interim final rule, because these actions are not within the scope of this interim final rule. Those beneficiaries had their overpayment debts and related waiver requests handled in the usual course of business, and we did not cause or increase the overpayment debt by our decision to suspend processing of certain workloads.

This interim final rule will apply to qualifying overpayment debts that we identify by December 31, 2020. We estimate that a December 31, 2020 cut-off will allow us sufficient time to identify all the qualifying overpayments that we held during the pandemic period. When we review a beneficiary's case and find that it occurred during the pandemic period, we will annotate it with a special code. That code will help ensure that we know this case should be evaluated under the interim final rule.

An example of how this would work in practice: In April 2020, we received evidence reflecting an increase in income for an SSI beneficiary, and we determined that the beneficiary's payments should in fact be lower based on the updated income information. However, we did not process the actual change in payment from April 2020 until the present, because we had suspended such actions during the pandemic period. Because we held this case until we resumed processing such actions in September 2020, and it was through no fault of the beneficiary's that they received overpayment amounts during the pandemic period, it would be considered a qualifying overpayment debt under the interim final rule.

An example of a situation that would not apply under the interim final rule: If we received evidence in January 2021 reflecting an increase in income for an SSI beneficiary that first began in April 2020, this SSI beneficiary would *not* qualify for the special waiver. Because we were not working on the case throughout the pandemic period and, accordingly, we were not holding our processing of the increased income amount, our actions were not responsible for the accrual of overpayment debt, so the debt does not qualify for this special waiver process. As always, of course, the beneficiary may still be considered for a waiver under our existing waiver process.

We chose to apply the streamlined waiver process to qualifying overpayment debts we identify by December 31, 2020 to fulfill of our obligation under the Act to ensure effective and responsible stewardship of the Social Security programs. Including the time limitation appropriately balances our stewardship obligation with the needs of beneficiaries who rely on our programs. We also chose the December 31, 2020 cutoff date because it limits the amount of time we have to apply two separate overpayment debt business processes; extending the period indefinitely would exacerbate that operational issue. We also gain administrative efficiencies by applying a single waiver of overpayment debt recovery rule to the qualifying subset of all incurred payments during the period, and the effect of those efficiencies is lessened when we follow multiple processes for an extended period. We need to operate efficiently because we expect—due to resuming the workloads we suspended in March 2020—to have to process a significantly higher amount of work over the coming months than comparable periods in the past. In light of these reasons, we believe the appropriate cutoff date for identifying qualifying overpayment debts is December 31, 2020.

Effective August 31, 2020, language in our overpayment notices will direct beneficiaries to contact their local Field Office with any questions about their overpayment, or to request an overpayment waiver. Field Office technicians will review the beneficiary's record to determine if the overpayment qualifies for a streamlined waiver, and if so, will document the request for waiver on an electronic Report of Contact (SSA–5002) and attest to the beneficiary's signature. Under the streamlined process, the beneficiary will not be required to complete the full form SSA–632 or provide supporting information about his or her income and expenses to make the waiver determination for the qualified debt. SSA will terminate the language in the overpayment notices effective December 31, 2020.

Difference From Current Policy

Under sections 204(a) and 1631(b)(1)(A) of the Act,[4] the Commissioner ''shall'' seek repayment of overpayment debts, by one or more of the methods listed in each section, unless waiver of recovery of the overpayment debt is appropriate. Consequently, we must seek repayments of overpayment debts made under both title II and title XVI of the Act, unless the circumstances of the overpaid individual satisfy the waiver criteria set out in sections 204(b) or 1631(b)(1)(B) of the Act.[5] Under sections 204(b) and 1631(b)(1)(B) of the Act, we waive recovery of an overpayment debt when the overpaid individual is without fault in causing the overpayment debt and adjustment or recovery would defeat the purpose of the statute, or would be against equity and good conscience, or, for title XVI overpayment debts only, would impede the efficient or effective administration of title XVI. These statutory criteria are broadly worded and provide us with considerable latitude to determine when it would be appropriate for us to waive recovery of an overpayment debt and to determine the process that we use to waive recovery of overpayment debts.

Under the current regulations and our internal agency instructions, before we can waive recovery of an overpayment debt, we must document any request for waiver, and develop any allegations an individual raises in the waiver request.[6] We must obtain sufficient information to clarify issues of fault, and then often consider the individual's ability to repay and issues of equity, each of which may require the overpaid individual to submit additional documentation as evidence. We must review the evidence and first determine whether the individual is without fault in causing the overpayment and meets at least one of the other requirements for waiver specified in the Act and regulations.

The other requirements for waiver shared by titles II, VIII, XVI are that recovery would defeat the purpose of the program or be against equity and good conscience. To determine if recovery of an overpayment debt is against equity and good conscience, our current regulations require us to develop information that an individual changed his or her position for the worse or relinquished a valuable right because of reliance upon a notice that a payment would be made or because of

[4] 42 U.S.C. 404(a) and 1383(b)(1)(A).

[5] 42 U.S.C. 404(b) and 1383(b)(1)(B).

[6] See 20 CFR 404.506(c), 408.910, and 416.550 and POMS GN 02201.021, GN 02201.021, GN 02201.023, GN 02250.230, GN 02250.244, GN 02250.400, GN 02250.255, SI 02260.001, SI 02260.005, SI 02260.010, SI 02260.020, and VB 02205.310SI 02260.025.

the overpayment debt itself.[7] Generally, when an individual requests waiver, we request and review information the individual provided us in order to determine whether the individual is without fault in causing the overpayment and that recovery would either defeat the purpose of the program or be against equity and conscience.[8] If we are unable to grant a waiver based upon review of the information available, we offer the person the opportunity for a file review so that the individual can review the file and applicable law and regulations with one of our representatives, who is prepared to answer questions.[9] Individuals also have the right to have a personal conference, where the person may offer further explanation and documentation to a decision maker.[10] This interim final rule does not change the formal aspects of requesting a waiver for overpayment debt, insofar as the beneficiary will continue to be able to contact SSA to initiate the process, the same waiver request application will be used, and when waivers are issued they will be communicated to beneficiaries in the same manner. However, when a beneficiary calls their local field office to request a waiver, if the overpayment is covered under this interim final rule, the agency will ask the beneficiary to provide less information than is normally required to adjudicate an overpayment waiver decision, such as information about a beneficiary's income, expenses, assets, and use of overpayment funds. Beneficiaries covered under this interim final rule should normally expect to be able to provide the necessary information over the phone while guided by our employees and without doing anything differently in advance of the call.

Under this interim final rule, we will use a streamlined waiver process for qualifying overpayment debts. Qualifying overpayment debts include debts accrued during the pandemic period because of our decision to defer action and suspend certain workloads that would have otherwise allowed us to identify and take appropriate action on the overpayments. Under this interim final rule, we will presume that the overpaid individual was without fault in causing the qualifying overpayment debt, subject to limited exclusions discussed above for overpayment debts that resulted from fraud or similar fault or misuse of benefits by a representative payee. Therefore, due to the no fault presumption, we will not fully develop the issue of fault. If we presume that the overpaid individual is without fault, we will determine that recovery of the overpayment debt would be against equity and good conscience without requiring the beneficiary or recipient to specifically show that he or she relinquished a valuable right or changed position, in reliance on the overpayment debt, for the worse. For purposes of this interim final rule, we will apply a broad concept of fairness when we find that recovery of the overpayment debt would be against equity and good conscience.

Regulatory Procedures

Justification for Issuing a Rule Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)).

We find that there is good cause under 5 U.S.C. 553(b)(B) to issue this interim final rule without prior public comment because prior public comment is impracticable and contrary to the public interest. As discussed above, this interim final rule will allow us to presume that certain individuals whose overpayment debts accrued during the March 1-September 30, 2020 COVID–19 pandemic period and that we identify by December 31 2020 were without fault in causing their overpayment debts because of our decision to suspend certain workloads and stop certain actions temporarily. The rule also allows us to apply a streamlined waiver process to decide waiver requests from these individuals. In the absence of this rule, our existing regulations would require us to continue to fully develop requests for waiver of these overpayment debts.

We find that public comment is impracticable because the delay associated with the public comment process would impede our ability to resume more normal operations. The delay associated with the public comment process would also impede our ability to operate because it would require us to continue to use our administrative resources to develop overpayment debt waiver requests for overpayments that we can readily presume were not the fault of the affected individuals. Applying our normal overpayment debt processes to these overpayment debts—rather than the streamlined processes in the interim final rule—would prevent us from using those administrative resources to perform other time sensitive and mission critical workloads that we deferred during the pandemic period. Enhancing our ability to perform these other critical workloads by forgoing public comment on this rule will allow us to begin to operate more normally and serve the interests of all beneficiaries, who are entitled to timely and responsive service from us, even during these unprecedented circumstances.

We also find that delaying this interim final rule to obtain public comment would be contrary to the public interest. A delay in implementation would burden the affected beneficiaries, who will receive notices of overpayment debts when we begin resuming normal workloads, and require them to prove the requirements for waiver by submitting the necessary evidence for us to consider. The delay associated with a public comment period would also be contrary to the public interest because it would reduce the effectiveness of the rule and the streamlined waiver process we are establishing. We are finalizing this rule before we resume the workloads that we suspended in March 2020 and begin assessing overpayment debts incurred during the pandemic period. If we delayed resuming our suspended workloads in order to obtain public comment on the rule, beneficiaries may incur a greater amount of overpayment debt than they would under the streamlined waiver process we are establishing. Prior public comment would therefore defeat the purpose of this rule, which is to provide effective and timely relief and ensure economic security to overpaid individuals affected by our actions to reprioritize our workloads to stop certain actions during the pandemic period. We thus find that it would be contrary to the public interest to obtain public comment and delay our ability to waive these overpayment debts, which were not the fault of the affected individuals.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this rule provided for

[7] See 20 CFR 404.509; 408.914, 416.554 and POMS GN 02250.150, and SI 02260.025, VB 02005.330.

[8] See 20 CFR 404.506 and 416.557.

[9] 20 CFR 404.506(c) and (d) and 416.577(a) and (b); POMS GN 02270.009, SI 02260.006, VB 02005.360.

[10] See 20 CFR 404.506(e) & (f); 416.557(c) and (d); and POMS GN 02270.013, SI 02260.006, VB 02005.360.

in 5 U.S.C. 553(d)(3). So, we are making this interim final rule effective upon publication.

Although we are making this interim final rule effective on publication, we invite public comment on all aspects of the interim final rule. We will consider any substantive comments we receive within 60 days of the publication of this interim final rule and will issue a revised final rule if necessary after we consider the public comments.

Executive Order 12866, as Supplemented by Executive Order 13563

We have consulted with the Office of Management and Budget (OMB) and determined that this interim final rule meets the criteria for a significant regulatory action under Executive Order 12866 and is subject to OMB review.

Anticipated Costs to Our Programs

Our Office of the Chief Actuary estimates that implementing this interim final rule will result in a reduction in recovered overpayment debts of approximately $238 million over FYs 2020–30, $157 million for the OASDI program and $80 million for the Federal SSI program.

Anticipated Administrative Savings to SSA in FY 2021

Our Office of Budget, Finance, and Management estimates that this change will result in net administrative savings to the agency of up to 220 workyears and $20 million to resume processing actions for these overpayment debts. To arrive at our estimate, we estimate an additional 5 minutes per action resumed to identify whether the overpayment falls within the COVID period for purposes of the final rule, offset by savings of 30 minutes to waive the overpayments for those requesting relief. We expect to realize the entirety of the net savings in FY 2021.

Executive Order 13132 (Federalism)

We analyzed this rule in accordance with the principles and criteria established by Executive Order 13132, and determined that the interim final rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this interim final rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this interim final rule will not have a significant economic impact on a substantial number of small entities, because it affects only individuals. Therefore, a Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

E.O. 13771

This interim final rule is a deregulatory action, because it results in administrative cost savings, as well as burden reduction for the public.

Paperwork Reduction Act (PRA)

We maintain existing OMB PRA-approved information collection tools relating to this interim final rule: The Request for Waiver of Overpayment Recovery (Form SSA–632–BK, OMB No. 0960–0037), which respondents use to request a waiver; and the Important Information About Your Appeal, Waiver Rights, and Repayment (Form SSA–3105, OMB No. 0960–0779), which respondents use to inform us that they may want to request an appeal or request a change in repayment rate of an overpayment. We do not plan to make any revisions to these forms due to this interim final rule.

While we do not plan to make any revisions to these forms, we will not need to ask all of the information on form SSA–632 (OMB No. 0960–0037) from respondents who contact us regarding overpayment waivers, and whose overpayments ultimately prove to be affected by this rule. As discussed in the preamble, SSA expects that for respondents covered under this IFR, the agency will not ask respondents questions regarding income, assets, expenses, or information about receiving the overpayment that may normally be pertinent for adjudicating a request for waiving overpayment debt. In a typical change to an information collection, we would provide a different, reduced burden estimate for these respondents. However, the burden range already reported in the OMB-approved information collection request (ICR) is so wide—5 to 120 minutes—that we see no need to calculate a new burden, as the respondents affected by this regulation would certainly fall within that range. In addition, while this interim final rule allows us to use a streamlined waiver for qualifying overpayment debts, we do not anticipate receiving, on an annual basis, more waiver requests in total than we normally receive. Finally, because we do not know the number of affected respondents (having not yet examined the universe of possible cases), that is also not a factor that would result in burden recalculation. Ultimately, though, because the burden we already report for the 0960–0037 ICR includes all of those respondents anyway, that too does not require a new burden calculation.

Accordingly, we are not soliciting public comment under the PRA on these ICs. However, upon publication of this interim final rule, we will submit a non-substantive change request to OMB (viewable to the public) to document the temporary, short-term, COVID-related change in criteria we will use for affected respondents.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Alimony, Blind, Disability benefits, Government employees, Income taxes, Individuals with disabilities, Insurance, Investigations, Penalties, Railroad retirement, Reporting and recordkeeping requirements, Social security, Travel and transportation expenses, Treaties, Veterans, Vocational rehabilitation.

20 CFR Part 408

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social security, Supplemental Security Income (SSI), Veterans.

20 CFR Part 416

Administrative practice and procedure, Aged, Alcoholism, Blind, Disability benefits, Drug abuse, Investigations, Medicaid, Penalties, Public assistance programs, Reporting and recordkeeping requirements, Social security, Supplemental Security Income (SSI), Travel and transportation expenses, Vocational rehabilitation.

The Commissioner of Social Security, Andrew Saul, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for the Social Security Administration, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislative and Congressional Affairs, Social Security Administration.

For the reasons stated in the preamble, we are amending subpart F of part 404, subpart I of part 408, and subpart E of part 416 of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart F—Overpayments, Underpayments, Waiver of Adjustment or Recovery of Overpayments, and Liability of a Certifying Officer

■ 1. The authority citation for subpart F of part 404 continues to read as follows:

Authority: Secs. 204, 205(a), 702(a)(5), and 1147 of the Social Security Act (42 U.S.C. 404, 405(a), 902(a)(5), and 1320b–17); 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3720A.

■ 2. Amend § 404.501 by adding a sentence after the second sentence in paragraph (a) introductory text to read as follows:

§ 404.501 General applicability of section 204 of the Act.

(a) * * * The term *pandemic period* as used throughout this subpart for the purposes of the waiver authority in § 404.506(b) refers exclusively to the period of time beginning on March 1, 2020, and ending on September 30, 2020. * * *

* * * * *

■ 3. Amend § 404.506 by:

■ a. Redesignating paragraphs (b) through (h) as paragraphs (c) through (i); and

■ b. Adding a new paragraph (b).

The addition reads as follows:

§ 404.506 When waiver may be applied and how to process the request.

* * * * *

(b) We will apply the procedures in this paragraph (b) when an individual requests waiver of all or part of a qualifying overpayment.

(1) For purposes of this paragraph (b), a qualifying overpayment is one that accrued during the *pandemic period* (see § 404.501(a)) because of the actions that we took in response to the COVID–19 national public health emergency, including the suspension of certain of our manual workloads that would have processed actions identifying and stopping certain overpayments.

(2) Notwithstanding any other provision of this subpart, we will presume that an individual who requests waiver of a qualifying overpayment is without fault in causing the overpayment (see § 404.507) unless we determine that the qualifying overpayment made to a beneficiary or a representative payee was the result of fraud or similar fault or involved misuse of benefits by a representative payee (see § 404.2041).

(3) If we determine under paragraph (b)(2) of this section that an individual or a representative payee is without fault in causing a qualifying overpayment we will also determine that recovery of the qualifying overpayment would be against equity and good conscience. For purposes of this paragraph (b)(3) only, ''against equity and good conscience'' is not limited to the meaning used in § 404.509 but means a broad concept of fairness that takes into account all of the facts and circumstances of the case.

(4) If we determine that a primary beneficiary is not without fault with respect to a qualifying overpayment under paragraph (b)(2) of this section, because it was caused by fraud or similar fault or because of representative payee misuse, we may still find that any auxiliary beneficiaries on the primary beneficiary's record are eligible for waiver of recovery of the qualifying overpayment under this paragraph (b). If an auxiliary beneficiary requests waiver of a qualifying overpayment in accordance with this paragraph (b), we will waive recovery of the overpayment if the auxiliary beneficiary meets all of the requirements of this paragraph (b).

(5) The provisions of this paragraph (b) will apply to a qualifying overpayment identified by December 31, 2020.

* * * * *

■ 4. Amend § 404.507 by adding a sentence after the third sentence of the introductory text to read as follows:

§ 404.507 Fault.

* * * Notwithstanding any other provision of this subpart, we will not determine any overpaid individual to be at fault in causing a qualifying overpayment (see § 404.506(b)(1)) unless we determine that the qualifying overpayment made to a beneficiary or a representative payee during the pandemic period (see § 404.501) was the result of fraud or similar fault or involved misuse of benefits by a representative payee (see § 404.2041).* * *

* * * * *

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

Subpart I—Underpayments and Overpayments

■ 5. The authority citation for subpart I of part 408 continues to read as follows:

Authority: Secs. 702(a)(5), 808, and 1147 of the Social Security Act (42 U.S.C. 902(a)(5), 1008, and 1320b–17); 31 U.S.C. 3716; 31 U.S.C. 3720A.

■ 6. Amend § 408.902 by:

■ a. Designating the paragraph as paragraph (a); and

■ b. Adding paragraph (b).

The addition read as follows:

§ 408.902 What is an overpayment?

* * * * *

(b) As used in this subpart, the term *pandemic period* for the purposes of the waiver authority in § 408.910 refers exclusively to the period of time beginning on March 1, 2020, and ending on September 30, 2020.

■ 7. Amend § 408.910 by adding paragraph (c) to read as follows:

§ 408.910 When will we waive recovery of an SVB overpayment?

* * * * *

(c) We will apply the procedures in this paragraph (c) when an individual requests waiver of all or part of a qualifying overpayment.

(1) For purposes of this paragraph (c), a qualifying overpayment is one that accrued during the *pandemic period* (see § 408.902(b)) because of the actions that we took in response to the COVID–19 national public health emergency, including the suspension of certain of our manual workloads that would have processed actions identifying and stopping certain overpayments.

(2) Notwithstanding any other provision of this subpart, we will presume that an individual who requests waiver of a qualifying overpayment is without fault in causing the overpayment (see § 408.912) unless we determine that the qualifying overpayment made to a beneficiary or a representative payee was the result of fraud or similar fault or involved misuse of benefits by a representative payee (see § 408.641).

(3) If we determine under paragraph (c)(2) of this section that an individual or a representative payee is without fault in causing a qualifying overpayment, we will also determine that recovery of the qualifying overpayment would be against equity and good conscience. For purposes of this paragraph (c)(3) only, ''against equity and good conscience'' is not limited to the meaning used in § 408.914 but means a broad concept of fairness that takes into account all of the facts and circumstances of the case.

(4) The provisions of this paragraph (c) will apply to a qualifying overpayment identified by December 31, 2020.

■ 8. Amend § 408.912 by adding paragraph (c) to read as follows:

§ 408.912 When are you without fault regarding an overpayment?

* * * * *

(c) *Special rule for qualifying overpayments.* Notwithstanding any

other provision of this subpart, we will not determine any overpaid individual to be at fault in causing a qualifying overpayment (see § 408.910(c)(1)) unless we determine that the qualifying overpayment made to an individual or a representative payee during the pandemic period (see § 408.902(b)) was the result of fraud or similar fault or involved misuse of benefits by a representative payee (see § 408.641).

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart E—Payment of Benefits, Overpayments, and Underpayments

■ 9. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3716; 31 U.S.C. 3720A.

■ 10. Amend § 416.537 by adding paragraph (c) to read as follows:

§ 416.537 Overpayments—defined.

* * * * *

(c) *Pandemic period.* As used throughout this subpart, the term *pandemic period* for the purposes of the waiver authority in § 416.550 refers exclusively to the period of time beginning on March 1, 2020, and ending on September 30, 2020.

■ 11. Amend § 416.550 by adding paragraph (c) to read as follows:

§ 416.550 Waiver of adjustment or recovery—when applicable.

* * * * *

(c) We will apply the procedures in this paragraph (c) when an individual requests waiver of all or part of a qualifying overpayment.

(1) For purposes of this paragraph (c), a qualifying overpayment is one that accrued during the *pandemic period* (see § 416.537(c)) because of the actions that we took in response to the COVID–19 national public health emergency, including the suspension of certain of our manual workloads that would have processed actions identifying and stopping certain overpayments.

(2) Notwithstanding any other provision of this subpart, we will presume that an individual who requests waiver of a qualifying overpayment is without fault in causing the overpayment (see § 416.552) unless we determine that the qualifying overpayment made to a beneficiary or a representative payee was the result of fraud or similar fault or involved misuse of benefits by a representative payee (see § 416.641).

(3) If we determine under paragraph (c)(2) of this section that an individual or a representative payee is without fault in causing a qualifying overpayment, we will also determine that recovery of the qualifying overpayment would be against equity and good conscience. For purposes of this paragraph (c)(3) only, ''against equity and good conscience'' is not limited to the meaning used in § 416.554 but means a broad concept of fairness that takes into account all of the facts and circumstances of the case.

(4) The provisions of this paragraph (c)(4) will apply to a qualifying overpayment identified by December 31, 2020.

■ 12. Amend § 416.552 by adding a sentence following the second sentence of the introductory text to read as follows:

§ 416.552 Waiver of adjustment or recovery—without fault.

* * * Notwithstanding any other provision of this subpart, we will not determine any overpaid individual to be at fault in causing a qualifying overpayment (see § 416.550(c)(1)) unless we determine that the qualifying overpayment made to an individual or a representative payee during the pandemic period (see § 416.537(c)) was the result of fraud or similar fault or involved misuse of benefits by a representative payee (see § 416.641). * * *

* * * * *

[FR Doc. 2020–18834 Filed 8–26–20; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–482]

Schedules of Controlled Substances: Extension of Temporary Placement of N-Ethylpentylone in Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary rule; temporary scheduling order; extension.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration is issuing this order to extend the temporary schedule I status of a synthetic cathinone, 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)pentan-1-one (*N*-ethylpentylone, ephylone), including its optical, positional and geometric isomers, salts, and salts of isomers. The schedule I status of *N*-ethylpentylone currently is in effect until August 31, 2020. This order extends the temporary scheduling of *N*-ethylpentylone for one year, or until the permanent scheduling action for this substance is completed, whichever occurs first.

DATES: This order, which extends the temporary scheduling order that DEA previously issued for this substance (83 FR 44474, August 31, 2018), is effective August 31, 2020, and expires on August 31, 2021. If DEA publishes a final rule making this scheduling action permanent, this order will expire on the effective date of that rule, if the effective date is earlier than August 31, 2021.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–8209.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

On August 31, 2018, the former Acting Administrator of the Drug Enforcement Administration (DEA) published a temporary scheduling order in the **Federal Register** (83 FR 44474) placing 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one (*N*-ethylpentylone, ephylone), a synthetic cathinone, in schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h).[1] That order was effective on the date of publication, and was based on findings by the former Acting Administrator of DEA that the temporary scheduling of this substance was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1). The CSA provides that the temporary control of this substance expire two years from the effective date of the temporary scheduling order, or on August 31, 2020. 21 U.S.C. 811(h)(2). However, this same subsection also provides that, during the pendency of proceedings under 21 U.S.C. 811(a)(1) to permanently add the substance to a schedule, the temporary scheduling of that substance can be extended for up to one year. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney

[1] Though DEA has used the term ''final order'' with respect to temporary scheduling orders in the past, this notice adheres to the statutory language of 21 U.S.C. 811(h), which refers to a ''temporary scheduling order.'' No substantive change is intended.

General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion.

The Acting Administrator of DEA, on his own motion pursuant to 21 U.S.C. 811(a), has initiated proceedings under 21 U.S.C. 811(a)(1) to permanently schedule *N*-ethylpentylone. DEA is simultaneously publishing, elsewhere in this issue of the **Federal Register**, a notice of proposed rulemaking for the permanent placement of *N*-ethylpentylone in schedule I. If that proposed rule is finalized, scheduling of this substance will be made permanent by publication of a final rule in the **Federal Register**.

Pursuant to 21 U.S.C. 811(h)(2), the Acting Administrator of DEA orders that the temporary scheduling of *N*-ethylpentylone, including its optical, positional, and geometric isomers, salts, and salts of isomers, be extended for one year, or until the permanent scheduling proceeding is completed, whichever occurs first.

Regulatory Matters

The CSA provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. Under 21 U.S.C. 811(h), the Administrator of DEA, as delegated by the Attorney General, may, by order, place a substance in schedule I on a temporary basis. This same subsection provides that the temporary scheduling of a substance shall expire at the end of two years from the date of the issuance of the order scheduling such substance, except that the Administrator may, during the pendency of proceedings to permanently schedule the substance, extend the temporary scheduling for up to one year.

Given that section 811(h) directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued and extended, DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this extension of the temporary scheduling order. The specific language chosen by Congress indicates an intention for DEA to proceed through the issuance of an order instead of proceeding by rulemaking. Given that Congress specifically requires the Attorney General to follow rulemaking procedures for other kinds of scheduling actions, see 21 U.S.C. 811(a), it is noteworthy that, in subsection 811(h), Congress authorized the issuance of temporary scheduling actions by order rather than by rule. In the alternative, even assuming that this action might be subject to section 553 of the APA, the Acting Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for extending the temporary scheduling order would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety that this substance would present if scheduling expired, for the reasons expressed in the temporary scheduling order (83 FR 44474, August 31, 2018). Further, DEA believes that this order extending the temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and the principles reaffirmed in Executive Order 13563 (Improving Regulation and Regulatory Review). Accordingly, this action has not been reviewed by the Office of Management and Budget (OMB). This order is not an Executive Order 13771 regulatory action.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism), it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. However, if this were a rule, pursuant to the CRA, ''any rule for which an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the federal agency promulgating the rule determines.'' 5 U.S.C. 808(2). It is in the public interest to maintain the temporary placement of *N*-ethylpentylone in schedule I because it poses a public health risk, for the reasons expressed in the temporary scheduling order (83 FR 44474, August 31, 2018). The temporary scheduling action was taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. Under 21 U.S.C. 811(h), temporary scheduling orders are not subject to notice and comment rulemaking procedures. DEA understands that the CSA frames temporary scheduling actions as orders rather than rules to ensure that the process moves swiftly, and this extension of the temporary scheduling order continues to serve that purpose. For the same reasons that underlie 21 U.S.C. 811(h), that is, the need to place this substance in schedule I because it poses an imminent hazard to public safety, it would be contrary to the public interest to delay implementation of this extension of the temporary scheduling order. Therefore, in accordance with section 808(2) of the CRA, this order extending the temporary scheduling order shall take effect immediately upon its publication. DEA has submitted a copy of this extension of the temporary scheduling order to both Houses of Congress and to the Comptroller General, although such filing is not required under the CRA, 5 U.S.C. 801–808 because, as noted above, this action is an order, not a rule.

Dated: August 25, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–19011 Filed 8–26–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0469]

RIN 1625–AA08

Special Local Regulation; Boat Parade; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation (SLR) on the waters of San Diego Bay, California on September 6, 2020. This temporary SLR is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway. This SLR temporarily establishes a designated section of the commercial anchorage area as a First

Amendment area to be used at the discretion of the the Captain of the Port, or his designated representative as a spectator area. Parade participants operating within the SLR shall comply with all instructions given by the on-scene PATCOM monitoring the event. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from noon to 4 p.m. on September 6, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0469 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Merridith Morrison, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable due to the short time between the Coast Guard becoming aware of the event on July 24, 2020, and the scheduled event occurring on September 6, 2020. The marine event sponsor of this boat parade is expecting to draw a high concentration of vessels to the San Diego Bay area along the proposed parade route. Traditionally, the San Diego Bay area serves as a major thoroughfare for commercial traffic, naval operations, ferry routes, and a number of other recreational uses. The Coast Guard is establishing this SLR to monitor the parade before, during, and after the event to minimize impacts on this congested waterway. We must establish this SLR by September 6, 2020 to ensure the safety of individuals, property, and the marine environment and we do not have sufficient time to request and respond to comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with the location, size and complexity of the boat parade that is planned to take place on September 6, 2020.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port (COTP) Sector San Diego has determined that potential hazards associated with the proposed parade will be a safety concern for anyone within the vicinity of the parade route. This rule is needed to protect personnel, vessels, spectators, and the marine environment in the navigable waters within the SLR during the enforcement period of this rule.

IV. Discussion of the Rule

This rule establishes an SLR from noon until 4 p.m. on September 6, 2020. The SLR will cover all navigable waters on a pre-determined course in the northern portion of the San Diego Main Ship Channel from Shelter Island Basin, past the Embarcadero, crossing the federal navigable channel and ending off of Coronado Island. This SLR will also temporarily establish a 200 yard radius within the commercial anchorage as a First Amendment area to be used as authorized by the Captain of the Port, or his designated representative. The First Amendment area will encompass all navigable waters, from surface to bottom, within 200 yards of 32°43′11.0″ N, 117°10′59.8″ W, within the commercial vessel anchorage.

The duration of the SLR is intended to protect personnel, vessels, specators, and the marine environment in these navigable waters while the parade is scheduled to occur. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. The Coast Guard will publish a LNM that details the vessel restrictions of the regulated area.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the SLR may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an SLR lasting only 4 hours that will monitor entry to the SLR for the duration of the enforcement period to cover before, during and after the parade has concluded. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels. All non-participant vessels or persons engaged in protest activity will be directed to the commercial vessel anchorage if they wish to remain in the regulated area.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T11–034 to read as follows:

§ 100.T11–034 President Trump Boat Parade, San Diego, CA.

(a) *Regulated areas.* The regulations in this section apply to the following area:

(1) All navigable waters, from surface to bottom, on a pre-determined course in the northern portion of the San Diego Main Ship Channel from Shelter Island Basin, past the Embarcadero, crossing the federal navigable channel and ending off of Coronado Island.

(2) All navigable waters, from surface to bottom, within 200 yards of 32°43′11.0″ N, 117°10′59.8″ W, within the commercial vessel anchorage.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector San Diego (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participants in the race.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Sector San Diego or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling the Sector San Diego JHOC at 619–278–7033. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) All non-participants, including those engaged in protest activity, may be directed by a designated representative to the enforcement area described in section (a)(2) of this section, where they must remain during the effective period unless otherwise authorized or directed.

(4) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from noon to 4 p.m. on Sunday, September 6, 2020.

Dated: August 14, 2020.

T.J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2020–18962 Filed 8–26–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0536]

RIN 1625–AA00

Safety Zone; Atlantic Ocean, Cape Canaveral, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within defined points during the launch of SpaceX Falcon 9 SAOCOM1B mission. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by space vehicles being launched in a direction resulting in a polar orbit trajectory. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Jacksonville.

DATES: This rule is from 4:00 p.m. until 10:00 p.m. on August 27, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0536 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the SpaceX Falcon 9 SAOCOM1B mission was originially scheduled and approved only 20 days before the safety zone would have been in effect on March 30, 2020. Then, the launch was cancelled completely on March 26, 2020, with no potential launch date. Then, on June 25, 2020, Captain of the Port Sector Jacksonville was notified that the launch was back on the schedule with a tentative launch date of July 25, 2020 but was subsequently cancelled. On August 19, 2020 Captain of the Port Jacksonville was notified that the launch was approved for August, 27, 2020. It is impracticable to publish an NPRM because to be effective the safety zone must be established by July 25, 2020.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because of safety concerns that should be mitigated by using a safety zone during space vehicle launches.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Jacksonville (COTP) has determined that potential hazards associated with a space vehicle launch, on August 27, 2020, will be a safety concern for anyone within a 240 square nautical mile (nm) area seaward of Cape Canaveral, FL. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during launch.

IV. Discussion of the Rule

This rule establishes a safety zone from 4:00 p.m. until 10:00 p.m. on August 27, 2020. The safety zone will cover all navigable waters within a 240 square nm area in the path of the SpaceX Falcon 9 SAOCOM1B launch. The duration of the zone is intended to protect personnel, vessels, and the marine environment in the surrounding navigable waters while the launch occurs. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the limited duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact the offshore area around Cape Canaveral for less than 6 hours. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the

person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only six hours that will prohibit entry of a 240 square nm area for the launch of the SpaceX Falcon 9 SAOCOM1B mission. The REC for the originally planned launch will be used as the substance of the determination has not changed, only the date of launch. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T07–0536 to read as follows:

§ 165.T07–0536 Safety Zone; Atlantic Ocean, Cape Canaveral, FL.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean, from surface to bottom, encompassed by a line connecting the following points beginning at Point 1: 28°36′30.95″ N 80°35′38.67″ W, thence to Point 2: 28°37′59.99″ N 80°23′00.00″ W, thence to Point 3: 28°27′32.62″ N 80°17′51.71″ W, thence to Point 4: 28°21′06.81″ N 80°22′39.89″ W, thence to Point 5: 28°10′00.58″ N 80°21′39.38″ W, thence to Point 6: 28°10′00.00″ N 80°24′00.00″ W, thence to Point 7: 28°25′50.40″ N 80°34′14.81″ W, and following along the shoreline back to the beginning point. These coordinates are based on WGS 84.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, and U.S. Air Force range safety personnel, and a Federal, State, and local officer designated by or assisting the Captain of the Port Jacksonville (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, transit through, anchor in or remain within the safety zone contact the COTP Jacksonville by telephone at (904) 714–7557 or the COTP's representative via VHF–FM radio on channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 4:00 p.m. until 10:00 p.m. on August 27, 2020.

Dated: August 21, 2020.

M.R. Vlaun,

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

[FR Doc. 2020–18886 Filed 8–26–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

Final Waivers and Extensions of the Project Periods for the American Indian Vocational Rehabilitation Services Training and Technical Assistance Center and the Vocational Rehabilitation Training Institute for the Preparation of Personnel in American Indian Vocational Rehabilitation Services

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Final waivers and extensions of project periods.

SUMMARY: The U.S. Department of Education (Department) waives the requirements in the Education Department General Administrative Regulations that generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. The waivers and extensions enable the current grantees under Catalog of Federal Domestic Assistance (CFDA) numbers 84.250Z and 84.315C to receive funding for an additional budget period, not to exceed September 30, 2021.

DATES: The waivers and extensions of the project periods are effective August 27, 2020.

FOR FURTHER INFORMATION CONTACT: Jerry Elliott, U.S. Department of Education, 400 Maryland Avenue SW, Room 5091, Potomac Center Plaza, Washington, DC 20202–1800. Telephone: 202–245–7335. Email: *Jerry.Elliott@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the American Indian Vocational Rehabilitation Services Training and Technical Assistance Center (Center) is to provide training and technical assistance (TA) to governing bodies of Indian Tribes, or consortia of those governing bodies, that have received an American Indian Vocational Rehabilitation Services (AIVRS) grant under section 121(a) of the Rehabilitation Act of 1973, as amended (Rehabilitation Act), to improve the delivery of vocational rehabilitation (VR) services to American Indians with disabilities.

The purpose of the Vocational Rehabilitation Training Institute for the Preparation of Personnel in American Indian Vocational Rehabilitation Services (Institute) is to prepare AIVRS project personnel in VR, specifically the development of a structured program of training for AIVRS personnel with limited knowledge or experience in the VR field to improve the delivery of VR services to American Indians with disabilities.

Taken together, the Center and the Institute comprise the total resources for the provision of training and TA to the AIVRS projects. In practice, the foundational academic training provided by the Institute compliments and provides a knowledge base for the more focused training and TA provided by the Center. For this reason, the Department has decided to combine the waivers and extensions for both programs into this single document.

In fiscal year (FY) 2015, the Department published in the **Federal Register** notices inviting applications (NIAs) announcing the grant competition for the Center under CFDA 84.250Z and the Institute under CFDA 84.315C. The Department funded one cooperative agreement for each program for a 60-month period that will expire September 30, 2020.

In early spring 2020, the effects of the COVID–19 pandemic began to be felt in the United States. American Indian reservations experienced and continue to experience a high rate of COVID–19 infections and have limited medical resources to treat those infected. Many of the AIVRS grantees across the country took actions to limit the spread of COVID–19 by requiring their nonessential personnel to work from home. AIVRS projects were confronted with the need to continue to provide VR services in a virtual environment and to continue to work with AIVRS project participants, service providers, educational and training resources, and employers in the new virtual environment.

While there are some technology challenges on and near the reservations, the Center and the Institute responded to the challenge of assisting AIVRS projects in several ways. The Center surveyed AIVRS project needs and responded by providing to AIVRS project staff training in use of virtual platforms (including use of social media) for communication with VR participants, external service providers, and training institutions, and for internal AIVRS project purposes. The Center partnered with the Institute and the Workforce Innovation Technical Assistance Center to continue to develop training and TA content for virtual delivery. An important area of training and TA content was how to work virtually with AIVRS participants to proceed through the VR process in a virtual environment. The Center's technical staff maintained ''office hours'' to provide one-on-one technical support to AIVRS projects trying to deliver VR services to applicants and eligible AIVRS project participants. The Institute conducted three virtual ''coffee breaks'' so far during COVID–19. The purpose of the coffee breaks is for AIVRS participants to learn more about a topic area or issue identified by AIVRS project staff that is relevant to providing VR services to American Indians with disabilities. Most recently, the Center provided training and TA to the AIVRS projects on safe ways to reopen, including the use of social distancing and continued use of virtual communication methods. Both the Institute and the Center have maintained or adapted their methods of training and TA provision to continue to provide virtual services to AIVRS project staff in all content areas. Recent increases in COVID–19 activity suggest that protective and safety measures will be required for some time and that maintenance of some of the new virtual ways of doing business will likely continue to be necessary.

Upon award of a new grant, typically there is a period in which grantees are hiring new staff and developing their own resources and content capacities, which may take several months. Due to the impact of COVID–19 and the immediate needs of the beneficiaries of the Center and the Institute, the Department has decided to extend the existing Center and Institute programs. These existing grantees are providing direct training and TA related to operating in the current environment and, therefore, the Department has decided not to hold a new competition that could create a temporary reduction in the availability of the training and TA support at a time when such assistance is most needed.

The Department is waiving the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, as well as waiving the requirements in 34 CFR 75.261(a) and (c)(2), which allow the extension of a project period only if the extension does not involve the obligation of additional Federal funds and extending the project periods of the grants. The waivers and extensions will enable the Department to provide additional funds to the Center under CFDA 84.250Z and to the Institute under CFDA 84.315C for an additional budget period, not to exceed September 30, 2021.

This action allows the Center and the Institute to request FY 2020 continuation funding. The funds for the Center will come from funds allotted under section 121(c)(2) of the Rehabilitation Act. Funds for the Institute will be provided from the funds allotted under section 21 of the Rehabilitation Act as in previous years. Decisions regarding continuation awards will be based on the program narratives, budgets, budget narratives, and program performance reports submitted by the grantees. Any activities to be carried out during the year of continuation awards would have to be consistent with, or be a logical extension of, the scope, goals, and objectives of each grantee's application as approved following the FY 2015 CFDA 84.250Z and CFDA 84.315C competitions. The FY 2015 NIAs will continue to govern the projects during the extension year. The current Center and Institute grantees may request continuation awards in FY 2020 for budget periods through FY 2021.

Final Waivers and Extensions

For these reasons, the Department does not believe that it is in the public interest to hold a new competition for the Center, CFDA 84.250Z, or the Institute, CFDA 84.315C, in FY 2020. Extending the project period of the Center and the Institute, currently in their fifth year, will allow for more efficient use of the funding and avoid any interruption in services that might result from holding a new competition. The Department intends to hold a competition for a new Center under CFDA 84.250Z and a new project under 84.315C in FY 2021.

The Department waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, as well as the requirements in 34 CFR 75.261(a) and (c)(2), which allow the extension of a project period only if the extension does not involve the obligation of additional Federal funds. This waiver allows the Department to issue a one-time continuation award in FY 2020 to the Center and the Institute, currently funded under CFDA 84.250Z and CFDA 84.315C, estimated as follows:

Grantee name	Amount
University of Northern Arizona (Center, Project Number: 250Z150002)	$774,000 (section 121(c)(2) funds).
Northwest Indian College (Institute, Project Number: H315C150002)	$166,000 (section 21 funds).

Waiver of Notice and Comment Rulemaking and Delayed Effective Date Under the Administrative Procedure Act

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)).

Generally, the ''good cause'' exception to notice and comment rulemaking under the APA (5 U.S.C. 553(b)(3)(B)) is to be ''narrowly construed and only reluctantly countenanced.'' *Tennessee Gas Pipeline Co.* v. *FERC,* 969 F.2d 1141, 1144 (D.C. Cir. 1992) (*quoting New Jersey* v. *EPA,* 626 F.2d 1038, 1045 (D.C. Cir. 1980)). The exception excuses notice and comment in emergency situations, *Am. Fed'n of Gov't Employees* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981), or where delay could result in serious harm. See *Hawaii Helicopter Operators Ass'n* v. *FAA,* 51 F.3d 212, 214 (9th Cir. 1995).

The COVID–19 pandemic struck during the second half of FY 2020 and, as explained above, created a situation where the Tribes were dealing with overwhelmingly challenging circumstances. The Department determined that, with Tribal resources and attention devoted to addressing concerns created by the pandemic, the Tribes were in need of the training and TA resources available from the Center and the Institute, without interruption, in order for the Tribal AIVRS projects to continue to deliver services to Tribal members with disabilities. For this reason, it is necessary for the Department to extend the grants awarded under CFDA 84.250Z and CFDA 84.315C for an additional year. There is insufficient time left in FY 2020 to adopt these waivers and extensions of the project periods through notice and comment rulemaking and to make the continuation awards to the two expiring grants. The failure to extend the existing grants for an additional year would result in an interruption of essential services to the AIVRS projects and the American Indians with disabilities who rely upon them. In addition, the Department is unique among Federal agencies in that it must go through notice and comment rulemaking under the APA to make its grants. The exception in the APA exempting grants from notice and comment generally does not apply to the Department. 5 U.S.C. 553(a)(2); 20 U.S.C. 1232(d). In short, in the unusual circumstances here, notice and comment rulemaking is both impracticable and not in the public interest.

The APA also requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). It is crucial that the funded grantees under CFDA 84.250Z and CFDA 84.315C continue to provide services through all of FY 2021. A delayed effective date would be contrary to public interest by prolonging uncertainty about the continuation of training and TA to AIVRS projects that provide VR services to American Indians with disabilities living on or near a reservation. Therefore, the Department waives the delayed effective date provision for good cause.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking, because there is good cause to waive notice and comment rulemaking under 5 U.S.C. 553.

Paperwork Reduction Act of 1995

These waivers and extensions of the project periods do not contain any information collection requirements.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other

documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

Commissioner, Rehabilitation Services Administration, Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–19004 Filed 8–25–20; 4:15 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 482

[CMS–1731–CN and CMS–1744–CN]

RIN–0938–AU07 and 0938–AU31

Medicare Program; FY 2021 Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS) and Special Requirements for Psychiatric Hospitals for Fiscal Year Beginning October 1, 2020 (FY 2021); Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: In the August 4, 2020 issue of the **Federal Register**, we published a final rule entitled ''FY 2021 Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS) and Special Requirements for Psychiatric Hospitals for Fiscal Year Beginning October 1, 2020 (FY 2021)''. The August 4, 2020 final rule updates the prospective payment rates, the outlier threshold, and the wage index for Medicare inpatient hospital services provided by Inpatient Psychiatric Facilities (IPF), which include psychiatric hospitals and excluded psychiatric units of an Inpatient Prospective Payment System (IPPS) hospital or critical access hospital. In addition, we adopted more recent Office of Management and Budget (OMB) statistical area delineations, and applied a 2-year transition for all providers negatively impacted by wage index changes. This correction document corrects the statement of economic significance in the August 4, 2020 final rule.

DATES: This correction is effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: The IPF Payment Policy mailbox at *IPFPaymentPolicy@cms.hhs.gov* for general information.

Nicolas Brock, (410) 786–5148, for information regarding the statement of economic significance.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2020–16990 (85 FR 47042), the final rule entitled ''FY 2021 Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS) and Special Requirements for Psychiatric Hospitals for Fiscal Year Beginning October 1, 2020 (FY 2021)'' (hereinafter referred to as the FY 2021 IPF PPS final rule) there was an error in the statement of economic significance and status as major under the Congressional Review Act (5 U.S.C. 801 *et seq.*). Based on an estimated total impact of $95 million in increased transfers from the federal government to IPF providers, we previously stated that the final rule was not economically significant under Executive Order (E.O.) 12866, and that the rule was not a major rule under the Congressional Review Act. However, the Office of Management and Budget designated this rule as economically significant under E.O. 12866 and major under the Congressional Review Act. We are correcting our previous statement in the August 4, 2020 final rule accordingly. This correction is effective October 1, 2020.

II. Summary of Errors

On page 47064, in the third column, the third full paragraph under B. Overall Impact should be replaced entirely. The entire paragraph stating:

''We estimate that this rulemaking is not economically significant as measured by the $100 million threshold, and hence not a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking.''

should be replaced with:

''We estimate that the total impact of this final rule is close to the $100 million threshold. The Office of Management and Budget has designated this rule as economically significant under E.O. 12866 and a major rule under the Congressional Review Act (5 U.S.C. 801 *et seq.*). Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking.''

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary of the Department of Human Services finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

This correction document does not constitute a rulemaking that would be subject to these requirements because it corrects only the statement of economic significance included in the FY 2021 IPF PPS final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were adopted and subjected to notice and comment procedures in the FY 2021 IPF PPS final rule. Rather, the corrections made through this correction document are intended to ensure that the FY 2021 IPF PPS final rule accurately reflects OMB's determination about its economic significance and major status under the Congressional Review Act (CRA). Executive Order 12866 and CRA determinations are functions of the Office of Management and Budget, not the Department of Health and Human Services, and are not rules as defined by the Administrative Procedure Act (5 U.S. Code 551(4)).

We ordinarily provide a 60-day delay in the effective date of final rules after the date they are issued, in accordance with the CRA (5 U.S.C. 801(a)(3)). However, section 808(2) of the CRA provides that, if an agency finds good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the rule shall take effect at such time as the agency determines. Even if this were a rulemaking to which the delayed effective date requirement applied, we found, in the FY 2021 IPF PPS Final Rule (85 FR 47043), good cause to waive the 60-day delay in the effective date of the IPF PPS final rule. In the final rule, we explained that, due to CMS prioritizing efforts in support of containing and combatting the COVID–

19 public health emergency by devoting significant resources to that end, the work needed on the IPF PPS final rule was not completed in accordance with our usual rulemaking schedule. We noted that it is critical, however, to ensure that the IPF PPS payment policies are effective on the first day of the fiscal year to which they are intended to apply and therefore, it would be contrary to the public interest to not waive the 60-day delay in the effective date. Undertaking further notice and comment procedures to incorporate the corrections in this document into the FY 2021 IPF PPS final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest to ensure that the policies finalized in the FY 2021 IPF PPS are effective as of the first day of the fiscal year to ensure providers and suppliers receive timely and appropriate payments. Further, such procedures would be unnecessary, because we are not altering the payment methodologies or policies. Rather, the correction we are making is only to indicate that the FY 2021 IPF PPS final rule is economically significant and a major rule under the CRA. For these reasons, we find we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors in the Preamble

In FR Doc. 2020–16990, appearing on page 47042 in the **Federal Register** of Tuesday, August 4, 2020, the following correction is made:

1. On page 47064, in the 3rd column, under B. Overall Impact, correct the third full paragraph to read as follows:

We estimate that the total impact of this final rule is very close to the $100 million threshold. The Office of Management and Budget has designated this rule as economically significant under E.O. 12866 and a major rule under the Congressional Review Act (5 U.S.C. 801 *et seq.*). Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking.

Dated: August 24, 2020.

Wilma M. Robinson,

Deputy Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2020–18902 Filed 8–26–20; 8:45 am]

BILLING CODE 4120–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1812, 1831, 1846, and 1852

RIN 2700–AE38

NASA Federal Acquisition Regulation Supplement: Detection and Avoidance of Counterfeit Parts (NFS Case 2017–N010)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is finalizing a revision to the NASA Federal Acquisition Regulation Supplement (NFS) requiring covered contractors and subcontractors at all tiers to use electronic parts that are currently in production and purchased from the original manufacturers of the parts, their authorized dealers, or suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers. These changes implement section 823(c)(2)(B) of Public Law 115–10, the National Aeronautics and Space Administration Transition Authorization Act of 2017.

DATES: This rule is effective September 28, 2020.

FOR FURTHER INFORMATION CONTACT: Dorice Kenely, NASA HQ, Office of Procurement, Policy, Training and Pricing Division, LP–011, 300 E Street SW, Washington, DC 20456–0001. Telephone 202–358–0443; facsimile 202–358–3082.

SUPPLEMENTARY INFORMATION:

I. Overview of the Rule

This rule implements section 823(c)(2)(B) of Public Law 115–10, the National Aeronautics and Space Administration Transition Authorization Act of 2017. It revises the NASA Federal Acquisition Regulation Supplement (NFS) to add new text requiring a covered contractor, defined as a contractor supplying an electronic part or a product that contains an electronic part, and their subcontractors at all tiers to use electronic parts currently in production and purchased from the original manufacturers, their authorized dealers, or suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers. If the contractor does not purchase electronic parts as discussed above, they must purchase the parts from a NASA identified supplier or contractor-approved supplier. The contractor then assumes responsibility and be required to inspect, test and validate authentication of the part. The contractor is also required to obtain traceability information and provide this information to the contracting officer upon request. The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

NASA's final rule is a separate but companion action to the FAR Council rule on Reporting of Nonconforming Items to the Government-Industry Data Exchange Program (GIDEP) (FAR Case 2013–002) published at 84 FR 64680. While both rules pertain to the topic of counterfeit parts and suspected counterfeit parts, there are discernable differences as they are implementing separate acts. These differences are discussed below.

Scope

While both the FAR and the NFS rule pertain to the topic of counterfeit parts and suspected counterfeit parts, the FAR has a broader application in the types of items covered. It is applicable to all items subject to higher-level quality standards in accordance with the clause at FAR 52.246–11, Higher-Level Contract Quality Requirement; all items that the contracting officer, in consultation with the requiring activity determines to be critical items for which use of the clause is appropriate; and for the acquisition of services, if the contractor will furnish, as part of the service, any items that meet the criteria specified in paragraphs (a)(1) through (a)(2) of this section. In addition, the FAR covers acquisitions that exceed the simplified acquisition threshold and are by, or for, the Department of Defense for electronic parts or end items, components, parts, or materials containing electronic parts. Based on the requirements of section 823 the NFS rule applies only to electronic parts for use in a safety or mission critical applications.

Reporting/Notification

The FAR requires two reporting requirements which are cleared under OMB Control number 9000–0187 titled Reporting of Nonconforming Items to the Government-Industry Data Exchange Program—FAR Sections affected: 52.246–26. One requirement is the submission of a report to GIDEP when the contractor becomes aware or has reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party) that an item purchased by the Contractor for delivery to, or for, the Government is a counterfeit or suspect counterfeit item

or a common item that has a major or critical nonconformance. The second reporting requirement is a notification to the contracting officer after becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party) that any end item, component, subassembly, part, or material contained in supplies purchased by the Contractor for delivery to, or for, the Government is counterfeit or suspect counterfeit.

While the NFS rule does not include a GIDEP reporting requirement it does include a requirement to notify the contracting officer when the contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

Allowability of Costs

As required by statute this NFS rule establishes that costs related to counterfeit parts, suspect counterfeit parts, or any corrective action that may be required to remedy the use or inclusion of such parts is unallowable unless a specific set of criteria is met. The FAR does not address the allowability of costs as it relates to the counterfeit parts, suspect counterfeit parts, or any corrective action that may be required to remedy the use or inclusion of such parts.

Supply Chain Sources

As required by statute the NFS rule establishes required sources for both electronic parts that are in production or currently available in stock and separately electronic parts are not in production or currently available in stock from suppliers. The FAR does not address sources of items.

Applicability—Commercial/COTS and SAT

Section 823 does not provide for any exemptions. As required by statute, this NFS rule applies to any electronic part or products that contain electronic parts, which includes commercial items, including COTS items, and contracts at or below the SAT. The associated final FAR rule is not applicable to commercial items or commercially off the shelf items; additionally, it does not apply to contracts and subcontracts at or below the simplified acquisition threshold.

II. Summary of Public Comments

The proposed rule was published in the **Federal Register** at 85 FR 663 on January 7, 2020 with five commenters submitting materials. In several cases, commenters requested changes to definitions that did not align with definitions provided in the National Aeronautics and Space Administration Transition Authorization Act and were therefore not taken. Two commenters merely affirmed the proposed rule text with no suggested changes. While no changes were made to the final rule in response to public comment, NASA's analysis and response to all other comments are discussed below.

One commenter suggested adding a requirement to electronically verify if a product was purchased from *eBay.com* or *amazon.com.* NASA notes no changes are necessary to the rule based on this comment because if the process outlined in the rule is followed, purchases from these sources will be captured without any additional verification required. Additionally, the selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

A commenter recommended requiring covered procuring parts that are not in production or available in stock to inspect & test the parts consistent with published industry standards, including reliability testing and apply additional standards and higher testing requirements to those parts to mitigate the risk. Additionally, the commenter requested clarification for the phrase ''in production'' in 1846.7002 and 1852.246–74 specifically, when a manufacturer, authorized distributor, or authorized aftermarket manufacturer has stock of a semiconductor in wafer or die form, that it be considered to be ''in production.'' Lastly, the commenter recommend ''electronic parts'' be amended to match the definition outlined 48 CFR 252.246–7008(a).

This rule uses the language and definitions as provided by the 2017 NASA Transition Authorization Act so no changes are made to the definitions. NASA believes no additional changes are necessary because if the process outlined in the rule is followed, the contractor must obtain traceability information for the electronic parts (*e.g.,* data code, lot code, serial number) and provide the information to the contracting officer upon request. In addition, for unique contract requirements that involve electronic parts that are not in production, NASA contractors are subject to NASA internal validation which include researching part availability from suppliers that meet the defined criteria, and researching supplier quality histories in the GIDEP database, NASA-internal supplier quality databases, part inspection and failure databases, open sources of supplier information indicating areas of risk, project nonconformance and risk databases, as well as other subscription-based databases that are designed for sharing insight about counterfeit risks in the supply chain. Also, NASA Headquarters' Office of Safety and Mission Assurance executes audits of Centers' and Projects' adherence to quality policies on a rotating basis and can instigate special audits when needed to discern conformance issues and risks.

A commenter wanted to know how NASA will maintain this NASA-identified supplier list.

As discussed elsewhere in the rule, NASA-identified suppliers will be identified on a case-by-case basis, using internal counterfeit avoidance and contractor validation processes, in lieu of maintaining a list.

A commenter wanted to know how NASA will mitigate risks for parts provided by a NASA-identified supplier.

The Agency-identified suppliers will be compliant with and validated using the policies and procedures discussed in this rule as well as NASA's standard quality assurance and counterfeit avoidance policies and procedures and supplier validation practices as described elsewhere in the rule.

A commenter wanted to know will NASA be accountable for corrective actions on identified suppliers.

As discussed in the rule costs related to corrective action to remedy the use or inclusion of counterfeit electronic parts are allowable costs for covered contractors, including NASA-identified contractors, that: (a) Have a system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts and (b) whose system has been reviewed and approved by NASA or the Department of Defense pursuant to 48 CFR 244.303.

A commenter wanted to know what NASA's validation process be for their identified suppliers.

The Agency's validation process actively pursues objective evidence of part and part supplier suitability throughout design, procurement, and product acceptance which provides the technical authority and risk management systems continuous/real-time awareness of conformance with NASA's standard quality assurance and counterfeit avoidance policies and procedures. Validation practices include

researching part availability, supplier quality histories in the GIDEP database, NASA-internal supplier quality databases, part inspection and failure databases, open sources of supplier information indicating areas of risk, project nonconformance and risk databases, as well as other subscription-based databases that are designed for sharing insight about counterfeit risks in the supply chain.

A commenter recommended the final rule clarify how ''mission critical'' and ''safety'' applications will be identified.

Section 823 cites the presence of counterfeit electronic parts in the supply chain as ''a danger to the United States government astronauts, crew, and other personnel and a risk to the agency overall'' as such, each unique contract requirement for electronic parts will be subject to the requirements of this rule when their presence in the NASA supply chain poses a danger to United States government astronauts, crew, and other personnel and a risk to the agency overall.

IV. Applicability to Commercial Item Acquisitions, Including Commercially Available Off-the-Shelf (COTS) Items, and Acquisitions Below the Simplified Acquisition Threshold (SAT)

This rule implements section 823 of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115–10). Section 823 does not limit the application of the requirements of the statue to non-commercial contracts or contracts above the simplified acquisition threshold. Consistent with 41 U.S.C. 1905, 1906 and 1907, the NASA Assistant Administrator for Procurement has determined that it is in the best interest of NASA to apply section 823 to the acquisition of commercial items, including COTS items, and those requirements below the SAT.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and therefore was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771.

This rule is not subject to the requirements of E.O. 13771 because this rule is not significant under E.O. 12866.

VII. Regulatory Flexibility Act

No comments were received on NASA's initial analysis and the Final Regulatory Flexibility Analysis (FRFA) is summarized below.

The rule will apply to all ''covered contractors.'' Covered contractors, as defined by Public Law 115–10 are contractors, including small entities, that supply an electronic part, or a product that contains an electronic part to NASA. While the rule will apply to all classes of small business, it will not necessarily affect all of those business because the rule requires reporting only when nonconforming defective and/or suspect counterfeit parts are present or there is suspicion that counterfeit parts are present in the supply chain. Since this rule requires contractors and subcontractors to purchase electronic parts that are currently in production from the original manufacturer, the authorized dealers or suppliers who obtain parts exclusively from the original manufacturer or for products that are not currently in production use of a NASA identified contractor, NASA believes that there is very little risk that a contractor or subcontractor will have a counterfeit part in the supply chain and thus very little risk that a small contractor will have to report. As reported in FPDS, NASA has had contract obligations with 3,120, 3,023 and 2,805 small business contractors in 2016, 2017 and 2018, respectively and no counterfeit parts were found in the supply chain. Further, based on the initial scope of the rule, NASA has assessed the number of commercial item acquisitions for electronic items procured above and below the simplified acquisition threshold and believe the impact of this proposed rule will be minimal. An analysis of data for the last three fiscal years from the FPDS revealed the following:

	Number of actions	Total dollar amount of actions
2019:		
Electronic Commercial Items	131	$17,810,644
Under the SAT	110	6,348,554
Above the SAT	21	11,462,089
2018:		
Electronic Commercial Items	275	38,516,656
Under the SAT	229	10,922,058
Above the SAT	46	27,594,598
2017:		
Electronic Commercial Items	526	38,020,457
Under the SAT	498	16,934,479
Above the SAT	28	21,085,978

The policy requires covered contractors and subcontractors to notify the applicable NASA contracting officer in writing not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

The final rule also requires covered contractors and subcontractors to purchase electronic parts that are currently in production from the original manufacturer, their authorized dealers or suppliers who obtain parts exclusively from the original manufacturer or their authorized dealers. Electronic parts that are not currently in production or available in stock shall be obtained from NASA identified suppliers or contractor-approved suppliers and the contractor

assumes responsibility for the authenticity, inspection, testing and traceability of the part. Contractor-approved suppliers are subject to review and audit by the Contracting Officer.

VIII. Paperwork Reduction Act

This rule contains information collection requirements that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, NASA has submitted a request for approval of a new information collection requirement associated with NFS Case 2017–N010 Detection and Avoidance of Counterfeit Parts to the Office of Management and Budget.

List of Subjects in 48 CFR:

Parts 1812 ''Acquisition of Commercial Items''; 1831 ''Contract Cost Principles and Procedures''; 1846 ''Quality Assurance'': 1852 Provisions and Clauses. Government procurement.

Geoffrey Sage,

NASA FAR Supplement Manager.

Accordingly, 48 CFR parts 1812, 1831, 1846, and 1852 are amended as follows:

■ 1. The authority citation for parts 1816, 1832 and 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 1812.301 by redesignating paragraph (f)(i)(T) as paragraph (f)(i)(U) and adding a new paragraph (f)(i)(T) to read as follows.

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) * * *

(T) 1852.246–74, Counterfeit Electronic Part Detection and Avoidance.

(U) 1852.247.71, Protection of the Florida Manatee.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Add section 1831.205–71 to read as follows:

1831.205–70 Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.

(a) Scope. This section implements the requirements of section 823(c)(2)(B), the NASA Transition Authorization Act of 2017 (Pub. L. 115–10).

(b) The costs of counterfeit electronic parts, suspect counterfeit electronic parts, and any corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

(1)(i) The covered contractor, as defined in section 1846.7001, has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by NASA or the Department of Defense pursuant to 48 CFR 244.303; and

(ii) The covered contractor, including subcontractors, notifies the applicable NASA contracting officer in writing in accordance with 1846.7002(c); or

(2) The counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation.

PART 1846—QUALITY ASSURANCE

■ 4. Add subpart 1846.70 to read as follows:

Subpart 1846.70—Counterfeit Electronic Part Detection and Avoidance.

Sec.

1846.7000 Scope of subpart.
1846.7001 Definitions.
1846.7002 Policy.
1846.7003 Contract clause.

1846.7000 Scope of subpart.

This subpart implements section 823(c), the NASA Transition Authorization Act of 2017 (Pub. L. 115–10).

(a) Prescribes policy and procedures for preventing counterfeit electronic parts and suspect counterfeit electronic parts from entering the supply chain when procuring electronic parts or end items, components, parts, or assemblies that contain electronic parts; and

(b) Applies to electronic parts when their presence in the NASA supply chain poses a danger to United States government astronauts, crew, and other personnel and a risk to the agency overall.

(c) Contracting officers, in consultation with the requiring activity, are responsible for making a determination concerning the applicability of this section and the appropriate use of the prescribed contract clauses.

1846.7001 Definitions.

''Authentic part'' means a new and unmodified part produced by the original component manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer.

''Authentication'' means a process to verify that a part is not counterfeit or suspect counterfeit.

''Authorized aftermarket manufacturer'' means an organization that fabricates an electronic part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

''Authorized supplier'' means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

''Contract manufacturer'' means a company that produces goods under contract for another company under the label or brand name of that company.

''Contractor-approved supplier'' means a supplier that does not have a contractual agreement with the original component manufacturer, but has been qualified as trustworthy by a contractor or subcontractor as having met prescribed counterfeit electronic part detection and avoidance system criteria using established counterfeit prevention industry standards and processes.

''Covered contractor'' means a contractor that supplies an electronic part, or a product that contains an electronic part, to NASA.

''Counterfeit electronic part'' means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

''Electronic part'' means a discrete electronic component, including a microcircuit, transistor, capacitor, resistor, or diode, that is intended for use in a safety or mission critical application.

''Original component manufacturer'' means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

''Original equipment manufacturer'' means a company that manufactures products that it has designed from purchased components and sells those

products under the company's brand name.

''Original manufacturer'' means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

''Suspect counterfeit electronic part'' means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

1846.7002 Policy.

The government and its contractors and subcontractors at all tiers are required to obtain electronic parts as prescribed in this section, whether the electronic parts are procured as discrete items or contained in an assembly.

(a) The covered contractor and subcontractors at all tiers shall obtain electronic parts that are in production or currently available in stock from—

(1) The original manufacturers of the parts;

(2) Their authorized dealers; or

(3) Suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers.

(b) If electronic parts are not in production or currently available in stock from suppliers as stated in paragraph (a) of this section, the covered contractor shall obtain electronic parts from NASA identified suppliers or contractor-approved suppliers for which—

(1) The covered contractor assumes responsibility for the authenticity of parts; and

(2) The covered contractor performs inspection, testing and authentication of parts; and

(3) The covered contractor obtains traceability information for the electronic parts (*e.g.,* data code, lot code, serial number) and provides this information to the contracting officer upon request; and

(4) The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

(c) The covered contractor, including subcontractors, shall notify the applicable NASA contracting officer in writing not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

1846.7003 Contract clause.

For acquisitions with covered contractors as defined in section 1846.7001, use the clause at 1852.246–74, Contractor Counterfeit Electronic Part Detection and Avoidance, in solicitations and contracts, when procuring—

(a) Electronic parts;

(b) End items, components, parts, or assemblies containing electronic parts; or

(c) Services, if the covered contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 1852.246–74 to read as follows:

1852.246–74 Contractor Counterfeit Electronic Part Detection and Avoidance.

As prescribed in 1846.7003, use the following clause:

CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE. (DATE)

(a) *Definitions.* As used in this clause—

''Authentic part'' means a new and unmodified part produced by the original component manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer.

''Authentication'' means a process to verify that a part is not counterfeit or suspect counterfeit.

''Authorized aftermarket manufacturer'' means an organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

''Authorized supplier'' means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

''Contract manufacturer'' means a company that produces goods under contract for another company under the label or brand name of that company.

''Contractor-approved supplier'' means a supplier that does not have a contractual agreement with the original component manufacturer, but has been qualified by the contractor or subcontractor approved by the contractor or government as having met prescribed counterfeit electronic part detection and avoidance system criteria using established counterfeit prevention industry standards and processes.

''Counterfeit electronic part'' means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

''Electronic part'' means a discrete electronic component, including a microcircuit, transistor, capacitor, resistor, or diode, that is intended for use in a safety or mission critical application (section 823 (d)(2) of Pub L. 115–10).

''Original component manufacturer'' means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

''Original equipment manufacturer'' means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

''Original manufacturer'' means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

''Suspect counterfeit electronic part'' means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

(b) *Sources of electronics parts.* In accordance with section 823(c)(3), the NASA Transition Authorization Act of 2017 (Pub. L. 115–10), the covered contractor shall—

(1) Obtain electronic parts that are in production by the original manufacturer or an authorized aftermarket manufacturer or currently available in stock from—

(i) The original manufacturers of the parts;

(ii) Their authorized dealers; or

(iii) Suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers;

(2) If electronic parts are not in production or currently available in stock from suppliers as stated in paragraph (b) of this clause, the covered contractor shall obtain electronic parts from NASA identified suppliers or contractor-approved suppliers for which—

(i) The covered contractor assumes responsibility for the authenticity of parts; and

(ii) The covered contractor performs inspection, testing and authentication of parts; and

(iii) The covered contractor obtains traceability information for the electronic parts (*e.g.,* data code, lot code, serial number) and provides this information to the contracting officer upon request; and

(iv) The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

(c) *Notification.* The covered contractor, including subcontractors, shall notify the NASA contracting officer in writing not later

than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

(d) *Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.* In accordance with section 823(c)(2)(B), the NASA Transition Authorization Act of 2017 (Pub. L. 115–10), the costs of counterfeit electronic parts and suspect counterfeit electronic parts and the costs of rework or corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

(1) The covered contractor has a system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by NASA or the Department of Defense pursuant to 48 CFR 244.303; and

(2) The covered contractor, including a subcontractor, notifies the applicable NASA contracting officer in writing in accordance with paragraph (c) of this clause; or

(3) The counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation.

(e) *Subcontracts.* The covered contractor shall insert this clause, including this paragraph (e), in subcontracts for—

(1) Electronic parts;

(2) End items, components, parts, or assemblies containing electronic parts; or

(3) Services where the covered contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service, including subcontracts for commercial items that are for electronic parts or assemblies containing electronic parts, unless the subcontractor is the original manufacturer. The covered contractor shall not alter the clause other than to identify appropriate parties.

(f) *Corrective Action.* In the event that the covered contractor supplies a counterfeit electronic part, suspect counterfeit electronic part or end item, component, or assembly containing a counterfeit electronic part to NASA, the covered contractor shall take such corrective actions as the Administrator considers necessary to remedy the use or inclusion of additional counterfeit electronic parts, suspect counterfeit electronic part or end items, components, or assemblies containing a counterfeit electronic part.

(End of clause)

[FR Doc. 2020–16986 Filed 8–26–20; 8:45 am]

BILLING CODE 7510–13–P

Proposed Rules

Federal Register
Vol. 85, No. 167
Thursday, August 27, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2008–0122]

Criteria for Development of Evacuation Time Estimate Studies (NUREG/CR–7002, Revision 1)

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG, NUREG/CR–7002, ''Criteria for Development of Evacuation Time Estimate Studies,'' Revision 1. This draft NUREG provides guidance to meet NRC requirements for development of evacuation time estimates (ETEs) to support emergency planning. This revision reflects the importance of various ETE model parameters based on the results of an applied research study on ETEs. The format and criteria provided in this document will support consistent application of the ETE methodology and will facilitate consistent NRC review of ETE studies. The NRC is soliciting public comment on the contemplated action and invites stakeholders and interested persons to participate. The NRC plans to hold a public meeting to promote full understanding of the contemplated action and facilitate public comment.

DATES: Submit comments by October 13, 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 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–2008–0122. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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: Todd Smith, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–287–3744, email: *Todd.Smith@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

Please refer to Docket ID NRC–2008–0122 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–2008–0122.
- *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 reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. Revision 1 to NUREG/CR–7002, ''Criteria for Development of Evacuation Time Estimate Studies'' is available in ADAMS under Accession No. ML20233A700.

A. Submitting Comments

Please include Docket ID NRC–2008–0122 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The ETE is a calculation of the time to evacuate the plume exposure pathway emergency planning zone (EPZ), an area around a nuclear power plant for which planning is needed to ensure prompt and effective actions can be taken in the event of a radiological emergency. The ETE is primarily used to inform protective action strategies within the EPZ and may be used to assist in the development of traffic management plans to support an evacuation. In November 2011, the NRC issued NUREG/CR–7002, ''Criteria for Development of Evacuation Time Estimate Studies'' (ADAMS Accession No. ML113010515), as guidance to support compliance with ETE provisions added to the NRC's regulations in title 10 of the *Code of Federal Regulations* (10 CFR), part 50, appendix E, section IV, in a final rule issued on November 23, 2011 (76 FR 72560). The initial release of this guidance was based on previous advancements in the development of ETE modeling and knowledge gained through research of large scale evacuations and staged evacuations.

Draft NUREG/CR–7002, Revision 1, is based on an applied research study to examine, through modeling and simulation, technical subjects associated with the use of traffic simulation models for ETE studies, documented in NUREG/CR–7269, ''Enhancing Guidance for Evacuation Time Estimate Studies'' (ADAMS Accession No.

ML20070M158). Specific areas of research include the impact of shadow evacuations, evacuation model boundary conditions, the use of manual traffic control, and the sensitivity of various model parameters important to ETE studies. The study provided a technical basis for revisions to NUREG/CR–7002 to reflect current practices in transportation modeling and an enhanced understanding of evacuation dynamics. Proposed revisions also include guidance for developing ETEs for various sized EPZs, updating ETEs, developing ETE studies in support of early site permit applications, and using measures of effectiveness for assessing model performance. The NRC's intent in revising NUREG/CR–7002 is to ensure consistency in the development and review of ETE studies.

III. Backfitting, Forward Fitting, and Issue Finality

Issuance of draft NUREG/CR–7002, Revision 1, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; affect issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants''; or constitute forward fitting as defined in Management Directive 8.4, because, as explained in draft NUREG/CR–7002, Revision 1, licensees are not required to comply with the positions set forth in that document.

IV. Public Meeting

The NRC will conduct a public meeting to describe draft NUREG/CR–7002, Revision 1, and answer questions from the public. The NRC will publish a notice of the location, time, and agenda of the meeting on the NRC's public meeting website at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at *https://www.nrc.gov/public-involve/public-meetings.html.*

Dated: August 21, 2020.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

[FR Doc. 2020–18818 Filed 8–26–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0801; Product Identifier 2019–SW–101–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2017–07–08 for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model MBB–BK 117 D–2 helicopters. AD 2017–07–08 requires repetitively inspecting each engine mount elastomeric bushing (elastomeric bushing). Since the FAA issued AD 2017–07–08, Airbus Helicopters has designed an improved engine mount metal bushing (metal bushing). This proposed AD would retain the inspection requirements of AD 2017–07–08 and would require replacing each affected engine mount bushing with an improved engine mount bushing, while also requiring repetitive inspections of the improved engine mount bushing. This proposed AD would also prohibit installing an elastomeric bushing on any helicopter. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 13, 2020.

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

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0801; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Union Aviation Safety Agency (EASA) 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 service information identified in this proposed rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: 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 817–222–5110; email *Matthew.Fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

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 file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

Confidential Business Information

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 NPRM 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 NPRM, 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 NPRM. Submissions containing CBI should be sent 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 817–222–5110; email *Matthew.Fuller@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.

Discussion

The FAA issued AD 2017–07–08, Amendment 39–18846 (82 FR 16895, April 7, 2017) (''AD 2017–07–08'') for Airbus Helicopters Model MBB–BK 117 D–2 helicopters. AD 2017–07–08 requires repetitive visual inspections of each elastomeric bushing of the inner and outer forward trusses of both engines, and depending on the outcome of the inspections, repairing or replacing the elastomeric bushings. AD 2017–07–08 was prompted by EASA AD No. 2015–0198, dated September 30, 2015 (EASA AD 2015–0198), issued by EASA, which is the Technical Agent for the Member States of the European Union. EASA advised that during a pre-flight check of a Model MBB–BK 117 D–2 helicopter, an elastomeric bushing was found delaminated. More cases of delaminated elastomeric bushings were reported following additional investigations. According to EASA, this condition could lead to cracks and eventually failure of the engine mount front support pins, possibly resulting in loss of helicopter control.

Actions Since AD 2017–07–08 Was Issued

Since the FAA issued AD 2017–07–08, EASA has issued a series of ADs to supersede EASA AD 2015–0198. EASA issued AD No. 2019–0030, dated February 13, 2019 (EASA AD 2019–0030), to supersede EASA AD 2015–0198. EASA AD 2019–0030 advises that Airbus Helicopters has designed an improved engine mount bushing part number (P/N) B712M10X1001, which when installed becomes a terminating action for the repetitive inspections of elastomeric bushing P/N 105–60386. Accordingly, EASA AD 2019–0030 requires installation of improved engine mount bushing P/N B712M10X1001 and also prohibits the installation of elastomeric bushing P/N 105–60386 on any Model MBB–BK 117 D–2 helicopter. Since EASA issued AD 2019–0030, occurrences were reported of finding damaged metal bushings. EASA issued AD No. 2019–0275, dated November 7, 2019 (EASA AD 2019–0275), which retains the requirements of EASA AD 2019–0030 and requires repetitive visual inspections of the metal bushings. EASA AD 2019–0275 also updates the terminology used in the definitions section from affected part to elastomeric bushing and from serviceable part to metal bushing.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

Differences Between This Proposed AD and the EASA AD

The EASA AD allows a non-cumulative tolerance of 10 hours time-in-service for its required compliance times. This proposed AD does not. The EASA AD requires reporting inspection results to Airbus Helicopters Deutschland GmbH if any worn or heavily worn metal is found, whereas this proposed AD does not.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) MBB–BK117 D–2–71A–002, Revision 1, dated December 14, 2018. This service information specifies instructions for repetitive visual inspections of elastomeric bushing P/N 105–60386 for defects, deformation, separation of the rubber, and missing rubber. If there is any deformation or separation of the rubber, this service information provides instructions to replace the affected parts with serviceable parts. This service information also specifies replacing elastomeric bushings P/N 105–60386 with metal bushings P/N B712M10X1001. This service information also does not allow the new metal bushings P/N B712M10X1001 to be installed on any helicopter together with the elastomeric bushings P/N 105–60386. This service information also prohibits installing elastomeric bushings P/N 105–60386 after installation of new metal bushings P/N B712M10X1001.

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.

Other Related Service Information

The FAA reviewed Airbus Helicopters ASB MBB–BK117 D–2–71A–011, Revision 0, dated October 16, 2019. This service information specifies instructions for repetitive inspections of the metal bushings P/N B712M10X1001 of the inner and outer forward trusses for worn metal bushings (gapping between the inner and outer truss less than 1mm) and heavily worn metal bushings (inner and outer metal bushings showing contact marks or worn out metal mesh).

The FAA also reviewed Airbus Helicopters AMM BK117 C2C2e, dated August 7, 2018. This service information specifies instructions for a detailed inspection of the engine mount bushings.

Proposed AD Requirements

This proposed AD would retain the repetitive visual inspections of AD 2017–07–08 and would propose requiring the installation of metal bushing P/N B712M10X1001, which would terminate the repetitive inspection of elastomeric bushing P/N 105–60386. This proposed AD would also require repetitive inspections of metal bushing P/N B712M10X1001 and prohibit the installation of elastomeric bushing P/N 105–60386 on any helicopter.

Costs of Compliance

The FAA estimates that this proposed AD would affect 30 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this proposed AD. Labor costs are estimated at $85 per work-hour.

Inspecting the engine mount bushings would take about 1 work-hour, for an

estimated cost of $85 per helicopter and $2,550 for the U.S. fleet.

Replacing the three engine mount bushings would take about 8 work-hours and parts would cost about $2,505, for an estimated cost of $3,185 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

2. Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2017–07–08, Amendment 39–18846 (82 FR 16895, April 7, 2017); and

■ b. Adding the following new AD:

Airbus Helicopters Deutschland GmbH Docket No. FAA–2020–0801; Product Identifier 2019–SW–101–AD.

(a) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model MBB–BK 117 D–2 helicopters, certificated in any category, with an engine mount elastomeric bushing (elastomeric bushing) part number (P/N) 105–60386 or an engine mount metal bushing (metal bushing) P/N B712M10X1001 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as a delaminated elastomeric bushing. This condition could result in excessive vibration, which could lead to cracking and failure of the engine mount front support pins, and loss of helicopter control.

(c) Affected ADs

This AD replaces AD 2017–07–08, Amendment 39–18846 (82 FR 16895, April 7, 2017).

(d) Comments Due Date

The FAA must receive comments by October 13, 2020.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) For helicopters with an elastomeric bushing P/N 105–60386 installed, within 50 hours time-in-service (TIS) and thereafter at intervals not to exceed 50 hours TIS:

(i) Visually inspect each elastomeric bushing for separation of the rubber from the metal or missing rubber by following Section 3.B.2 of Airbus Helicopters Alert Service Bulletin No. ASB MBB–BK117 D–2–71A–002, Revision 1, dated December 14, 2018.

(ii) If any rubber has separated from the metal or if there is missing rubber, before further flight, inspect the elastomeric bushing for deformation, corrosion, and mechanical damage.

(A) Replace the elastomeric bushing with an airworthy engine mount bushing if there is any deformation, separation of the rubber from the metal, corrosion, or mechanical damage, or repair the elastomeric bushing if the deformation, separation of the rubber, corrosion, or mechanical damage is within the maximum repair damage limitations.

(B) If the inner and outer parts of the elastomeric bushing are separated with missing rubber, before further flight, replace the elastomeric bushing with an airworthy engine mount bushing.

(2) For helicopters with a metal bushing P/N B712M10X1001 installed, within 100 hours TIS, and thereafter every 100 hours TIS, visually inspect the metal bushing of the inner and outer forward trusses for gapping between the inner and outer truss, contact marks on the inner and outer engine mount bushings, and worn out metal mesh.

(i) If there is gapping between the inner and outer truss less than 1mm, within 50 hours TIS, replace the metal bushing with an airworthy engine mount bushing.

(ii) If there is gapping between the inner and outer truss of 1mm or greater than 1mm, contact marks on the inner or outer engine mount bushings, or worn out metal mesh, before further flight, replace the metal bushing with an airworthy engine mount bushing.

(3) For helicopters with an elastomeric bushing P/N 105–60386 installed, within 300 hours TIS, replace each elastomeric bushing P/N 105–60386 with metal bushing P/N B712M10X1001.

(4) Performing the actions required by paragraph (f)(3) of this AD constitutes a terminating action for the repetitive inspections required by paragraph (f)(1) of this AD.

(5) As of the effective date of this AD, do not install elastomeric bushing P/N 105–60386 on any helicopter.

(g) 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 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD No. 2019–0275, dated November 7, 2019. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 7200, Engine (Turbine, Turboprop).

Issued on August 20, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–18696 Filed 8–26–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742 and 774

[Docket No. 200824–0224]

RIN 0694–AH80

Identification and Review of Controls for Certain Foundational Technologies

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Bureau of Industry and Security (BIS) controls the export, reexport, and transfer (in-country) of dual-use and certain military items through the Export Administration Regulations (EAR), including the Commerce Control List (CCL). Many items (commodities, software, and technology) subject to the jurisdiction of the EAR are listed on the CCL. Pursuant to the Export Control Reform Act of 2018, BIS and its interagency partners are engaged in a process to identify emerging and foundational technologies that are essential to the national security of the United States. Foundational technologies essential to the national security are those that may warrant stricter controls if a present or potential application or capability of that technology poses a national security threat to the United States. In order to determine if technologies are foundational, BIS will evaluate specific items, including items currently subject only to anti-terrorism (AT) controls on the CCL or those designated as EAR99. This ANPRM seeks public comment on the definition of, and criteria for, identifying foundational technologies. Comments on this ANPRM will help inform the interagency process to identify and describe such foundational technologies.

DATES: Submit comments on or before October 26, 2020.

ADDRESSES: You may submit comments through either of the following:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The identification number for this rulemaking is BIS–2020–0029.
- *Address:* By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Refer to RIN 0694–AH80.

FOR FURTHER INFORMATION CONTACT: Tongele Tongele, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Department of Commerce by: phone (202) 482–0092; fax (202) 482–3355; or email *Tongele.Tongele@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 1758 (50 U.S.C. 4801) of the Export Control Reform Act of 2018 (ECRA) requires the Department of Commerce to establish appropriate controls on the export, reexport, or transfer (in country) of emerging and foundational technologies. Under ECRA, emerging and foundational technologies are those technologies that are essential to the national security of the United States and are not critical technologies described in Section 721(a)(6)(A)(i)–(v) of the Defense Production Act of 1950, as amended (DPA). ECRA notes the national security importance of U.S. leadership in science, technology, engineering, and manufacturing, including foundational technology that is essential to innovation. Items subject to the Export Administration Regulations (EAR) (15 CFR parts 730–774) that are not covered by the DPA's definition of critical technologies are items controlled only for anti-terrorism (AT), crime control (CC), or short supply (SS) reasons, subject to United Nations (UN) embargoes, or designated as EAR99.

Section 1758 of ECRA requires that foundational technologies be identified, and that BIS establish appropriate controls for that technology under the EAR. At a minimum, such controls would apply to countries subject to an embargo, including an arms embargo, imposed by the United States.

ECRA also requires that the interagency process is to take into account:

- The development of foundational technologies in foreign countries;
- The effect export controls may have on the development of such technologies in the United States; and
- The effectiveness of export controls imposed pursuant to ECRA on limiting the proliferation of foundational technologies to foreign countries.

For purposes of this ANPRM, the term foundational technologies includes not only ''technology'' but also ''commodities'' and ''software'' as used in the EAR.

BIS now seeks public comment to inform the interagency process to identify and describe foundational technologies. For example, foundational technologies could include items that are currently subject to control for military end use or military end user reasons under Supplement No. 2 to part 744 of the EAR. Many of these items, including semiconductor manufacturing equipment and associated software tools, lasers, sensors, and underwater systems, can be tied to indigenous military innovation efforts in China, Russia or Venezuela. Accordingly, they may pose a national security threat.

There may be additional items, classified on the CCL at the AT level or as EAR99 for which an export license is not required for countries subject to a U.S. arms embargo that also warrant review to determine if they are foundational technologies essential to the national security. For example, such controls may be reviewed if the items are being utilized or required for innovation in developing conventional weapons, enabling foreign intelligence collection activities, or weapons of mass destruction applications.

BIS, through an interagency process, seeks to determine whether there are specific foundational technologies that warrant more restrictive controls, including technologies that have been the subject of illicit procurement attempts which may demonstrate some level of dependency on U.S. technologies to further foreign military or intelligence capabilities in countries of concern or development of weapons of mass destruction.

BIS welcomes comments on: (1) How to further define foundational technology to assist in identification of such items; (2) sources to identify such items; (3) criteria to determine whether controlled items identified in AT level Export Control Classification Numbers (ECCNs), in whole or in part, or covered by EAR99 categories, for which a license is not required to countries subject to a U.S. arms embargo, are essential to U.S. national security; (4) the status of development of foundational technologies in the United States and other countries; (5) the impact specific foundational technology controls may have on the development of such technologies in the U.S.; (6) examples of implementing controls based on end-use and/or end-user rather than, or in addition to, technology based controls; (7) any enabling technologies, including tooling, testing, and certification equipment, that should be included within the scope of a foundational technology; and (8) any other approaches to the issue of identifying foundational technologies important to U.S. national security, including the stage of development or maturity level of an foundational technology that would warrant consideration for export control.

BIS does not seek to expand jurisdiction over technologies that are not currently subject to the EAR, such as ''fundamental research'' described in § 734.8 of the EAR.

BIS will review public comments submitted in response to this ANPRM to help inform BIS and its interagency partners' efforts to identify, reevaluate and subsequently control foundational technologies. This interagency process is expected to result in rules and comment periods with new control levels for items currently controlled for AT reasons on the CCL or new ECCNs on the CCL for technologies currently classified as EAR99.

OMB has determined that this action is significant under Executive Order 12866.

Submission of Comments

Comments should be submitted to BIS as described in the **ADDRESSES** section of this ANPRM by October 26, 2020.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–18910 Filed 8–26–20; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–482]

Schedules of Controlled Substances: Placement of N-Ethylpentylone in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes placing 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)pentan-1-one (*N*-ethylpentylone, ephylone) and its optical, positional, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule I of the Controlled Substances Act. If finalized, this action would make permanent the existing regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle *N*-ethylpentylone.

DATES: Comments must be submitted electronically or postmarked on or before September 28, 2020.

Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons may file a request for a hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and/or 1316.47, as applicable. Requests for a hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before September 28, 2020.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–482'' on all electronic and written correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration (DEA) encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate the electronic submission are not necessary. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.
- *Hearing requests:* All requests for a hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/ALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–8209.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified as directed above will be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information to this

proposed rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing or Waiver of Participation in Hearing

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Interested persons may file requests for hearing or notices of intent to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(a) or (b), and include a statement of interest in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing together with a written statement regarding the interested person's position on the matters of fact and law involved in any hearing as set forth in 21 CFR 1308.44(c).

All requests for a hearing and waivers of participation must be sent to DEA using the address information provided above.

Legal Authority

The Controlled Substances Act (CSA) provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of the Department of Health and Human Services (HHS); [1] or (3) on the petition of any interested party. 21 U.S.C. 811(a). This proposed action is supported by a recommendation from the Assistant Secretary for Health of the HHS (Assistant Secretary) and an evaluation of all other relevant data by DEA. If finalized, this action would make permanent [2] the imposition of regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles or proposes to handle *N*-ethylpentylone.

Background

On August 31, 2018, DEA published an order in the **Federal Register** amending 21 CFR 1308.11(h) to temporarily place 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)pentan-1-one (*N*-ethylpentylone, ephylone) in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). 83 FR 44474. That temporary scheduling order was effective on the date of publication, and was based on findings by the former Acting Administrator of DEA that the temporary scheduling of this synthetic cathinone was necessary to avoid an imminent hazard to the public safety pursuant to section 811(h)(1). Section 811(h)(2) provides that the temporary control of this substance expire two years from the effective date of the scheduling order, which was August 31, 2020. However, this same provision also provides that, during the pendency of proceedings under 21 U.S.C. 811(a)(1) for the permanent scheduling of the substance, the temporary scheduling of that substance can be extended for up to one year. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of HHS,[3] or on the petition of any interested party. An extension of the existing temporary order is being ordered by the Acting Administrator of DEA (Acting Administrator) in a separate action, and is being simultaneously published elsewhere in this issue of the **Federal Register**.

The Acting Administrator, on his own motion, is initiating proceedings under 21 U.S.C. 811(a)(1) to permanently schedule *N*-ethylpentylone. DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse for this synthetic cathinone. On September 25, 2019, the former Acting Administrator submitted a request to the Assistant Secretary to provide DEA with a scientific and medical evaluation of available information and a scheduling recommendation for *N*-ethylpentylone, in accordance with 21 U.S.C. 811(b) and (c). Upon evaluating the scientific and medical evidence, on July 15, 2020, the Assistant Secretary submitted to the Acting Administrator HHS's scientific and medical evaluations for this substance. Upon receipt of the scientific and medical evaluation and scheduling recommendation from HHS, DEA reviewed the documents and all other relevant data, and conducted its own eight-factor analysis of the abuse potential of *N*-ethylpentylone in accordance with 21 U.S.C. 811(c).

Proposed Determination To Schedule N-Ethylpentylone

As discussed in the background section, the Acting Administrator is initiating proceedings, pursuant to 21 U.S.C. 811(a)(1), to add *N*-ethylpentylone permanently to schedule I. DEA has reviewed the scientific and medical evaluation and scheduling recommendation, received from HHS, and all other relevant data and conducted its own eight-factor analysis of the abuse potential of *N*-ethylpentylone pursuant to 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in its proposed scheduling action. Please note that both the DEA and the HHS 8-Factor analyses and the Assistant Secretary's July 15, 2020, letter are available in their entirety under the tab ''Supporting Documents'' of the public docket of this rulemaking action at *http://www.regulations.gov,* under Docket Number ''DEA–482.''

1. *The Drug's Actual or Relative Potential for Abuse:* Both the DEA and the HHS 8-factor analyses found that *N*-ethylpentylone has abuse potential associated with its abilities to produce psychoactive effects that are similar to those produced by schedule I synthetic cathinones such as pentylone, mephedrone, methylone, and 3,4-methylenedioxypyrovalerone (MDPV) and schedule II stimulants such as methamphetamine and cocaine that have a high potential for abuse. In particular, the responses in humans to N-ethylpentylone are stimulant-like and include paranoia, agitation, palpitations, tachycardia, hypertension, and hyperthermia.

N-Ethylpentylone has no approved medical uses in the United States [4] and has been encountered on the illicit market with adverse outcomes on the public health and safety. Because this substance is not an approved drug product, a practitioner may not legally

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

[2] *N*-ethylpentylone is currently subject to schedule I controls on a temporary basis, pursuant to a temporary scheduling order issued by DEA under authority of 21 U.S.C. 811(h). 83 FR 44474, Aug. 31, 2018.

[3] Because the Secretary of HHS has delegated to the Assistant Secretary for Health the authority to make domestic drug scheduling recommendations, for purposes of this proposed rulemaking, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.''

[4] There are no legitimate drug channels for *N*-ethylpentylone as a marketed drug, but DEA notes that this synthetic cathinone has been used in scientific research.

prescribe it, and it cannot be dispensed to an individual. The use of this substance without medical advice leads to the conclusion that this synthetic cathinone is being abused for its psychoactive properties.

Reports from public health and law enforcement state that this substance is being abused and taken in amounts sufficient to create a hazard to an individual's health. This hazard is evidenced by emergency department admissions and deaths, representing a significant safety issue for those in the community. Further, from January 2014 through December 2019 (query date: July 10, 2020), the System to Retrieve Information from Drug Evidence (STRIDE), STARLiMS, and the National Forensic Laboratory Information System (NFLIS) databases registered a total of 20,502 reports by participating DEA, State, local, and other forensic laboratories, as applicable, pertaining to *N*-ethylpentylone.[5] NFLIS registered more than 19,000 reports from state and local forensic laboratories identifying this substance in drug-related exhibits for a period from January 2014 to December 2019 from 46 states. There were no occurrences of *N*-ethylpentylone reported in NFLIS for 2013. *N*-Ethylpentylone was first identified in NFLIS in May 2014. STRIDE/STARLiMS registered more than 700 reports from DEA forensic laboratories from January 2015 to December 2019. There were no occurrences of *N*-ethylpentylone reported in STRIDE/STARLiMS for 2013 and 2014. *N*-Ethylpentylone was first reported to STRIDE/STARLiMS in December 2015. Consequently, the data indicate that *N*-ethylpentylone is being abused, and it presents safety hazards to the health of individuals who consume it due to its stimulant properties, making it a hazard to the safety of the community.

2. *Scientific Evidence of the Drug's Pharmacological Effects, if Known:* As described by HHS, studies show that *N*-ethylpentylone produces pharmacological effects that are similar to those produced by schedule I and II substances such as methamphetamine (II), cocaine (II), MDMA (I), mephedrone (I), MDPV (I), and methylone (I). Similar to these schedule I and II substances, *N*-ethylpentylone binds to monoamine transporters for dopamine, serotonin, or norepinephrine, and blocks the uptake of these neurotransmitters at their transporters, but does not promote the release of these monoamines. Additionally, behavioral studies in animals demonstrate that *N*-ethylpentylone produces locomotor behavior and discriminative stimulus effects that are similar to those of MDMA, methamphetamine, and cocaine. Overall, these data indicate that *N*-ethylpentylone produces pharmacological effects and stimulant-like behaviors that are similar to those of schedule I substances MDMA, mephedrone, MDPV, and methylone, as well as schedule II stimulants methamphetamine and cocaine.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance: N*-Ethylpentylone, like other synthetic cathinones, is a designer drug of the phenethylamine class and it is structurally similar to schedule I substances pentylone, mephedrone, methylone, MDMA, and MDPV, as well as schedule II substance methamphetamine. *N*-Ethylpentylone has an ethyl carbon chain ($-CH_2CH_3$) on the nitrogen (N) atom, a propyl group ($-CH_2CH_2CH_3$) on the α-carbon, and a methylenedioxy group ($-OCH_2O-$) on the phenyl ring.

Pharmacokinetic studies show that *N*-ethylpentylone is rapidly absorbed and enters the brain within 20 minutes after intraperitoneal administration, and at approximately 40 minutes reaches its maximum concentration. *N*-Ethylpentylone was found to undergo hydrogenation, deethylation, demethylation, and hydroxylation in human liver microsomes resulting in four different metabolites. These four metabolites of *N*-ethylpentylone have been identified in blood and oral fluid specimens in humans.

Neither DEA nor HHS is aware of any currently accepted medical use for *N*-ethylpentylone. According to HHS's July 2020 scientific and medical evaluation and scheduling recommendation, FDA has not approved a marketing application for a drug product containing N-ethylpentylone for any therapeutic indication, nor is HHS aware of any reports of clinical studies or claims of an accepted medical use for *N*-ethylpentylone in the United States.

A drug has a ''currently accepted medical use'' if DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, all of the following must be demonstrated: The drug's chemistry is known and reproducible; there are adequate safety studies; there are adequate and well-controlled studies proving efficacy; the drug is accepted by qualified experts; and the scientific evidence is widely available. 57 FR 10499 (1992). Based on this analysis, *N*-ethylpentylone has no currently accepted medical use in the United States. Furthermore, DEA has not found any references regarding clinical testing of *N*-ethylpentylone in the scientific and medical literature. Although the chemistry of synthetic cathinones, in general, is known and has been reproduced, as mentioned above there are no clinical studies involving *N*-ethylpentylone. Taken together with the HHS's conclusion, DEA finds that there is no legitimate medical use for *N*-ethylpentylone in the United States.

4. *History and Current Pattern of Abuse:* As described by DEA and HHS, *N*-ethylpentylone is a synthetic cathinone of the phenethylamine class and it is structurally and pharmacologically similar to schedule I and II substances such as pentylone (I), mephedrone (I), methylone (I), MDPV (I), methamphetamine (II), MDMA (I). Thus, it is likely that *N*-ethylpentylone is abused in the same manner and by the same users as these substances. That is, *N*-ethylpentylone, like these substances, is most likely ingested by swallowing capsules or tablets or snorted by nasal insufflation of the powder tablets. Products containing *N*-ethylpentylone, similar to schedule I synthetic cathinones, are likely to be falsely marketed as ''research chemicals,'' ''jewelry cleaner,'' ''stain remover,'' ''plant food or fertilizer,'' ''insect repellants,'' or ''bath salts''; sold at smoke shops, head shops, convenience stores, adult book stores, and gas stations; and purchased on the internet. Like those seen with commercial products that contain synthetic cathinones, the packages of products that contain *N*-ethylpentylone also probably contain the warning ''not for human consumption,'' most likely in an effort to circumvent statutory restrictions for these substances. Demographic data collected from published reports and mortality records suggest that the main users of *N*-ethylpentylone, similar to schedule I synthetic cathinones and MDMA, are young adults.

Available evidence suggests that the history and pattern of abuse of *N*-ethylpentylone parallels that of MDMA, methamphetamine, or cocaine and that

[5] STRIDE is a database of drug exhibits sent to DEA laboratories. Exhibits from the database are from DEA, other federal agencies, and some local law enforcement agencies. STARLiMS is a laboratory information management system that systematically collects results from drug chemistry analyses conducted by DEA laboratories, and it replaced STRIDE in 2014. NFLIS is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by state and local forensic laboratories across the country. The NFLIS participation rate, defined as the percentage of the national drug caseload represented by laboratories that have joined NFLIS, is over 97 percent. NFLIS includes drug chemistry results from completed analyses only. NFLIS and STRIDE/STARLiMS databases were queried on July 10, 2020.

N-ethylpentylone has been marketed as a replacement for these substances. *N*-Ethylpentylone has been identified in law enforcement seizures that were initially suspected to be MDMA. In addition, there are reports that abusers of *N*-ethylpentylone thought they were using MDMA or another illicit substance but toxicological analysis revealed that the psychoactive substance was *N*-ethylpentylone. Toxicology reports also revealed that *N*-ethylpentylone is being ingested with other substances including other synthetic cathinones, common cutting agents, or other recreational substances. Consequently, products containing synthetic cathinones, including *N*-ethylpentylone, are distributed to users, often with unpredictable outcomes. Thus, the recreational abuse of *N*-ethylpentylone is a significant concern.

5. *Scope, Duration and Significance of Abuse:* *N*-Ethylpentylone is a popular recreational drug that emerged on the United States' illicit drug market after the scheduling of other popular synthetic cathinones (*e.g.,* ethylone, mephedrone, methylone, pentylone, and MDPV) (*see* DEA's Eight Factor Analysis for a full discussion). Forensic laboratories have confirmed the presence of *N*-ethylpentylone in drug exhibits received from state, local, and federal law enforcement agencies. Law enforcement data show that *N*-ethylpentylone first appeared in the illicit drug market in 2014 with one encounter and began increasing thereafter.[6] In 2015, NFLIS registered 6 reports from 4 states regarding *N*-ethylpentylone. However, in 2016, there were 2,252 reports from 40 states and, in 2017, there were 6,242 reports from 44 states related to this substance registered in NFLIS. *N*-Ethylpentylone represented 61 percent of all synthetic cathinones encountered by local law enforcement agencies and reported to NFLIS in 2017. In 2018, there were 9,680 reports from 41 states related to this substance registered in NFLIS, and in 2019, there were 1,598 reports from 25 states. At its peak in 2018, *N*-ethylpentylone represented 79 percent of all synthetic cathinones encountered by local law enforcement agencies and reported to NFLIS. Overall, from January 2014 to December 2019, NFLIS registered 19,779 reports from state and local forensic laboratories identifying this substance in drug-related exhibits from 46 states. STRIDE/STARLiMS registered more than 700 reports from DEA forensic laboratories during January 2015 to December 2019. There were no occurrences of *N*-ethylpentylone reported to STRIDE/STARLiMS for 2014. Concerns over the continuing abuse of synthetic cathinones have led to the control of many synthetic cathinones.

6. *What, if Any, Risk There Is to the Public Health:* HHS reported that the public health risks of *N*-ethylpentylone result from its ability to induce stimulant-like responses, which may lead to adverse events that include cognitive impairment and even death. Adverse health effects associated with the abuse of *N*-ethylpentylone include a number of stimulant-like adverse health effects such as diaphoresis, insomnia, mydriasis, hyperthermia, vomiting, agitation, disorientation, paranoia, abdominal pain, cardiac arrest, respiratory failure, and coma. In addition, *N*-ethylpentylone has been involved in deaths of many individuals. DEA is aware of approximately 154 overdose deaths involving *N*-ethylpentylone abuse reported in the United States between 2014 and 2018. Some of these deaths occurred in Alabama, Maryland, and Florida. Furthermore, the identification of *N*-ethylpentylone in toxicological samples associated with fatal and non-fatal overdoses as reported in the medical and scientific literature, forensic laboratory reports, and public health documents confirms these adverse effects of *N*-ethylpentylone. Like schedule I synthetic cathinones, *N*-ethylpentylone has caused acute health problems leading to emergency department admissions, violent behaviors causing harm to self or others, and/or death. Thus, the abuse of *N*-ethylpentylone, like that of the abuse of schedule I synthetic cathinones and stimulant drugs, poses significant adverse health risks including death.

Furthermore, because abusers of synthetic cathinones obtain these substances through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent. These unknown factors pose an additional risk for significant adverse health effects to the end user.

Based on information received by DEA, the abuse of *N*-ethylpentylone has led to, at least, the same qualitative public health risks as schedule I synthetic cathinones and MDMA, and schedule II methamphetamine. The public health risks attendant to the abuse of synthetic cathinones, including *N*-ethylpentylone, are well established and have resulted in large numbers of emergency department visits and fatal overdoses.

7. *Its Psychic or Physiological Dependence Liability:* According to HHS, the psychic or physiological dependence liability of *N*-ethylpentylone is demonstrated by its positive abuse-related studies in animals and reported stimulant effects in humans. The results from two behavioral studies (drug discrimination and locomotor studies) demonstrate that *N*-ethylpentylone produced behavioral effects that are similar to those of substances with stimulant effects such as the schedule I cathinones pentylone and MDPV. Furthermore, *N*-ethylpentylone has been reported to be abused for its stimulant properties. In addition, DEA notes that because *N*-ethylpentylone shares pharmacological properties with substances that have stimulant properties, it is probable that *N*-ethylpentylone has a dependence profile similar to these substances which are known to cause substance dependence.

In summary, data suggests that *N*-ethylpentylone produces behavioral effects in animals and humans that are similar to those of schedule I and II stimulants. Although there are no clinical studies evaluating dependence liabilities specific for *N*-ethylpentylone, the pharmacological profile of this substance strongly suggests that it possesses dependence liabilities that are qualitatively similar to schedule I or II substances such as pentylone (I), MDMA (I), methamphetamine (II), and cocaine (II).

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* *N*-Ethylpentylone is not an immediate precursor of any controlled substance under the CSA as defined by 21 U.S.C 802(23).

Conclusion: After considering the scientific and medical evaluation conducted by HHS, HHS's scheduling recommendation, and DEA's own eight-factor analysis, DEA finds that the facts and all relevant data constitute substantial evidence of the potential for abuse of *N*-ethylpentylone. As such, DEA hereby proposes to permanently schedule *N*-ethylpentylone as a controlled substance under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for HHS and review of all other available data, the Acting

[6] NFLIS and STRIDE/STARLiMS databases were queried on July 10, 2020.

Administrator of DEA, pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds that:

1. *N*-Ethylpentylone has a high potential for abuse;

2. *N*-Ethylpentylone has no currently accepted medical use in treatment in the United States; and

3. There is a lack of accepted safety for use of *N*-ethylpentylone under medical supervision.

Based on these findings, the Acting Administrator of DEA concludes that 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)pentan-1-one (*N*-ethylpentylone, ephylone) including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, warrants continued control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

Requirements for Handling N-Ethylpentylone

If this rule is finalized as proposed, *N*-ethylpentylone would continue [7] to be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) *N*-ethylpentylone, or who desires to handle *N*-ethylpentylone, is required to be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Security. N*-Ethylpentylone is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b), and in accordance with 21 CFR 1301.71–1301.93. Non-practitioners handling N-ethylpentylone must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

3. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of *N*-ethylpentylone must be in compliance with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

4. *Quota.* Only registered manufacturers are permitted to manufacture *N*-ethylpentylone in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

5. *Inventory.* Any person registered with DEA to handle *N*-ethylpentylone must have an initial inventory of all stocks of controlled substances (including *N*-ethylpentylone) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including *N*-ethylpentylone) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records and Reports.* Every DEA registrant is required to maintain records and submit reports with respect to *N*-ethylpentylone pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304 and 1312.

7. *Order Forms.* Every DEA registrant who distributes *N*-ethylpentylone is required to comply with the order form requirements, pursuant to 21 U.S.C. 828 and 21 CFR part 1305.

8. *Importation and Exportation.* All importation and exportation of *N*-ethylpentylone must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

9. *Liability.* Any activity involving *N*-ethylpentylone not authorized by, or in violation of the CSA or its implementing regulations is unlawful, and could subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order (E.O.) 13563.

This proposed rule does not meet the definition of an E.O. 13771 regulatory action, and the repeal and cost offset requirements of E.O. 13771 have not been triggered. OMB has previously determined that formal rulemaking actions concerning the scheduling of controlled substances, such as this rule, are not significant regulatory actions under Section 3(f) of E.O. 12866.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of E.O. 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

The Acting Administrator, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. On August 31, 2018, DEA published an order to temporarily place *N*-ethylpentylone in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). DEA estimates that all entities handling or planning to handle this substance have already established and implemented the systems and processes required to handle *N*-ethylpentylone. There are

[7] *N*-Ethylpentylone is currently subject to schedule I controls on a temporary basis, pursuant to the temporary scheduling order issued by DEA under the authority of 21 U.S.C. 811(h). 83 FR 44474, August 31, 2018. An order extending the temporary scheduling of *N*-ethylpentylone for one year is published elsewhere in this issue of the **Federal Register**, on the same day as this notice of proposed rulemaking.

currently 20 unique registrations authorized to handle *N*-ethylpentylone specifically, as well as a number of registered analytical labs that are authorized to handle schedule I controlled substances generally. From review of entity names, DEA estimates these 20 registrations represent 16 entities. Some of these entities are likely to be small entities. However, since DEA does not have information of registrant size and the majority of DEA registrants are small entities or are employed by small entities, DEA estimates a maximum of 16 entities are small entities. Therefore, DEA conservatively estimates as many as 16 small entities are affected by this proposed rule.

A review of the 20 registrations indicates that all entities that currently handle *N*-ethylpentylone also handle other schedule I controlled substances, and thus they have established and implemented (or maintain) the systems and processes required to handle *N*-ethylpentylone as a schedule I substance. Therefore, DEA anticipates that this proposed rule will impose minimal or no economic impact on any affected entities, and, thus, will not have a significant economic impact on any of the 16 affected small entities. Therefore, DEA has concluded that this proposed rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (d)(86) and remove and reserve paragraph (h)(36).

The addition reads as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(86) *N*-Ethylpentylone (Other names: ephylone, 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)pentan-1-one) 7543

* * * * *

Dated: August 24, 2020.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–19007 Filed 8–26–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 411

[CMS–1720–RCN]

RIN 0938–AT64

Medicare Program; Modernizing and Clarifying the Physician Self-Referral Regulations Extension of Timeline for Publication of Final Rule

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Extension of timeline for publication of final rule.

SUMMARY: This notice announces an extension of the timeline for publication of a Medicare final rule in accordance with the Social Security Act, which allows us to extend the timeline for publication of the final rule.

DATES: As of August 26, 2020, the timeline for publication of the final rule to finalize the provisions of the October 17, 2019 proposed rule (84 FR 55766) is extended until August 31, 2021.

FOR FURTHER INFORMATION CONTACT: Lisa O. Wilson, (410) 786–8852.

SUPPLEMENTARY INFORMATION: In the October 17, 2019 **Federal Register** (84 FR 55766), we published a proposed rule that addressed undue regulatory impact and burden of the physician self-referral law. The proposed rule was issued in conjunction with the Centers for Medicare & Medicaid Services' (CMS) Patients over Paperwork initiative and the Department of Health and Human Services' (the Department or HHS) Regulatory Sprint to Coordinated Care. In the proposed rule, we proposed exceptions to the physician self-referral law for certain value-based compensation arrangements between or among physicians, providers, and suppliers; a new exception for certain arrangements under which a physician receives limited remuneration for items or services actually provided by the physician; a new exception for donations of cybersecurity technology and related services; and amendments to the existing exception for electronic health records (EHR) items and services. The proposed rule also provides critically necessary guidance for physicians and health care providers and suppliers whose financial relationships are governed by the physician self-referral statute and regulations. This notice announces an extension of the timeline for publication of the final rule and the continuation of effectiveness of the proposed rule.

Section 1871(a)(3)(A) of the Social Security Act (the Act) requires us to establish and publish a regular timeline for the publication of final regulations based on the previous publication of a proposed regulation. In accordance with section 1871(a)(3)(B) of the Act, the timeline may vary among different regulations based on differences in the complexity of the regulation, the number and scope of comments received, and other relevant factors, but may not be longer than 3 years except under exceptional circumstances. In addition, in accordance with section 1871(a)(3)(B) of the Act, the Secretary may extend the initial targeted publication date of the final regulation if the Secretary, no later than the regulation's previously established proposed publication date, publishes a notice with the new target date, and such notice includes a brief explanation of the justification for the variation.

We announced in the Spring 2020 Unified Agenda (June 30, 2020, *www.reginfo.gov*) that we would issue the final rule in August 2020. However, we are still working through the

complexity of the issues raised by comments received on the proposed rule and therefore we are not able to meet the announced publication target date. This notice extends the timeline for publication of the final rule until August 31, 2021.

Dated: August 24, 2020.

Wilma M. Robinson,

Deputy Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2020–18867 Filed 8–26–20; 8:45 am]

BILLING CODE 4120–01–P

Notices

Federal Register

Vol. 85, No. 167

Thursday, August 27, 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

Submission for OMB Review; Comment Request

August 24, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 28, 2020 will be considered. 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.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program Regulations—Reporting and Recordkeeping Burden.

OMB Control Number: 0584–0043.

Summary of Collection: The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides supplemental foods, nutrition education, including breastfeeding promotion and support, and health care referrals to low income, nutritionally at-risk pregnant, breastfeeding and postpartum women, infants, and children up to age five. Currently, WIC operates through State health departments in 50 States, 33 Indian Tribal Organizations, American Samoa, District of Columbia, Guam, Commonwealth of the Northern Mariana Islands, Puerto Rico, and the Virgin Islands. The Federal regulations governing the WIC Program (7 CFR part 246) require that certain program-related information be collected and that full and complete records concerning WIC operations are maintained. The WIC Program is authorized by the Child Nutrition Act of 1966, as amended.

Need and Use of the Information: The Food and Nutrition Service (FNS) collects information from state and local agencies, applicants, and retail vendors to determine eligibility in the WIC Program. This ongoing information collection is mandatory for state agencies and required to obtain or retain benefits for the WIC participants. This information includes participant certification information (*e.g.,* income and nutrition risk); nutrition education documentation; local agency and vendor application and agreement information; vendor sales and shelf price data; data related to vendor monitoring and training; financial and food delivery system records, and Electronic Benefits Transfer (EBT) delivery. State Plans are the principal source of information about how each State agency operates its WIC Program. The information is needed for the general operation of the Program, including regulatory compliance, and for ongoing program integrity and cost-saving efforts. The information is also used by FNS to manage, plan, evaluate, make decisions, and report on WIC Program operations. If the information were not collected, the efficiency and effectiveness of the Program would be jeopardized, improper use of Federal funds would increase, and FNS' ability to detect violations would diminish greatly.

Description of Respondents: Individuals or Households; Businesses or Other for Profit; Not-for profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 6,913,189.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Semi-annually; Monthly; Annually; and as Needed.

Total Burden Hours: 3,347,011.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–18884 Filed 8–26–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: FNS Information Collection Needs due to COVID–19

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is an Extension of a Currently Approved Collection.

DATES: Written comments must be received on or before October 26, 2020.

ADDRESSES: Comments will be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Melissa Abelev at *melissa.abelev@usda.gov,* or 703–305–2134.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed

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 proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: FNS Information Collection Needs due to COVID–19.

Form Number:

OMB Number: 0584–0654.

Expiration Date: November 31, 2020.

Type of Request: Extension of a currently approved collection.

Abstract: As the Food and Nutrition Service (FNS) is responding to the COVID–19 Coronavirus pandemic, it is implementing a number of waivers and program adjustments to ensure Americans in need can access nutrition assistance during the crisis while maintaining recommended social distancing practices. Two pieces of legislation have detailed many of the program adjustments available to FNS. The Families First Coronavirus Response Act of 2020 (PL 116–127) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act (PL 116–136) provided a number of program adjustments and additional funding, respectively. The programs' authorizing legislation also allows for some waivers and flexibilities. The statutes describing these waivers and flexibilities also have reporting requirements. The Department obtained approval through an emergency clearance to collect the information as described in this Notice (OMB–0854–0654; expiration 11/30/2020). USDA anticipates the need to collect the data beyond the expiration date and is seeking approval of this Information Collection Request in order to meet the continuing information collection and reporting requirements detailed in the Families First Coronavirus Response Act of 2020, as well as program administration needs to implement the CARES Act of 2020.

Section 2302(a)(2) of the Families First Coronavirus Response Act of 2020 (FFCRA), enacted March 18, 2020, allows the Department of Agriculture to adjust, at the request of State agencies or by guidance in consultation with one or more State agencies, issuance methods and application and reporting requirements under the Food and Nutrition Act of 2008, as amended, (FNA) to be consistent with what is practicable under actual conditions in affected areas. Section 2302(c) of FFCRA requires the Secretary of Agriculture to submit a report to Congress following the end of the public health emergency, including a description of the measures taken to address the food security needs of affected populations during the emergency, including any information or data supporting State agency requests, among other information not included in this information collection (IC).

Further, Section 2203(a)(1) allows State agencies administering the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to request a waiver of 17(d)(3)(C)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(C)(i)), which requires applicants be physically present in the clinic. Local agencies are required to submit a report detailing the use and benefits of this waiver within one year of use of such waiver, and State agencies are required to submit a summary report of local agency usage of waivers under this Section within 18 months. Section 2204(a)(1) gives State agencies administering WIC and the WIC Farmers Market Nutrition Program (FMNP) the opportunity to request a waiver or modification of qualified regulatory requirements from USDA if such requirements cannot be met due to COVID–19, and such waivers are necessary to provide assistance to WIC and WIC FMNP participants. State agencies are also required under this Section to provide a report to USDA no later than one year after such waivers were granted, detailing their use of the waiver and how it improved services to women, infants and children.

In addition, Title II of the FFRCA allows a number of adjustments to the Child Nutrition Programs and with those adjustments requires the States to report to the Secretary of Agriculture how they used the waivers and whether they improved services to children. In order to comply with the requirements of the FFRCA, FNS will ask the States to report the required data points on existing FNS forms. These data will be collected electronically using the existing remarks fields in the FNS Food Program Reporting System (FPRS).

In all the instances described above, the information collection includes burden on State agencies for requesting waivers due to COVID–19 and reporting to FNS evaluation data on how the waiver has impacted State operations, which is a requirement on States in FFRCA.

Additionally, FNS is asking State agencies to report the USDA commodities used during a disaster on a more frequent basis. This information is currently collected in an OMB approved form, the FNS–292A, Report of Commodity Distribution for Disaster Relief (OMB Control Number 0584–0594 Food Programs Reporting System, expiration July 31, 2023). State distributing agencies may release commodity or donated foods procured by the Department of Agriculture (USDA) to disaster organizations to provide nutritional assistance to disaster victims. Under the Code of Federal Regulations (CFR) at 7 CFR 250.69(f), State distributing agencies shall provide a summary report to FNS within 45 days following termination of the disaster assistance, and maintain records of these reports and other information relating to disasters. OMB approved in an emergency collection (OMB 0584–0654, expiration 11/30/2020) for FNS to change the frequency of the collection of the commodity reports from 45 days after the completion of the disaster, to a weekly basis. This change was requested due to the number of requests and the burden of the FNS regional offices. Additionally, this request is being requested in order for FNS Food Distribution (FD) staff to monitor levels of USDA commodities more frequently to ensure States have access to USDA commodities in the coming weeks.

Affected Public: State, Local and Tribal Government: Respondent groups identified include: (1) State agencies and Indian Tribal Organizations that operate USDA Nutrition Assistance Programs; (2) Local WIC Agencies.

Estimated Number of Respondents: The total estimated number of respondents is 2,068. This includes: 53 SNAP State Agencies who will submit Waiver information, evaluation information, and weekly operational updates; 89 WIC State program staff who will submit waiver information; 89 WIC State program staff who will submit evaluation information; 49 Farmers Market Nutrition Program Staff who will submit waiver information; 49 Farmers Market Nutrition Program Staff who will submit evaluation information; 56 Child Nutrition Program staff who will submit information on form FNS10; 57 Child Nutrition Program staff who will submit information on FNS44; 53 Child Nutrition Program staff who will submit information on FNS418; 60 Food Distribution State program staff who will submit information on FNS292A; and 1808 WIC Local Agency Program

staff who will submit information on an evaluation survey.

As shown in the respondent burden table below (Table 1), FNS anticipates two types of respondents: State Government workers and Local Government workers at WIC agencies. Together, their reporting burden is 26,386 burden hours. Note that the estimates below assume data collection over twelve months, though they will be revised should the Public Health Crisis timeline differ.

SNAP State Program Staff will have two types of burden:

• *Waivers:* FNS anticipates up to 3 waivers requests per month per State agency. SNAP Program Staff in 53 State Agencies will submit approximately 3 waiver requests per month. Each waiver will take about 10 hours to complete for a total of 19,080 burden hours. (53 State Agency Staff * 3 waivers per months * 12 months (36 waiver request) = 1,908 responses * 10 hours = 19,080 burden hours)

• *Data Reports:* SNAP Program Staff in 53 State Agencies will submit 3 data reports, reporting on the evaluation data required by FFRCA. It will take them about 3 hours to report the data in the data reports for a total of 159 burden hours. (53 State Agency Staff * 3 data reports = 159 responses * 3 hours = 477 burden hours).

• *Weekly Operational Update:* SNAP program staff in 53 State Agencies will submit 1 weekly update to their FNS Regional Offices. Each update will take approximately 1 hour to complete. (53 State agencies * 52 weekly reports = 2,756 annual responses * 1 hour per response = 2,756 burden hours).

WIC State Program Staff will have two types of burden:

• *Waivers:* FNS anticipates up to 40 waiver opportunities under the Public Health Emergency. Each state will request about 14 waivers. Each waiver request will take about 15 minutes to complete for a total of 311.5 burden hours. (89 State Agency Staff * 14 waivers = 1,246 responses * .25 hours = 311.5 burden hours)

• *Evaluation Information:* WIC Program Staff in 89 State Agencies will submit 1 survey, reporting on the evaluation data required by the FFRCA. It will take them about 2 hours to complete the survey, for a total of 178 burden hours. (89 State Agency Staff * 1 survey = 89 Responses * 2 hours = 178 burden hours)

• *MIS Data Pull:* FNS will request states submit a data pull from their MIS systems to help facilitate the evaluation data reporting on the number of WIC participants affected by different waivers. (89 WIC State Agencies * 1 data pull = 89 Responses * 1.5 hours per response = 133.5 burden hours)

FMNP State Program Staff will have two types of burden:

• *Waivers:* FNS anticipates up to 8 waiver opportunities under the Public Health Emergency and each state will request 4 waivers. FMNP Program Staff in 49 State Agencies will submit approximately 4 waiver requests. Each waiver request will take about 15 minutes to complete for a total of 49 burden hours. (49 State Agency Staff * 4 waivers = 196 responses * .25 hours = 49 burden hours)

• *Evaluation Information:* FMNP Program Staff in 49 State Agencies will submit 1 State Plan, reporting on the evaluation data required by the FFRCA. It will take them about 3 hours to complete the report, for a total of 147 burden hours. (49 State Agency Staff * 1 State Plan = 49 Responses * 3 hours = 147 burden hours)

CN State Program Staff will submit data on three types of existing FNS Forms:

• *FNS10:* CN Program staff in 56 States will submit information on an existing FNS form in the remarks section. They will enter the data monthly for the 30-day report and for the 90-day report for two submissions per month. It will take about 15 minutes to complete for a total of 336 burden hours. (56 State Agency Staff * 24 submissions = 1,344 responses * .25 hours = 336 burden hours)

• *FNS44:* CN Program staff in 57 States will submit information on an existing FNS form in the remarks section. They will enter the data monthly. It will take about 15 minutes to complete for a total of 171 burden hours. (57 State Agency Staff * 12 submissions = 684 responses * .25 hours = 171 burden hours).

• *FNS418:* CN Program staff in 53 States will submit information on an existing FNS form in the remarks section. They will enter the data monthly. It will take about 15 minutes to complete for a total of 159 burden hours. (53 State Agency Staff * 12 submissions = 636 responses * .25 hours = 159 burden hours).

Food Distribution State program Staff will have one type of burden:

• *FNS292A:* Food Distribution Program Staff in 60 State Agencies will submit form FNS292A 52 times (weekly over twelve months) This is an increase in burden for an existing, approved form. It will take them approximately 15 minutes to complete the form each time for a total of 780 burden hours. (60 State Agency Staff * 52 submissions = 3,120 responses * .25 hours = 780 burden hours).

WIC Local Government Agency Staff: Local Agency staff in 1,808 Local WIC agencies will submit 1 survey to FNS. It will take 1 hour to complete and submit the report for a total of 1,808 burden hours (1,808 Local Agency staff * 1 submission = 1,808 responses * 1 hours = 1,808 burden hours)

Pamilyn Miller,

Administrator, Food and Nutrition Service.

TABLE 1—RESPONDENT BURDEN TABLE

Respondent category	Type of respondents	Instruments	Number of respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)
State Gov.	SNAP State Program	Waiver	53	36	1,908	10	19,080
	SNAP State Program	Data Reports	53	3	159	3	477
	SNAP State Agency	Weekly Operational Update.	53	52	2,756	1	2,756
	WIC State Program Staff.	Waiver	89	14	1,246	0.25	311.5
	WIC State Program Staff.	Evaluation Survey	89	1	89	2	178
	WIC State Program Staff.	MIS Data Pull	89	1	89	1.5	133.5
	FMNP State Program Staff.	Waiver	49	4	196	0.25	49
	FMNP State Program Staff.	Evaluation Info	49	1	49	3	147
	CN State Program Staff	Form: FNS10	56	24	1,344	0.25	336
		Form: FNS44	57	12	684	0.25	171
		Form: FNS418	53	12	636	0.25	159

TABLE 1—RESPONDENT BURDEN TABLE—Continued

Respondent category	Type of respondents	Instruments	Number of respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)
	Food Dist. State Program.	Form: FNS292A	60	52	3,120	0.25	780
Local Government	WIC Local Agency Program Staff.	Report to State	1,808	1	1,808	1	1,808
					0	0.25	0
Respondent Total			2,066	6.817	14,084	1.873	26,386

[FR Doc. 2020–18860 Filed 8–26–20; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Supplemental Nutrition Assistance Program Emergency Allotments (COVID–19)

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. The Families First Coronavirus Response Act of 2020, enacted March 18, 2020, includes a general provision that allows the Department of Agriculture to issue emergency allotments (EA) based on a public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act related to an outbreak of COVID–19 when a State has also issued an emergency or disaster declaration. This is a new collection for activities associated with administering emergency allotments.

DATES: Written comments must be received on or before October 26, 2020.

ADDRESSES: Comments may be sent to: Kelly Stewart, Food and Nutrition Service, U.S. Department of Agriculture, via email to *Kelly.stewart@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Kelly Stewart at 703–305–2435 or *Kelly.stewart@usda.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed 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 proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Abstract

The Families First Coronavirus Response Act of 2020 (Pub. L. 116–127), enacted March 18, 2020, includes a general provision that allows the Department of Agriculture to issue emergency allotments (EA) based on a public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act related to an outbreak of COVID–19 when a State has also issued an emergency or disaster declaration. The Department obtained approval through an emergency clearance to collect the information as described in this Notice (OMB Control Number 0854–0652; expiration 9/30/2020). USDA anticipates the need to collect the data beyond the expiration date and is seeking approval of this Information Collection Request in order to meet the continuing information collection and reporting requirements detailed in the Families First Coronavirus Response Act of 2020.

As authorized by Families First Coronavirus Response Act of 2020, State agencies impacted by COVID–19 may submit a waiver request to their FNS Regional Office for approval to provide a EA to households to bring all households up to the maximum benefit due to pandemic related economic conditions. State agency waivers will generally be approved under one or more the following conditions as it relates to COVID–19:

- Residents of the State are confirmed to have contracted COVID–19.
- Some or all areas of the State are containment or quarantine zones.
- Businesses have closed or significantly reduced their hours.
- The State's residents have experienced economic impacts due to job suspensions or losses.
- The State's residents have been directed to practice social distancing.

Once the State's waiver has been approved by FNS, the State may provide the EA without contacting the household. Following waiver approval, FNS will require State Agencies to attest to FNS on a monthly basis the EA waiver is still needed. Both the initial waiver and the monthly attestation are conducted via email. FNS expects 53 State agencies will submit one initial EA waiver to FNS. Currently 51 State agencies are operating under an EA waiver. It is possible that States may have more than one declared public health emergency over the next year as COVID–19 rates ebb and flow, therefore we are including hours for these initial waiver requests in this IC as a precautionary measure. Each initial EA waiver submission should take approximately one hour to complete. Each monthly email attesting to the continued need for the EA waiver is expected to take 15 minutes to complete.

Section 18(b) of the Food and Nutrition Act of 2008, as amended, requires that, ''In any fiscal year, the Secretary shall limit the value of those allotments issued to an amount not in excess of the appropriation for such fiscal year.'' Because the EA waiver increases the monthly benefit of participants above the amount originally anticipated for this fiscal year, the amount of benefits issued and redeemed must be carefully tracked to ensure FNS does not exceed its appropriation. As such, it is necessary for FNS to collect information from State agencies

operating EA on a more frequent basis than would be reported normally. Generally, States report disaster-related SNAP participation and issuance data to FNS on the FNS–292B, Report of Disaster Supplemental Nutrition Assistance Benefit Issuance, within 45 days of terminating disaster assistance.

While a State is operating under an EA waiver, FNS requires the State to submit *bi-weekly* FNS–292B reports. The burden for a State agency to submit FNS–292B reports during normal operations is currently captured under the information collection for the Food Programs Reporting System (FPRS), OMB Control Number 0584–0594 (expiration date 7/31/2023). However, FNS is including the burden for submitting this form more frequently under this information collection.

• FNS–292B—.4 hours per response × 53 State Agencies × 26 weeks = 551 hours.

Respondent category	Instruments	Form	Number of respondents	Frequency of response	Total annual responses	Responses per respondent	Hours per response	Annual burden (hours)
State Agencies.	Bi-weekly EA Reporting to FNS.	FNS–292B	53	26	1,378	26	0.4	551.20
	Initial Waiver Request—Emergency Allotment.	N/A	53	1	53	1	1	53
	Monthly EA Attestation	N/A	53	12	636	12	0.25	159
Total	.....	.....	53	39	2,067	39	0.369230769	763

Affected Public: State, Local and Tribal Governments.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 39.

Estimated Total Annual Responses: 2,067.

Estimated Time per Response: .37 hours.

Estimated Total Annual Burden on Respondents: 763.

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–18859 Filed 8–26–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Advertised Timber for Sale

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the revision with changes of the currently approved information collection 0596–0066, Advertised Timber for Sale.

DATES: Comments must be received in writing on or before October 26, 2020 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Forest Management, 1400 Independence Avenue SW, Mail Stop 1103, Washington DC 20250–0003.

Comments also may be submitted via facsimile to (202) 205–1045 or by email to: *SM.FS.bidform_comment@usda.gov.*

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may view comments received on the World Wide Web/internet site at: *http://www.fs.fed.us/forestmanagement.*

FOR FURTHER INFORMATION CONTACT: Carl Maass, Forest Management Staff, at (970) 295–5961, or email, *carl.maass@usda.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Advertised Timber for Sale.

OMB Number: 0596–0066.

Expiration Date of Approval: December 31, 2020.

Type of Request: Extension with Revision.

Abstract: Pursuant to statutory requirements at 16 U.S.C. 472a, unless extraordinary conditions exist as defined by regulation, the Secretary of Agriculture must: (1) Advertise sales of all National Forest System timber or forest products exceeding $10,000 in appraised value; (2) select bidding methods that ensure open and fair competition; (3) select bidding methods that ensure that the Federal Government receives not less than appraised value of the timber or forest product; and (4) monitor bidding patterns for evidence of unlawful bidding practices.

Pursuant to the Forest Service Small Business Timber Sale Set-Aside Program, developed in cooperation with the Small Business Administration, Forest Service regulations at Title 36 of the Code of Federal Regulations, § 223.84 require that the Forest Service bid form used by potential timber sale bidders include provisions for small business concerns. The data collected will be used by the agency to ensure that National Forest System timber will be sold at not less than appraised value, that bidders will meet specific criteria when submitting a bid, and that anti-trust violations will not occur during the bidding process.

The tax identification number of each bidder is entered into an automated bid monitoring system, which is used to determine if speculative bidding or unlawful bidding practices are occurring and is required to process electronic payments to the purchaser.

Respondents will be bidders on National Forest System timber sales. Forest Service sale officers will mail bid forms to potential bidders, and bidders will return the completed forms, dated and signed, to the Forest Service sale officer.

The data gathered in this information collection are not available from other sources.

Forms Associated With This Information Collection

FS–2400–42a—National Forest Timber and Forest Products for Sale (Advertisement and Short-Form Bid): This form will be used for soliciting and receiving bids on short-notice timber sales advertised for less than 30 days for less than $10,000 in advertised value. Respondents are bidders on National Forest System timber sales.

FS–2400–14—Bid for Advertised Timber (3 form versions: FS–2400–14UR—Unit Rate Bidding; FS–2400–14WA—Weighted Average Bidding; FS–2400–14TV—Total Value Bidding): These forms implement the same statutes, policies, and regulations and collect similar information from the same applicants. Respondents are bidders on National Forest System timber and forest product sales.

FS–2400–14BV—Bid For Integrated Resource Timber Contract (2 form versions: FS–2400–14BV—Best Value,

Total Value Bidding; FS–2400–14BVU—Best Value, Unit Rate Bidding): These forms will be used for soliciting and receiving bids on contracts advertised for 30 days or longer and on contracts greater than $10,000 in advertised value.

Forms showing changes to the October 2018 versions currently in use can be viewed on the World Wide Web/internet site at: *http://www.fs.fed.us/forestmanagement.*

Item	FS–2400–42a	FS 2400–14	FS–2400–14BV
Estimate of Annual Burden per Respondent	3.0 hours	14.4 hours	34.4 hours.
Type of Respondents	Individuals, large and small businesses, and corporations bidding on National Forest timber sales and Integrated Resource Timber Contracts.		
Estimated Annual Number of Respondents	316	1,712	244.
Average Estimated Number of Responses per Respondent.	1.8	3.9	1.2.
Estimated Total Annual Burden on Respondents	1,706 hours	96,146 hours	10,072 hours.

Comment Is Invited

Comment is invited on: (1) Whether the proposed collection of information is necessary for the stated purposes or the proper performance of the functions of the agency, including whether the information shall have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including name and address when provided, will be summarized and included in the request for Office of Management and Budget approval. All comments also will become a matter of public record.

Allen Rowley,

Associate Deputy Chief, National Forest System.

[FR Doc. 2020–18835 Filed 8–26–20; 8:45 am]

BILLING CODE 3411–15–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: September 2, 2020, 11:00 a.m. EDT.

PLACE: Conference Call.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on Wednesday, September 2, 2020 at 11:00 a.m. EDT. The Board will discuss open investigations, the status of audits from the Office of the Inspector General, and financial and organizational updates via conference call. The ''new business'' portion of the meeting will include a discussion led by the Chairman on future plans of the board and how it will be moving forward with a ''quorum of one.''

Additional Information

This meeting will only be available via the dial in number below.

If you require a translator or interpreter, please notify the individual listed below as the ''Contact Person for Further Information,'' at least three business days prior to the meeting.

Audience members should use the following dial-in number and Pin to join the conference:

Toll Free: 866.831.8711
Automated ID: 22735

The CSB is an independent federal agency charged with investigating incidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Comment

The time provided for public statements will depend upon the number of people who wish to speak. Speakers should assume that their presentations will be limited to three minutes or less, but commenters may submit written statements for the record.

CONTACT PERSON FOR MORE INFORMATION:

Hillary Cohen, Communications Manager, at *public@csb.gov* or (202) 446–8094. Further information about this public meeting can be found on the CSB website at: *www.csb.gov.*

Dated: August 25, 2020.

Raymond Porfiri,

Deputy General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2020–19035 Filed 8–25–20; 4:15 pm]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New York Advisory Committee (Committee) will hold a meeting on Friday, September 18, 2020, from 1:00–2:00 p.m. EST for the purpose of discussing a topic for the Committee's civil rights project.

DATES: The meeting will be held on Friday, September 18, 2020, from 1:00–2:00 p.m. EST.

ADDRESSES: *Public Call Information:* Dial: (800) 367–2403; Conference ID: 7109728.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 202–809–9618.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an

email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov* in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Program Unit at 202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzmAAAQ* under the Commission on Civil Rights, New York Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or phone number.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes from the August 21, 2020 meeting
III. Discussion and Vote: Civil Rights Topics
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: August 24, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–18864 Filed 8–26–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Georgia Advisory Committee (Committee) will hold a meeting via teleconference on Tuesday, October 6, 2020, at 2:00 p.m. ET for the purpose of discussing civil rights concerns in the state.

DATES: The meeting will be held on Tuesday, October 6, 2020 at 2:00 p.m. ET.

Public Call Information: Dial: 800–367–2403; Conference ID: 6763795.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 202–618–4158.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll-free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Carolyn Allen at *callen@usccr.gov.* in the Regional Program Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit Office at 202–618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkxAAA* under the Commission on Civil Rights, Georgia Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or phone number.

Agenda

Welcome and Roll Call
Discussion: Civil Rights in Georgia
Public Comment
Adjournment

Dated: August 21, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–18810 Filed 8–26–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting via teleconference on Friday, September 4, 2020, at 12:00 p.m. Eastern Time, for the purpose of discussing Voting Rights and COVID 19 in the state.

DATES: The meeting will be held on Friday, September 4, 2020, at 12:00 p.m. Eastern Time.

Public Call Information: Dial: 800–367–2403; Confirmation Code: 1533765.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 202–618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll-free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not

refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at 202–618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjPAAQ* under the Commission on Civil Rights, Michigan Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call

Approval of Minutes from August 19 meeting

Discussion: Voting Rights and COVID 19 in Michigan

Public Comment

Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the immediacy of the subject matter.

Dated: August 21, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–18807 Filed 8–26–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Import, End-User, Delivery Verification Certificates and Firearms Entry Clearance Requirements

AGENCY: Bureau of Industry and Security, 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 October 26, 2020.

ADDRESSES: Interested persons are invited to submit comments by email to Mark Crace, IC Liaison, Bureau of Industry and Security, at *mark.crace@bis.doc.gov* or to *PRAcomments@doc.gov.* Please reference OMB Control Number 0694–0093 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 Mark Crace, IC Liaison, Bureau of Industry and Security, phone 202–482–8093, or by email at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information addresses three activities: (1) Import Certificates/End Use Certificates, (2) Delivery Verification, and (3) Firearms Entry Clearance Requirements.

Import Certificates or End-User Certificates (IC/EUC)—The IC/EUC, BIS–645P, is obtained by the foreign importer and transmitted to the U.S. exporter. They are issued by the government of the country of ultimate destination to exercise legal control over the disposition of the items covered by the IC/EUC. The control exercised by the government issuing the IC/EUC is in addition to the conditions and restrictions placed on the transaction by BIS.

Delivery Verification—The Delivery Verification Certificate (DV) is required by BIS as part of its export control program. The license holder is responsible for having the ultimate consignee complete the BIS–647P, Delivery Verification Certificate Form when the goods are delivered. BIS uses the DV procedure on an ''as needed'' basis. The DV is usually required when there is suspicion of violation of the EAR. Therefore, if the exporter cannot supply the DV, BIS must be notified to determine if an exception is legitimate. Otherwise, the exporter would be in violation of the EAR.

Firearms Entry Clearance Requirements—On January 23, 2020, The Department of Commerce issued a final rule that described how articles the President determines no longer warrant control under the United States Munitions List (USML) Category I—Firearms, Close Assault Weapons and Combat Shotguns; Category II—Guns and Armament; and Category III—Ammunition/Ordnance would be controlled under the Commerce Control List (CCL). This final rule, which became effective on March 9, 2020, was published in conjunction with a final rule on Categories I, II, and III from the Department of State, Directorate of Defense Trade Controls (DDTC).

This entry clearance requirement is necessary due to the changes by the President in determining that certain items no longer warrant control under United States Munitions List (USML) Category I—Firearms, Close Assault Weapons and Combat Shotguns; Category II—Guns and Armament; and Category III—Ammunition/Ordnance would be controlled under the Commerce Control List (CCL). As the State Department previously collected this same type of information, the Department of Commerce controls the CCL and must now take over this collection of information. Section 758.10 Entry clearance requirements for temporary imports will specify the EAR procedures for temporary imports and subsequent exports.

II. Method of Collection

Submitted electronically or in paper form.

III. Data

OMB Control Number: 0694–0093.

Form Number(s): BIS–645P, BIS–647P.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 11,776.

Estimated Time per Response: 1 minute to 30 minutes.

Estimated Total Annual Burden Hours: 1,630.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Mandatory.

Legal Authority: §§ 748.9, 748.10, 748.12, 748.14, Part 748 Supplement No. 5, 758.10, 762.5(d), 762.6, 764.2(g)(2), and of the Export Administration Regulations (EAR).

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 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. 2020–18851 Filed 8–26–20; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–121]

Difluoromethane (R-32) From the People's Republic of China: Preliminary Affirmative 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 Difluoromethane (R-32) from the People's Republic of China (China) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 20, 2020.

FOR FURTHER INFORMATION CONTACT: Joshua Tucker or William Miller, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2044 or (202) 482–3906, 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 February 24, 2020.[1] On June 8, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now August 20, 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,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly 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 product covered by this investigation is difluoromethane (R-32) from China. 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 (scope).[5] No party commented on the scope of the investigation. Thus, Commerce has not modified the scope language as it appeared in the *Initiation Notice.*

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. Because China is a non-market economy, within the meaning of section 771(18) of the Act, Commerce has calculated normal value (NV) in accordance with section 773(c) of the Act.

In addition, Commerce has relied on facts available under section 776(a) of the Act to determine the cash deposit rate assigned to the China-wide entity. Furthermore, pursuant to sections 776(a) and (b) of the Act, because the China-wide entity did not cooperate to the best of its ability in responding to Commerce's requests for data, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

[1] *See Difluoromethane (R-32) from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 85 FR 10406 (February 24, 2020) (*Initiation Notice*).

[2] *See Difluorormethane {sic} (R-32) from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 85 FR 34707 (June 8, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Difluoromethane (R-32) from the People's Republic of China,'' 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 10407.

Combination Rates

In the *Initiation Notice,*[6] Commerce stated that it would calculate exporter/producer combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[7] For a list of the respondents that established eligibility for their own separate rates and the exporter/producer combination rates applicable to these respondents, *see* Appendix III.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer	Exporter	Estimated weighted-average dumping margin (percent)
Taizhou Qingsong Refrigerant New Material Co., Ltd	Taizhou Qingsong Refrigerant New Material Co., Ltd	161.49
Zibo Feiyuan Chemical Co., Ltd	Zibo Feiyuan Chemical Co., Ltd	221.06
Zibo Feiyuan Chemical Co., Ltd	T.T. International Co., Ltd	221.06
Producers Supplying the Non-Individually-Examined Exporters Receiving Separate Rates (*see* Appendix III).	Non-Individually Examined Exporters Receiving Separate Rates (*see* Appendix III).	196.19
China-Wide Entity		221.06

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 subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which NV exceeds U.S. price, as indicated in the chart above as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its 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 information relied upon in making its final determination.

Public Comment

Case briefs or other written comments 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 case briefs, may be submitted no later than seven days after the deadline date for case briefs.[8] 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.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[9]

Final Determination

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 petitioners. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for

[6] *See Initiation Notice,* 85 FR at 10409.

[7] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

postponement of a final AD 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 August 13 and 14, 2020, Taizhou Qingsong Refrigerant New Material Co., Ltd. (Taizhou Qingsong), Zibo Feiyuan Chemical Co., Ltd. (Zibo Feiyuan), and Arkema Inc. (the petitioner), requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[10] 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 of sales at LTFV. If the final determination is affirmative, 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 the subject merchandise 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: August 20, 2020.

Joseph A. Laroski Jr.,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is difluoromethane (R-32), or its chemical equivalent, regardless of form, type or purity level. R-32 has the Chemical Abstracts Service (CAS) registry number of 75–10–5 and the chemical formula CH2 F2. R-32 is also referred to as difluoromethane, HFC-32, FC-32, Freon-32, methylene difluoride, methylene fluoride, carbon fluoride hydride, halocarbon R32, fluorocarbon R32, and UN 3252. Subject merchandise also includes R-32 and unpurified R-32 that are processed in a third country or the United States, including, but not limited to, purifying or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope R-32. R-32 that has been blended with products other than pentafluoroethane (R-125) is included within this scope if such blends contain 85% or more by volume on an actual percentage basis of R-32. In addition, R-32 that has been blended with any amount of R-125 is included within this scope if such blends contain more than 52% by volume on an actual percentage basis of R-32. Whether R-32 is blended with R-125 or other products, only the R-32 component of the mixture is covered by the scope of this investigation. The scope also includes R-32 that is commingled with R-32 from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the current scope is merchandise covered by the scope of the antidumping order on hydrofluorocarbon blends from the People's Republic of China. *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016) (the *Blends Order*).

R-32 is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2903.39.2035. Other merchandise subject to the current scope, including the abovementioned blends that are outside the scope of the Blends Order, may be classified under 2903.39.2045 and 3824.78.0020. The HTSUS subheadings and CAS registry number 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 Comments
V. Discussion of the Methodology
  A. Non-Market Economy Country
  B. Surrogate Country
  C. Separate Rates
  D. Separate Rate Recipients
  E. Margin for the Separate Rate Companies
  F. Combination Rates
  G. The China-Wide Entity
  H. Date of Sale
  I. Fair Value Comparisons
  J. Export Price
  K. Normal Value
  L. Comparisons to Normal Value
VI. Currency Conversion
VII. Conclusion

Appendix III

LIST OF SEPARATE RATE COMPANIES

Exporter	Producer
Non-Individually Examined Exporters Receiving Separate Rates	Producers Supplying the Non-Individually-Examined Exporters Receiving Separate Rates
Icool International (Hong Kong) Limited	Changshu 3F Zhonghao New Chemical Materials Co., Ltd.
Icool International (Hong Kong) Limited	Zhejiang Zhiyang Chemical Co., Ltd.
Icool International (Hong Kong) Limited	Taizhou Huasheng New Refrigeration Material Co., Ltd.
Icool International (Hong Kong) Limited	Zhejiang Lishui Fuhua Chemical Co., Ltd.
Icool International (Hong Kong) Limited	Zibo Feiyuan Chemical Co., Ltd.
Icool International (Hong Kong) Limited	Jiangsu Meilan Chemical Co., Ltd.
Icool International (Hong Kong) Limited	Taizhou Qingsong Refrigerant New Material Co., Ltd.
Icool International (Hong Kong) Limited	Zhejiang Sanmei Chemical Industry Co., Ltd.
Icool International (Hong Kong) Limited	Shandong Huaan New Material Co., Ltd.
Icool International (Hong Kong) Limited	Liaocheng Fuer New Materials Technology Co., Ltd.
Icool International (Hong Kong) Limited	Ruyuan Dongyangguang Fluorine Co., Ltd.
Icool International (Hong Kong) Limited	Shandong Xinlong Science Technology Co., Ltd.
Icool International (Hong Kong) Limited	Linhai Limin Chemicals Co., Ltd.
Icool International (Hong Kong) Limited	Dongyang Weihua Refrigerants Co., Ltd.
Icool International (Hong Kong) Limited	Zhejiang Fulai Refrigerant Co., Ltd.

[10] *See* Taizhou Qingsong's and Zibo Feiyuan's Letter, ''Less-Than-Fair Value Investigation of Difluoromethane (R-32) from the People's Republic of China: Request for Extension of Final Determination and Provisional Measures,'' dated August 13, 2020; and Petitioner's Letter, ''Difluoromethane (R-32) from the People's Republic of China: Petitioner's Request to Postpone Final Determination,'' dated August 14, 2020.

LIST OF SEPARATE RATE COMPANIES—Continued

Exporter	Producer
Non-Individually Examined Exporters Receiving Separate Rates	Producers Supplying the Non-Individually-Examined Exporters Receiving Separate Rates
Icool International (Hong Kong) Limited	Zhejiang Guomao Industrial Co., Ltd.
Icool International (Hong Kong) Limited	Zhejiang Yonghe Refrigerant Co., Ltd.
Icool International (Hong Kong) Limited	Shanghai Aohong Chemical Co., Ltd.
Ninhua Group Co., Ltd	Changshu 3F Zhonghao New Chemical Materials Co., Ltd.
Ninhua Group Co., Ltd	Zhejiang Zhiyang Chemical Co., Ltd.
Ninhua Group Co., Ltd	Taizhou Huasheng New Refrigeration Material Co., Ltd.
Ninhua Group Co., Ltd	Zhejiang Lishui Fuhua Chemical Co., Ltd.
Ninhua Group Co., Ltd	Zibo Feiyuan Chemical Co., Ltd.
Ninhua Group Co., Ltd	Jiangsu Meilan Chemical Co., Ltd.
Ninhua Group Co., Ltd	Taizhou Qingsong Refrigerant New Material Co., Ltd.
Ninhua Group Co., Ltd	Zhejiang Sanmei Chemical Industry Co., Ltd.
Ninhua Group Co., Ltd	Shandong Huaan New Material Co., Ltd.
Ninhua Group Co., Ltd	Liaocheng Fuer New Materials Technology Co., Ltd.
Ninhua Group Co., Ltd	Ruyuan Dongyangguang Fluorine Co., Ltd.
Ninhua Group Co., Ltd	Shandong Xinlong Science Technology Co., Ltd.
Ninhua Group Co., Ltd	Linhai Limin Chemicals Co., Ltd.
Ninhua Group Co., Ltd	Dongyang Weihua Refrigerants Co., Ltd.
Ninhua Group Co., Ltd	Zhejiang Fulai Refrigerant Co., Ltd.
Ninhua Group Co., Ltd	Zhejiang Guomao Industrial Co., Ltd.
Ninhua Group Co., Ltd	Zhejiang Yonghe Refrigerant Co., Ltd.
Ninhua Group Co., Ltd	Shanghai Aohong Chemical Co., Ltd.
Shandong Huaan New Material Co., Ltd	Shandong Huaan New Material Co., Ltd.
T.T. International Co., Ltd	Sinochem Lantian Fluoro Materials Co., Ltd.
T.T. International Co., Ltd	Zhejiang Sanmei Chemical Industry Co., Ltd.
T.T. International Co., Ltd	Shandong Huaan New Material Co., Ltd.
Zhejiang Sanmei Chemical Ind. Co., Ltd	Jiangsu Sanmei Chemical Ind. Co., Ltd.
Zhejiang Sanmei Chemical Ind. Co., Ltd	Fujian Qingliu Dongying Chemical Co., Ltd.

[FR Doc. 2020–18811 Filed 8–26–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–832, C–351–833, A–560–815, A–201–830, A–841–805, A–274–804]

Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago: Continuation of Antidumping Duty Orders and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on carbon and certain alloy steel wire rod (wire rod) from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago and revocation of the countervailing duty (CVD) order on wire rod from Brazil would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD orders and the CVD order.

DATES: Applicable August 27, 2020.

FOR FURTHER INFORMATION CONTACT: Benjamin Smith (AD) and Ian Hamilton (CVD), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2181 and (202) 482–4798, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 2002, Commerce published the CVD order on wire rod from Brazil.[1] On October 29, 2002, Commerce published the AD orders on wire rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago.[2] On June 3, 2019, the ITC instituted its reviews of the AD and CVD orders.[3] On June 4, 2019, Commerce published the notice of initiation of the sunset reviews of the AD orders on wire rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago and the CVD order on wire rod from Brazil, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[4] As a result of its reviews, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the AD orders on wire rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins of dumping likely to prevail should the orders be

[1] *See Notice of Countervailing Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil and Canada,* 67 FR 64871 (October 22, 2002). The CVD order on wire rod from Canada was revoked on January 23, 2004, pursuant to a changed circumstances review. *See Carbon and Certain Alloy Steel Wire Rod from Canada: Final Results of Countervailing Duty Changed Circumstances Review and Revocation of Countervailing Duty Order, in Whole,* 69 FR 3330 (January 23, 2004).

[2] *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002). The AD order on wire rod from Ukraine was revoked, effective July 30, 2013, as a result of the ITC's determination that revocation of the order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States. *See Carbon and Certain Alloy Steel Wire Rod from Ukraine: Revocation of Antidumping Duty Order,* 79 FR 38009 (July 3, 2014). Subsequently, on March 14, 2018, Commerce issued the existing AD order on carbon and alloy steel wire rod from Ukraine, which is not covered in these sunset reviews. *See Carbon and Alloy Steel Wire Rod from the Republic of South Africa and Ukraine: Antidumping Duty Orders,* 83 FR 11175 (March 14, 2018).

[3] *See Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago; Institution of Five-Year Reviews,* 84 FR 25564 (June 3, 2019).

[4] *See Initiation of Five-Year ("Sunset") Reviews,* 84 FR 25741 (June 4, 2019).

revoked.[5] Commerce also determined, pursuant to sections 751(c)(1) and 752(b) of the Act, that revocation of the CVD order on wire rod from Brazil would be likely to lead to continuation or recurrence of countervailable subsidies and notified the ITC of the magnitude of the subsidy rates likely to prevail should the order be revoked.[6]

On August 21, 2020, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the AD orders on wire rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago and the CVD order on wire rod from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[7]

Scope of the Orders

The merchandise subject to these orders is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.,* products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of grade 1080 tire cord quality wire rod and grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis—that is, the direction of rolling—of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under this order are currently classifiable under subheadings 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091, 7213.91.3092, 7213.91.3093, 7213.91.4500, 7213.91.4510, 7213.91.4590, 7213.91.6000, 7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0000, 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6050, 7227.90.6051, 7227.90.6053, 7227.90.6058, 7227.90.6059, 7227.90.6080, and 7227.90.6085 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

On October 1, 2012, Commerce determined that wire rod with an actual diameter of 4.75 mm to 5.00 mm produced in Mexico and exported to the United States by Deacero S.A.P.I. de C.V. and Deacero USA, Inc. (collectively, Deacero) was circumventing the AD order on wire rod

[5] *See Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders,* 84 FR 53673 (October 8, 2019).

[6] *See Carbon and Certain Alloy Steel Wire Rod from Brazil: Final Results of the Expedited Third Sunset Review of the Countervailing Duty Order,* 84 FR 53675 (October 8, 2019).

[7] *See Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago,* 85 FR 51756 (August 21, 2020).

from Mexico.[8] Specifically, Commerce determined that Deacero's shipments to the United States of such wire rod constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope of the AD order on wire rod from Mexico, effective as of December 20, 2011.[9] Commerce's affirmative finding in the *Final Circumvention Determination I* applied solely to Deacero. The U.S. Court of Appeals for the Federal Circuit (Federal Circuit) upheld Commerce's finding in the *Final Circumvention Determination I* that wire rod with an actual diameter of 4.75 mm to 5.00 mm produced in Mexico and exported to the United States by Deacero was circumventing the AD order on wire rod from Mexico.[10]

On March 13, 2019, Commerce determined that wire rod with an actual diameter less than 4.75 mm produced in Mexico and exported to the United States by Deacero was circumventing the AD order on wire rod from Mexico.[11] Specifically, Commerce determined that Deacero's shipments to the United States of such wire rod constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope of the AD order on wire rod from Mexico, effective as of February 7, 2018.[12] Commerce's affirmative finding in the *Final Circumvention Determination II* applied solely to Deacero.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the AD and CVD orders would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the AD orders on wire rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago and the CVD order on wire rod from Brazil.

U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year reviews of the orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Notification to Interested Parties

These five-year sunset reviews and this notice are in accordance with section 751(c) and (d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: August 21, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–18900 Filed 8–26–20; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Final Determination of Circumvention of the Antidumping Order,* 77 FR 59892 (October 1, 2012) (*Final Circumvention Determination I*), and accompanying Issues and Decision Memorandum (IDM).

[9] *Id.,* 77 FR at 59893.

[10] *See Deacero S.A. de C.V.* v. *United States,* 817 F. 3d 1332, 1339 (Fed. Cir. 2016).

[11] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Affirmative Determination of Circumvention of the Antidumping Duty Order,* 84 FR 9089 (March 13, 2019) (*Final Circumvention Determination II*), and accompanying IDM.

[12] *Id.,* 84 FR at 9090.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of a Record of Decision

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of availability of a record of decision.

SUMMARY: The National Oceanic and Atmospheric Administration's (NOAA's) National Ocean Service (NOS) announces the availability of the Record of Decision (ROD) for the Coral Reef Conservation Program's (CRCP's) final Programmatic Environmental Impact Statement (PEIS). On August 20, 2020, the NOS Acting Assistant Administrator signed the ROD, which constitutes the agency's final decision.

FOR FURTHER INFORMATION CONTACT: Liz Fairey, NMFS Office of Habitat Conservation, NOAA Coral Reef Conservation Program, 1315 East-West Highway, Silver Spring, MD 20910, *liz.fairey@noaa.gov*.

SUPPLEMENTARY INFORMATION: On July 11, 2018, NOAA published the Notice of Intent to prepare a PEIS for continued operation of NOAA's CRCP. The public comment period for scoping ended on August 15, 2018. Three individuals/organizations submitted comments during the 35-day scoping period, and CRCP considered these comments in the drafting of the PEIS.

On December 13, 2019, NOAA published a draft PEIS for coral reef conservation and restoration activities conducted by CRCP throughout parts of the United States, including the South Atlantic Ocean, Gulf of Mexico, and Remote Pacific Islands, and priority international areas (*i.e.,* wider Caribbean, Coral Triangle, South Pacific, and Micronesia). The public comment period for the draft PEIS ended on January 27, 2020. Thirteen individuals/organizations submitted comments during the 45-day comment period. Appendix I of the final PEIS outlines how the final PEIS responds to the comments.

On July 17, 2020, the Environmental Protection Agency (EPA) published a notice of availability of the final PEIS in the **Federal Register** (85 FR 43580). NOAA did as well (85 FR 43544). The waiting period for the final PEIS ended on August 17, 2020. The NEPA implementing regulations at 40 CFR 1506.10 require a minimum 30-day waiting period between the time the EPA publishes its **Federal Register** notice and the time an agency makes a decision on the proposed action covered by the EIS. Except for a supportive letter from EPA, CRCP did not receive any comments during the 30-day waiting period. CRCP has reviewed the final PEIS and concluded that it fully analyzes the issues covered by the draft PEIS and addresses the comments and suggestions submitted by commenters. This notice advises the public that the 30-day waiting period has elapsed and that the ROD is available, documenting CRCP's decision to select and implement the No Action Alternative.

Electronic copies of the PEIS and the ROD are available at *https://coralreef.noaa.gov/about/enviro-compliance.html* and *https://coast.noaa.gov/czm/compliance/*. The preparation of the ROD was conducted in accordance with the requirements of NEPA, the Council on Environmental Quality's Regulations (40 CFR parts 1500–1508), and NOAA's NEPA-implementing policies and procedures.

Dated: August 21, 2020.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–18798 Filed 8–26–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice for open public meeting, and request for public comments.

SUMMARY: This serves as notice of a virtual public meeting for the NOAA Hydrographic Services Review Panel (HSRP) on September 23, 2020, 1–5:30 p.m. EDT, and September 24, 2020, 1–5 p.m. EDT via webinar. The HSRP will be asked for advice and recommendations on the development of the implementation plans for the two ocean and coastal mapping strategies noted below and other HSRP meeting topics. Individuals or groups who also want to comment on these or other NOAA navigation services topics are encouraged to submit advance public comments and letters via email no later than September 15, 2020.

DATES: Comments are due by September 15, 2020.

HSRP public meeting:

1. September 23, 2020, 1–5:30 p.m., EDT.
2. September 24, 2020, 1–5 p.m. EDT.

ADDRESSES: You may submit public comments identified by ''September 2020 HSRP meeting public comments'' in the subject line of the message by September 15, 2020, by email to: *Melanie.Colantuno@noaa.gov, Lynne.Mersfelder@noaa.gov, Virginia.Dentler@noaa.gov, and hydroservices.panel@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Lynne Mersfelder-Lewis, HSRP program manager, National Ocean Service, Office of Coast Survey, NOAA (N/CS), email: *hydroservices.panel@noaa.gov, Lynne.Mersfelder@noaa.gov,* and phone 240–533–0064.

SUPPLEMENTARY INFORMATION: Advance registration is required for the webinar at: *https://register.gotowebinar.com/register/8315160447400968715.* Comments are requested on the development of the implementation plans for the ocean and coastal mapping strategies which are as follows:

(1) ''*National Strategy for Mapping, Exploring, and Characterizing the United States Exclusive Economic Zone,*'' (NOMEC), including the establishment of a Standard Ocean Mapping Protocol: *https://www.whitehouse.gov/wp-content/uploads/2020/01/20200611-FINAL-STRATEGY–NOMEC-Sec.-2.pdf;* and;

(2) ''Mapping the Coast of Alaska—A 10-Year Strategy in Support of the United States Economy, Security, and Environment,'' or the Alaska Coastal Mapping Strategy (ACMS): *https://iocm.noaa.gov/about/documents/strategic-plans/alaska-mapping-strategy-june2020.pdf.*

Advance written statements will be shared with the HSRP members and will be included in the meeting public record. The HSRP meeting agenda, draft meeting documents, presentations, and background materials are posted online and updates can be downloaded prior to the meeting at: *https://www.nauticalcharts.noaa.gov/hsrp/hsrp.html* and *https://www.nauticalcharts.noaa.gov/hsrp/meetings.html.*

Due to the condensed nature of the meeting, each individual or group providing written public comments will be limited to one comment per public comment period with no repetition of previous comments. Comments can also be submitted in writing during the daily public comment period using the chat function in the webinar. Comments will be read into the record, transcribed, and become part of the meeting record. Due to time meeting constraints, all comments may not be addressed during the meeting.

The Hydrographic Services Review Panel (HSRP) is a Federal Advisory Committee established to advise the Under Secretary of Commerce for Oceans and Atmosphere, the NOAA Administrator, on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, as amended, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice. Past HSRP public meeting documents, recommendation letters and issue papers are located online at: *https://www.nauticalcharts.noaa.gov/hsrp/recommendations.html* and *https://www.nauticalcharts.noaa.gov/hsrp/meetings.html.*

Matters to be Considered

The panel is convening on issues relevant to NOAA's navigation services, including stakeholder use of navigation services data, products and services, and a NOAA request to the HSRP to provide recommendations for the future development of implementation plans for the two ocean and coastal mapping strategies NOMEC and ACMS. The HSRP will discuss at least one draft issue paper ''*Alaska Coastal Mapping Strategy—Gaps and Priorities*'', and other topics related to hydrographic surveys, nautical charting, delays impacting the ongoing National Spatial Reference System (NSRS) modernization, hurricane supplemental funds and the status of coastal mapping, PORTS® (Physical Oceanographic Real-Time System) sensor enhancements and expansion, the research plan for the NOAA-University of New Hampshire Joint Hydrographic Center Cooperative Agreement, ''*Mapping U.S. Marine and Great Lakes Waters: Office of Coast Survey Contributions to a National Ocean Mapping Strategy*'', updates on legislative and budget priorities, and other topics. Navigation services include the data, products, and services provided by the NOAA programs and activities that undertake geodetic observations, gravity modeling, coastal and shoreline mapping, bathymetric mapping, hydrographic surveying, nautical charting, tide and water level observations, current observations, flooding, resilience, inundation and sea level rise, marine modeling, geospatial and LIDAR data, and related topics. This suite of NOAA products and services support safe and efficient navigation, resilient coasts and communities, and the nationwide positioning information infrastructure to support America's commerce. The Panel will hear about the missions and uses of NOAA's navigation services, the value these services bring, and what improvements could be made. Other matters may be considered. The agenda, speakers and time are subject to change, please refer to the website for the most updated information.

Special Accommodations

This meeting is physically accessible to people with disabilities. Please direct requests for sign language interpretation or other auxiliary aids to *Melanie.Colantuno@noaa.gov* at least 10 business days in advance of the meeting.

Shepard M. Smith,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–18892 Filed 8–26–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA424]

Marine Mammals; File No. 23644

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Iain Kerr, Ocean Alliance, 32 Horton Street, Gloucester, MA 01930, has applied in due form for a permit to conduct research on 22 cetacean species including endangered or threatened blue whales (*Balaenoptera musculus*), Gulf of Mexico Bryde's whales (*B. edeni*), fin whales (*B. physalus*), Hawaii insular false killer whales (*Pseudorca crassidens*), humpback whales (*Megaptera novaeangliae*), North Atlantic right whales (*Eubalaena glacialis*), sei whales (*B. borealis*), Southern right whales (*E. australis*), sperm whales (*Physeter macrocephalus*), and Western North Pacific gray whales (*Eschrichtius robustus*).

DATES: Written, telefaxed, or email comments must be received on or before September 28, 2020.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 23644 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 23644 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Shasta McClenahan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant proposes to conduct research for five years on 22 cetacean species in U.S. and international waters of the North Atlantic and North Pacific Oceans. Research would be conducted for several cetacean studies including toxicology, microplastics, acoustics, and behavioral ecology. Researchers would conduct vessel and unmanned aircraft system surveys for biological sampling (skin and blubber biopsy, exhaled air, feces, and sloughed skin), counts, passive acoustics, photo-ID, photograph/video, observations, photogrammetry, and thermal imaging. Cetaceans also may be incidentally harassed during surveys when targeting another cetacean species or conspecifics. Samples collected on the high seas or in foreign territorial waters worldwide may be imported for study. Collected tissue samples also may be cultured for cell line development. Please see the application take tables for proposed take numbers by species.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 24, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–18866 Filed 8–26–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA419]

Public Information Session Regarding Atlantic Bluefin Tuna Stock Assessment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; notification of public information session.

SUMMARY: NMFS is holding a public conference call and webinar for the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) and other interested stakeholders to provide an update on the status of recent work by the Standing Committee on Research and Statistics (SCRS) Bluefin Tuna Species Group to assess the western Atlantic and eastern Atlantic/Mediterranean bluefin tuna stocks.

DATES: An operator-assisted conference call and webinar information session that is open to the public will be held on September 3, 2020, from 1 p.m. to 3 p.m. EDT. (Phone number 888–935–0267; verbal password: ''ICCAT''; WebEx link: *t.ly/iJxD;* WebEx password: ICCAT). Participants must dial in by phone to receive audio and log on to the WebEx to view the presentation. Participants are strongly encouraged to dial in and log on 15 minutes prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Terra Lederhouse at 301–427–8360 or *Terra.Lederhouse@noaa.gov.*

SUPPLEMENTARY INFORMATION: ICCAT's SCRS recently held the scheduled virtual meeting of its Bluefin Tuna Species Group to conduct stock assessments for the western Atlantic and eastern Atlantic/Mediterranean stocks of bluefin tuna. The work undertaken by the Bluefin Tuna Species Group, of which some analytical work is still ongoing, is considered preliminary until adopted by the SCRS by correspondence in late September 2020. At that time, the SCRS will also develop and adopt management advice for the Commission for both stocks of bluefin tuna. While it would be premature to speculate on the conclusions of the assessment or its implications, including with respect to management advice, NMFS scientists will provide the Advisory Committee to the U.S. Section to ICCAT and other interested stakeholders with an update on the preliminary results of the stock assessments at the September 3, 2020 webinar. NMFS will provide an opportunity for participants to ask questions regarding the presentation on the assessment work and will announce the timing and format for the question and answer period at the beginning of the conference call.

The webinar is specifically an update on the stock assessment progress and not on development of U.S. positions.

A Fall meeting of the Advisory Committee to the U.S. Section to ICCAT will be held after the final stock assessment results and SCRS management advice have been published to discuss additional topics related to the assessment results.

Dated: August 24, 2020.

Alexa Cole,

Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2020–18874 Filed 8–26–20; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2020–0027]

CARD Act Rules Review Pursuant to the Regulatory Flexibility Act; Request for Information Regarding Consumer Credit Card Market

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of section 610 review and request for comments; request for information regarding consumer credit card market.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is requesting comment on two related, but separate, reviews. First, the Bureau is conducting a review of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) Rules consistent with the Regulatory Flexibility Act. As part of this review, the Bureau is seeking comment on the economic impact of the CARD Act Rules on small entities so that it can determine whether the rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. Second, the Bureau is conducting a review of the consumer credit card market, within the limits of its existing resources available for reporting purposes, pursuant to the CARD Act, and is seeking comment on a number of aspects of the consumer credit card market.

DATES: Comments must be received by October 27, 2020.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2020–0027 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-RFI-CardActReviews@cfpb.gov.* Include Docket No. CFPB–2020–0027 in the subject line of the message.
- *Hand Delivery/Mail/Courier:* Comment Intake—CARD Act Rules RFA Review and Credit Card Market Review, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by hand delivery, mail, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Please note the specific rule or topic on which you are commenting at the top of each response (you do not need to address all rules or topics). Because paper mail in the Washington, DC area and at the Bureau is subject to delay and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All submissions in response to this Request for Information (RFI), including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

The Bureau is requesting comment on the following two related, but separate, reviews: (1) The RFA section 610 review; and (2) the CARD Act section 502(a) review. The Bureau requests that when a commenter makes a specific comment, the commenter indicates whether that comment relates to the RFA section 610 review, the CARD Act section 502(a) review, or both.

FOR FURTHER INFORMATION CONTACT: Yaritza Velez, Counsel, or Krista Ayoub, Senior Counsel, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is requesting comment on two related, but separate, reviews. Part I sets forth a description of the review of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) [1] Rules (as defined below) that the Bureau is conducting consistent with section 610 of the Regulatory Flexibility Act (RFA).[2] As discussed below, the CARD Act Rules generally affect credit card issuers and other creditors that offer open-end (not home-secured) credit plans. The CARD Act Rules also affect certain credit unions that were offering certain multifeatured plans at the time the CARD Act Rules were adopted and were separately approving and underwriting certain advances under those plans. As part of this review, the Bureau is seeking comment on the economic impact of the CARD Act Rules on small entities so that the agency can determine whether the rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities.

Part II discusses the review that the Bureau must conduct of the consumer credit card market every two years under section 502(a) of the CARD Act.[3] To inform the Bureau's next review, the Bureau invites members of the public, including consumers, credit card issuers, industry analysts, consumer groups, and other interested persons to submit information and other comments relevant to the issues identified in part II, as well as any information they believe is relevant to a review of the credit card market. This review relates to the credit card market generally, and not just to small entities.

The statutory authorities require these reviews, and these are not triggered by the current, COVID–19 related economic conditions, although the Bureau recognizes that the information submitted will reflect those conditions.

The Bureau believes that commenters may benefit from the Bureau issuing one RFI for the two reviews, because it expects that some commenters may wish to comment on both reviews and may find some benefit in commenting on both reviews at the same time. The Bureau requests that when a commenter makes a specific comment, the commenter indicates whether that comment relates to the RFA section 610 review, the CARD Act section 502(a) review, or both.

[1] Public Law 111–24, 123 Stat. 1734 (2009). One purpose of the CARD Act is to establish fair and transparent practices relating to the extension of open-end consumer credit plans.

[2] Public Law 96–354, 94 Stat. 1164 (1980).

[3] *See* 15 U.S.C. 1616(a).

I. RFA Section 610 Review

The RFA requires each agency to consider the effect on small entities for certain rules it promulgates.[4] Specifically, section 610 of the RFA [5] provides that each agency shall publish in the **Federal Register** a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities.

The Bureau has published such a plan in the **Federal Register**.[6] Section 610 provides that the purpose of the review is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities.[7] As also set forth in section 610, in each review the Bureau will consider several factors:

1. The continued need for the rule;
2. The nature of public complaints or comments on the rule;
3. The complexity of the rule;
4. The extent to which the rule overlaps, duplicates, or conflicts with Federal, State, or other rules; and
5. The time since the rule was evaluated or the degree to which technology, market conditions, or other factors have changed the relevant market.[8]

A. CARD Act Rules

This section lists and briefly describes the rules that the Bureau plans to review in 2020 under the criteria described by section 610 of the RFA and pursuant to the Bureau's review plan.[9]

1. The Rules

From July 2009 to April 2011, the Board of Governors of the Federal Reserve System (Board) published an interim final rule [10] and three final rules,[11] primarily to implement a number of substantive and disclosure provisions required by the CARD Act. This document collectively refers to these four rules as the ''CARD Act Rules.'' [12] The CARD Act Rules amended Regulation Z, which implements the Truth in Lending Act (TILA),[13] and the official staff commentary to the regulation, which interprets the requirements of Regulation Z.[14] The Board issued the CARD Act Rules pursuant to its authority under section 2 of the CARD Act [15] and TILA sections 105(a) and (f), 127(c)(5), 143, 148(d), and 149(b).[16]

Many of the provisions in the CARD Act Rules apply to a ''card issuer,'' as defined in § 1026.2(a)(7),[17] that extends credit under a ''credit card account under an open-end (not home-secured) consumer credit plan,'' as defined in § 1026.2(a)(15)(ii). Among other things, the CARD Act Rules contain provisions to implement the CARD Act that: (1) Prohibit card issuers from extending credit without assessing the consumer's ability to pay, with special rules regarding the extension of credit to persons under the age of 21; [18] (2) restrict the amount of required fees that a card issuer can charge during the first year after an account is opened; [19] (3) limit the amount card issuers can charge for penalty fees, such as when a consumer makes a late payment or exceeds his or her credit limit; [20] (4) restrict the circumstances under which card issuers can increase interest rates and certain fees on credit card accounts, and require subsequent reevaluations of rate increases; [21] (5) restrict fees for over-the-limit transactions to one per billing cycle and require that the consumer opt in to payment of such transactions in order for the fee to be charged; [22] (6) restrict how payments in excess of the minimum payment may be allocated; [23] and (7) require card issuers to submit to the Bureau agreements for open-end consumer credit card plans, and agreements with institutions of higher education (or an affiliated organization) regarding the issuance of credit cards to students at that institution.[24]

In addition to the provisions that implement the CARD Act, the CARD Act Rules also incorporated provisions of (1) a final rule amending Regulation Z that the Board adopted in January 2009 (January 2009 Regulation Z Rule); [25] and (2) the Board's final rule amending Regulation AA under the Federal Trade Commission Act (FTC Act) [26] to protect consumers from unfair acts or practices with respect to consumer credit card accounts (January 2009 FTC Act Rule).[27] The CARD Act Rules generally incorporated these provisions, with revisions as applicable to be consistent with the CARD Act.[28] The CARD Act Rules also generally finalized provisions of the Board's proposed rules to provide clarifications and technical amendments to the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule (May 2009 Proposed Rules), with revisions as applicable to be consistent with the CARD Act.[29]

The Board adopted the January 2009 Regulation Z Rule following a comprehensive review of TILA's rules for open-end (revolving) credit that is not home-secured. The January 2009 Regulation Z Rule amended many of the Regulation Z provisions that apply to open-end credit, including those in subparts A (General) and B (Open-end Credit), appendix G, and related commentary. The January 2009 Regulation Z Rule was designed, in part, to improve the effectiveness of the disclosures that ''creditors,'' as defined in § 1026.2(a)(17),[30] must provide under Regulation Z to consumers at application and throughout the life of an

[4] The term ''small entity'' is defined in the RFA. *See* 5 U.S.C. 601(6).

[5] 5 U.S.C. 610(a).

[6] 84 FR 21732 (May 15, 2019).

[7] 5 U.S.C. 610(a).

[8] 5 U.S.C. 610(b).

[9] 84 FR 21732 (May 15, 2019).

[10] 74 FR 36077 (July 22, 2009).

[11] 75 FR 7658 (Feb. 22, 2010); 75 FR 37526 (June 29, 2010); 76 FR 22948 (Apr. 25, 2011).

[12] The CARD Act Rules also implemented the Credit CARD Technical Corrections Act of 2009. Public Law 111–93, 123 Stat. 2998 (2009); 75 FR 7658 (Feb. 22, 2010).

[13] 15 U.S.C. 1601 *et seq.*

[14] The CARD Act Rules were originally adopted by the Board in 12 CFR part 226 but, upon transfer of authority by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to implement TILA to the Bureau, were renumbered as 12 CFR part 1026. 76 FR 79768 (Dec. 22, 2011); *see also* 81 FR 25323 (Apr. 28, 2016). The Bureau subsequently amended some of the provisions in the CARD Act Rules. *See, e.g.,* 78 FR 18795 (Mar. 28, 2013); 78 FR 25818 (May 3, 2013).

[15] Section 2 of the CARD Act states that the Board ''may issue such rules and publish such model forms as it considers necessary to carry out this Act.'' Public Law 111–24, 123 Stat. 1734 (2009).

[16] 15 U.S.C. 1604(a) and (f), 1637(c)(5), 1663, 1665c, and 1665d.

[17] *See also* 15 U.S.C. 1602(o).

[18] 12 CFR 1026.51.

[19] 12 CFR 1026.52(a).

[20] 12 CFR 1026.52(b).

[21] 12 CFR 1026.55 and 1026.59.

[22] 12 CFR 1026.56.

[23] 12 CFR 1026.53.

[24] 12 CFR 1026.57(d) and 1026.58(c). The CARD Act Rules also contained the following other provisions to implement the CARD Act: (1) § 1026.5(a)(2)(iii); (2) § 1026.5(b)(2)(ii)(A) and (B); (3) § 1026.7(b)(11) and (12); (4) § 1026.9(c)(2), (e), (g), and (h); (5) § 1026.10(b)(2)(ii), (b)(3), (d), (e), and (f); (6) § 1026.11(c); (7) § 1026.16(f); (8) § 1026.57(a) through (c); and (9) § 1026.58(a) through (b) and (d) through (g).

[25] 74 FR 5244 (Jan. 29, 2009).

[26] 15 U.S.C. 41–58.

[27] *See* 74 FR 5498 (Jan. 29, 2009). The Board issued this final rule jointly with similar rules issued by the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA).

[28] 74 FR 54124, 54125 (Oct. 21, 2009); 75 FR 7658, 7659 (Feb. 22, 2010). Because the Board incorporated the provisions of the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule, as amended, into the CARD Act Rules, the Board withdrew the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule. 75 FR 7925 (Feb. 22, 2010).

[29] 74 FR 20784 (May 5, 2009); 74 FR 20804 (May 5, 2009).

[30] *See also* 15 U.S.C. 1602(g).

open-end account.[31] The January 2009 Regulation Z Rule provisions, as amended, that the Board incorporated into the CARD Act Rules, included changes to the format, timing, and content requirements for the five main types of disclosures for open-end credit governed by Regulation Z: (1) Credit and charge card application and solicitation disclosures;[32] (2) account-opening disclosures;[33] (3) periodic statement disclosures;[34] (4) subsequent notices such as change-in-terms notices;[35] and (5) advertising provisions.[36] These revisions to the disclosure provisions generally affect creditors that offer open-end (not home-secured) credit plans (including credit card accounts and open-end plans that are not credit card accounts such as overdraft lines of credit and other personal lines of credit), and persons advertising open-end (not home-secured) credit, whether or not they are creditors.[37]

Among other things, the CARD Act Rules also incorporated provisions from the January 2009 Regulation Z Rule that revised commentary to the definition of ''open-end credit,'' as defined in § 1026.2(a)(20).[38] These revisions clarified that advances that are separately underwritten are generally not open-end credit but closed-end credit for which closed-end disclosures must be given.[39] The Board expected these revisions to primarily impact certain credit unions that were at that time offering certain multifeatured plans and were separately approving and underwriting certain advances under those plans.[40]

The January 2009 FTC Act Rule contained provisions that are similar to several of those adopted in the CARD Act.[41] The January 2009 FTC Act Rule was designed to protect consumers from unfair acts or practices with respect to consumer credit card accounts, including (1) requiring institutions to provide consumers with a reasonable amount of time to make a payment before the institution can consider the consumer late in making that payment; (2) requiring institutions to allocate amounts paid in excess of the minimum payment in specified ways; (3) restricting institutions from increasing rates on existing balances except in specified circumstances; (4) prohibiting institutions from imposing finance charges based on balances for days in billing cycles that precede the most recent billing cycle as a result of the loss of a grace period; and (5) limiting the amount of fees for the issuance or availability of credit that institutions may charge to an account during the first year after account opening. The CARD Act Rules generally incorporated these provisions, with revisions as applicable to be consistent with the CARD Act.

The May 2009 Proposed Rules generally proposed clarifications and technical amendments to the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule. The Board proposed these clarifications to resolve confusion regarding how institutions would comply with particular aspects of those rules. The proposed amendments to the January 2009 Regulation Z Rule also included several proposed provisions applicable to deferred interest plans, such as plans that permit a consumer to avoid interest charges if a purchase balance is paid in full by a certain date.[42] The CARD Act Rules generally finalized the provisions in the May 2009 Proposed Rules, with revisions as applicable to be consistent with the CARD Act.

The Bureau recodified Regulation Z, including the amendments made by the CARD Act Rules, in 2011 when the Bureau assumed rulemaking responsibility under TILA.[43]

2. The Market

As discussed above in part I.A.1, the CARD Act Rules primarily apply to credit card accounts and other open-end (not home-secured) products. The Bureau has monitored the credit card market generally, including through biennial reviews and submission of reports to Congress pursuant to section 502 of the CARD Act.[44] To date, the Bureau has issued four reports pursuant to that obligation—in 2013, 2015, 2017, and 2019 (collectively, the Reports).[45] Several of these Reports have examined changes in the credit card market since the CARD Act Rules became effective, although data have generally not been available to evaluate changes specific to small entities in a comparable level of detail as was possible for large entities.[46]

a. Credit Card Market

i. Market Structure and Participants

The credit card market is one of the United States' largest consumer financial markets, with nearly 170 million Americans having at least one credit card and collectively carrying nearly $1 trillion in total credit card debt.[47] The market has been growing in recent years by most measures, with diverse participation from the largest banks to small community banks, from credit unions to non-bank program managers, and from servicers to fintech startups. The market is highly concentrated, with the 10 largest issuers consistently representing the majority of total credit card balances, while many smaller providers account for a smaller share of balances.

In 2010, there were 4,642 banks, thrifts, and credit unions that offered credit cards and as a result were affected by the CARD Act.[48] Of these affected entities, 4,044 were small entities as defined by the current SBA threshold of $600 million or less in total assets.[49] The trend toward bank and credit union consolidation was present prior to the CARD Act and has continued, which has reduced the number of small entities participating in the credit card

[31] One purpose of TILA is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. 15 U.S.C. 1601(a).

[32] 12 CFR 1026.60.

[33] 12 CFR 1026.6(b).

[34] 12 CFR 1026.7(b).

[35] 12 CFR 1026.9(c)(2) and (g).

[36] 12 CFR 1026.16.

[37] 74 FR 5244, 5249, 5391 (Jan. 29, 2009).

[38] *See also* 15 U.S.C. 1602(j).

[39] Comment 2(a)(20)–5.

[40] 74 FR 5244, 5258–60, 5391 (Jan. 29, 2009).

[41] *See* 75 FR 7658, 7661–62, 7666–67 (Feb. 22, 2010).

[42] 74 FR 20784, 20786–87, 20788–91 (May 5, 2009); *see also* 12 CFR 1026.7(b)(14) and 1026.16(h).

[43] 76 FR 79768 (Dec. 22, 2011); *see also* 81 FR 25323 (Apr. 28, 2016).

[44] *See* 15 U.S.C. 1616.

[45] *See* Bureau of Consumer Fin. Prot., *CARD Act Report,* (Oct. 1, 2013) (2013 Report), *https://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf*; Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market,* (Dec. 2015) (2015 Report), *https://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf*; Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market,* (Dec. 2017) (2017 Report), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf*; Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market,* (Aug. 2019) (2019 Report), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf.*

[46] *See* 2017 Report at 19 n.13.

[47] *See* 2019 Report at 6, 11.

[48] This analysis considers data reported through the Federal Financial Institutions Examination Council (FFIEC) Call Report and NCUA Call Report to determine the number of banks, thrifts, and credit unions that participate in the credit card market. Call Report data are matched to data on institution characteristics and banking structure from the Board's National Information Center. Prior to the first quarter of 2012, thrifts were not required to file a Call Report, likely resulting in an underestimate of the number of thrifts operating in the credit card market prior to 2012. To determine whether an entity is considered small according to the Small Business Administration (SBA) definition, this analysis uses average assets across the calendar year.

[49] U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes,* effective Aug. 19, 2019, Sector 52 (Finance and Insurance), *https://www.sba.gov/document/support—table-size-standards.*

market. As of 2019, 4,305 banks, thrifts, and credit unions offered credit cards, of which 3,437 were considered small entities.[50]

Consumer credit cards generally can be divided into two distinct segments: General purpose cards and private label cards. General purpose cards are credit cards that can be used to purchase goods and services at a wide range of merchants. These cards display the brand of a major payment card network, most commonly American Express, Discover, Mastercard, or Visa. General purpose cards are offered by many banks, credit unions, and community banks. Some card issuers specialize in offering credit cards to consumers with subprime credit scores, while others may offer credit cards to consumers with prime or non-prime scores.

In contrast, private label cards—sometimes called ''store cards''—do not carry a network brand. Consumers can use these cards only at the particular merchant or affiliated group of merchants associated with the card. This segment is highly concentrated, with only a handful of providers representing the overwhelming share of private label credit card balances. Deferred interest is a notable feature with this kind of card.

ii. Credit Card Pricing Structure and Credit Availability

Credit card pricing is fairly complex and involves different components, such as interest rates and fees. The cost to the consumer also depends on a number of consumer-dependent factors, such as the cardholder's creditworthiness, usage of features and rewards, and repayment behavior.

Consumers who utilize a credit card may pay for that credit in a number of different ways. Consumers may be charged an annual (or monthly) fee. They may incur penalty fees if they violate the account terms, most commonly by making a payment late. They may be charged a variety of other fees relating to specific features or usages of the account, such as cash advance fees, balance transfer fees, or foreign transaction fees. Finally, consumers may pay interest charges if, for example, consumers carry a balance from month-to-month or utilize a cash advance.

As discussed above, pursuant to the CARD Act,[51] the Bureau has published four Reports detailing its reviews of the state of the credit card market in which it examines, among other things, the cost and availability of card credit and recent innovations in the market. Several of these Reports have also examined changes in the credit card market since the CARD Act Rules became effective, although data have generally not been available to evaluate changes specific to small entities in a comparable level of detail as was possible for large entities.[52] The Bureau's Reports observed the following changes in terms of credit card pricing following the implementation of the CARD Act: (1) Over-the-limit fees declined sharply, to a nearly non-existent level, after the effective date of the CARD Act opt-in rule in February 2010; (2) The average late fee declined from the fourth quarter of 2009 to the same quarter in 2010, following the effective date of the CARD Act Rules' safe harbors for penalty fee amounts; (3) There has been an increase in the amount and prevalence of annual fees following the CARD Act's implementation;[53] and (4) The total fees, as a share of cycle ending balance, however, were 180 basis points (43 percent) lower in the fourth quarter of 2010 than the same quarter of 2008, prior to the implementation of the CARD Act. This effect was most noticeable for the deep subprime segment, which may be correlated with the 25 percent fee cap for cards in their first year as set forth in the CARD Act.

In addition, the Reports also found that, beginning in the first quarter of 2009 and continuing through the second quarter of 2010, the first full quarter after most of the provisions of the CARD Act took effect in February 2010, the account-weighted average retail annual percentage rate (APR)[54] increased by 230 basis points. The increase was more modest among accounts with deep subprime credit scores and highest among accounts held by consumers with prime and superprime credit scores. However, for accounts with deep subprime credit scores, the effective interest rate fell by 200 basis points from the fourth quarter of 2008 to the same quarter in 2012, with much of that decline occurring during the period prior to when most of the CARD Act provisions became effective in February 2010 when retail APRs were increasing. Also, the incidence of repricing[55] has come down significantly and has remained at very low levels since the CARD Act's February 2010 effective date of limitations on repricing activity.

The Reports also found changes related to credit availability. First, the Reports found that there has been a reduction in the availability of credit for consumers with subprime scores as well as for students and young adults, the latter a direct effect of the CARD Act's restrictions on issuing cards to students and individuals under the age of 21. Second, a small but discernible percentage of applicants that issuers deemed otherwise creditworthy were declined as a result of insufficient income to satisfy the CARD Act's ability-to-pay requirement. Third, there has been a marked decline in the percentage of consumers receiving credit line increases on their accounts, also possibly due to the ability-to-pay requirement. Fourth, the Bureau reviewed evidence that suggested issuers might be using line management as a means of responding to revealed risk post-origination, in place of repricing balances in ways restricted by the CARD Act.

The Bureau's 2019 Report included a review of academic scholarship examining the CARD Act's effects. In many cases, these academic analyses corroborate the Bureau's findings from prior years' card market reports including, for example, findings that the CARD Act led to reductions in consumers' total payments toward certain fees such as late fees and over-limit fees. However, across the methodologies and analyses reviewed, a consistent theme is the challenge of disentangling the effects of the CARD Act itself, rather than the effects of other market changes such as the Great Recession. Overall, the scholarship review suggests that the CARD Act's effect on consumer welfare is mixed, with some scholarship suggesting the CARD Act may have had unintended consequences.[56]

[50] Other potentially affected small entities include non-depository institutions that issue credit cards, though data are currently too limited to assess the number of such entities.

[51] 15 U.S.C. 1616.

[52] *See* 2017 Report at 19 n.13.

[53] Rewards cards may be a reason for the increase in credit card annual fees. *See* 2019 Report at 12. Credit card rewards programs have rapidly increased in prevalence over the past decade. Issuers are offering a greater diversity of rewards programs—and in many cases more compelling value propositions—to match the increasing popularity of these products with consumers. For many consumers, rewards have become central to the decision of which credit cards to acquire and how to use them. *See* 2015 Report at 263; 2017 Report at 60; 2019 Report at 100–101.

[54] Discussions of credit card interest rates often focus on the APR as it is the interest rate charged on balances (the ''retail APR''). The APR is often used as shorthand for expressing the costs associated with using a credit card. However, for several reasons, the retail APR may not provide an accurate indication of the effective interest rates paid by consumers. The effective interest rate is defined as total interest charges for a period of time, stated as a percent of average cycle-ending balance for the same period of time. 2013 Report at 29.

[55] Repricing is a practice in which an issuer increases a consumer's APR.

[56] *See* 2019 Report at 13.

iii. Other Developments and Innovation

The Reports also discuss new developments and innovation in the credit card market since the CARD Act Rules became effective. The following section discusses: (1) Credit card agreements; (2) use of digital account servicing platforms; (3) new fixed payment features being offered; and (4) credit card payment rates.

The Bureau's 2013 Report found that credit card agreements became simpler and shorter after the CARD Act Rules became effective.[57] However, the Bureau's 2015 Report noted that card agreements became longer, but not more complex, from 2012 to 2014.[58] The Bureau's 2017 Report noted declines in the complexity level of credit card pricing disclosures from 2009 to 2010, and that the level of complexity had remained stable.[59] These agreements remain complex documents.

Consumers are increasingly relying on digital account servicing platforms, such as websites or mobile applications, where consumers can view and manage account activity. As of 2018, 78 percent of active accounts were enrolled in online portals for general purpose cards, as compared to 55 percent in 2014.[60] The share of accounts held by consumers who opt out of paper billing statements has risen by more than one-third since 2014,[61] and the share of accounts held by consumers who make payments against their accounts using digital channels has risen from 38 percent reported in 2013[62] to 55 percent in 2018.[63]

A few issuers have begun offering a feature that leverages a card's existing credit line to provide a fixed repayment plan that is separate from payments made toward the revolving balance on the account. Issuers have implemented a variety of these types of payment options into the card servicing platform for easier signup. New flexible payment features of credit card accounts fall into two categories: Those that provide a payment plan for existing purchases and those that provide a payment plan for future purchases.[64]

Fixed payment plans for existing purchases allow certain individual purchases made on a credit card to be paid off using fixed monthly payments over a set period of time. Issuers that offer this type of feature let consumers select eligible transactions through the card's mobile app or online portal for fixed monthly payments. The issuers' products (or announced products) differ slightly but, in general, purchases over a certain dollar threshold are eligible.[65]

Credit repayment flexibility is not new, but today's options differ in their use of credit card mobile apps. One issuer launched a credit card balance management platform in 2009, but it was delivered separately from the primary account interaction. Today's repayment flexibility products are presented to the consumer in the flow of viewing his or her transaction history. Eligible transactions are denoted with an icon that links to the product terms. A range of repayment periods and corresponding costs are offered (*e.g.,* three payments, six payments, or 12 payments). In addition, one issuer provides a corresponding feature through which cardholders may pay down the account balance in an amount equal to a specific transaction's dollar amount.[66]

The second set of flexible repayment options for credit card accounts consists of features that provide a payment plan for purchases yet to be made. Multiple issuers offer cardholders the opportunity to receive a cash disbursement from an unused portion of their credit line, which is repaid in equal monthly payments over a set period of time. These initiatives allow the issuers to increase consumer use of portions of credit line that are not currently being used. A card issuer may offer this feature to cardholders that meet certain basic eligibility checks, such as satisfactory payment history on the card and meaningful unused line size. Cardholders may be able to select different lengths of repayment, depending on their eligibility. The transactions extended under this feature are repaid using equal monthly payments for a set period of time.[67]

These fixed payment plans and their structures involve a broad array of regulatory provisions adopted in the CARD Act Rules, such as limitations on APR and fee increases, payment allocation rules, and ability to pay.[68]

Credit card payment rates have been increasing since 2010, as measured by total payments as a share of total statement balances. It is unclear precisely what combination of factors has contributed to this change. However, increases in payment rates have coincided with some of the regulatory changes created by the CARD Act, such as clearer due dates, new ability-to-pay rules, and payment disclosure requirements, along with the improvement in macroeconomic conditions and changes in consumer profiles.[69]

b. Other Open-End (Not Home-Secured) Products

As discussed in part I.A.1, the CARD Act Rules include some provisions that apply to open-end (not home-secured) plans generally, including open-end plans that are not credit card accounts, such as overdraft lines of credit and other personal lines of credit. The Bureau is aware, through its market monitoring function, of the growth of open-end personal lines of credit. Several non-depository lenders offer small-dollar open-end personal lines of credit in amounts ranging from approximately $500 to $4,500. Some States specifically authorize personal small-dollar lines of credit. For example, the Tennessee Flexible Credit Act allows licensed lenders to make open-end lines of credit, unsecured or secured by personal property, with an outstanding principal balance of no more than $4,000.[70] Even with this market monitoring, the Bureau does not know with certainty the total number of small entities that offer open-end (not home-secured) products that are not credit card accounts. Individuals and businesses may extend small amounts of consumer credit covered by TILA and Regulation Z without the Bureau's awareness.[71]

As discussed in part I.A.1, the CARD Act Rules also had an impact on certain multifeatured plans that were being offered by credit unions at the time the CARD Act Rules were adopted. Some reports suggest these plans were offered by over 3,000 credit unions prior to the adoption of the CARD Act Rules,[72] with

[57] 2013 Report at 5, 63–66.

[58] 2015 Report at 119–23.

[59] *See* 2017 Report at 195–205.

[60] 2019 Report at 48.

[61] 2019 Report at 49.

[62] 2013 Report at 68.

[63] 2019 Report at 53.

[64] *Id.* at 177.

[65] *Id.* at 178.

[66] *Id.*

[67] *Id.* at 179.

[68] *Id.*

[69] *See* 2015 Report at 49–50.

[70] Tenn. Code Ann. sec. 45–12–101, 45–12–102, and 45–12–111.

[71] *See* 12 CFR 1026.1(c)(1). Regulation Z generally applies to each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly; (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and (iv) the credit is primarily for personal, family, or household purposes.

[72] Nicole Kellner-Swick & Ashley L. Sweeney, *Multi-Featured Open-End Lending: The Past, Present and Future,* That Credit Union Blog (Jan. 23, 2013), *https://thatcreditunionblog.wordpress.com/2013/01/23/multi-featured-open-end-lending-the-past-present-and-future/;* Michelle A. Samaad, *Open-End Lending Drop Blamed on Regs, Confusion,* Credit Union Times (Aug. 5, 2012), *https://www.cutimes.com/2012/08/05/open-end-lending-drop-blamed-on-regs-confusion/?slreturn=20180603145338.*

others citing a number just under 2,000,[73] although more recent data appear to be unavailable.

The NCUA in July 2012 issued a supervisory letter to provide guidance to federal credit unions on a permissible blended approach to multifeatured lending that is consistent with the CARD Act Rules.[74] In preparing this letter, NCUA consulted with the Bureau on the interpretation of Regulation Z as it relates to multifeatured open-end lending. Among other things, this letter discussed a permissible blended approach to multifeatured lending that has a single loan agreement with both open-end and closed-end credit subaccounts. NCUA indicated that this blended approach is consistent with Regulation Z, provided the credit union complies with the requirements under 12 CFR part 1026, subpart B for open-end credit and 12 CFR part 1026, subpart C, for each closed-end loan transaction under the single plan.

3. Bureau Resources and Analysis

Since 2011, the Bureau has published various reports and other materials about the credit card market. As discussed in part I.A.2 and pursuant to the CARD Act, the Bureau has published four Reports detailing its reviews of the state of the credit card market in which it examines, among other things, the cost and availability of card credit and recent innovations in the market. In 2011, the Bureau published findings from a Bureau-convened conference on the effects of the CARD Act.[75] Pursuant to the CARD Act,[76] the Bureau publishes annually a report that discusses agreements between card issuers and institutions of higher education (or certain organizations affiliated with such institutions) in connection with the issuance of credit cards. To date, the Bureau has published eight of these reports.[77] Other Bureau reports specific to the credit card market have generally focused on consumer behaviors in the market, including end-of-year credit card borrowing and patterns of revolving and repayment.[78]

Pursuant to the CARD Act and TILA, the Bureau collects various information from card issuers. The Bureau collects credit card agreements from card issuers on a quarterly basis.[79] The Bureau publishes the agreements on its website in the credit card agreement database.[80] In addition, the Bureau collects annually and publishes on its website college credit card marketing agreement data and credit card issuers' marketing agreements with colleges, universities, and their affiliates, as well as the number of cards covered by, and the amount of payments made by issuers under these agreements.[81] The Bureau also collects information semi-annually from certain card issuers through its terms of credit card plans (TCCP) survey and publishes these data on its website.[82] These data show features of the most commonly held (*i.e.,* modal) credit card for issuers that report such information. Other previously collected data include the credit card database, which shows monthly account-level aggregates for credit cards from several large issuers, and surveys of several credit card issuers including questions regarding card application and approval, digital account servicing, deferred interest, and loan performance.[83] Other data similar to these monthly account-level aggregates are also shared with the Bureau via memoranda of understanding (MOUs) with other bank regulators.

4. Previous Input to the Bureau

In 2011, the Bureau issued an RFI related to streamlining regulatory requirements (2011 RFI).[84] The 2011 RFI asked the public to identify provisions of the inherited regulations that the Bureau should make the highest priority for updating, modifying, or eliminating because they are outdated, unduly burdensome, or unnecessary. The 2011 RFI also discussed several specific requirements that may warrant review, such as the ability-to-pay rules. It also sought suggestions for practical measures to make complying with the regulations easier. The Bureau received around 10 letters that included information about credit card accounts and open-end (not home-secured) credit generally. These comments came from a variety of stakeholders, including trade groups and other market participants, card issuers, and consumer advocacy groups.

Also, as discussed in part I.A.2 and pursuant to the CARD Act, the Bureau has published four biennial Reports on the state of the credit card market that examine, among other things, the cost and availability of card credit and recent innovations in the market. In connection with these Reports, the CARD Act requires the Bureau to ''solicit comment from consumers, credit card issuers, and other interested parties.'' [85] For each of the four Reports, the Bureau has done so through a RFI published in the **Federal Register**.[86] In these RFIs, the Bureau sought comment on various topics, including the terms of credit card agreements and practices of credit card issuers, the effectiveness of credit card disclosures, the adequacy of protection from unfair or deceptive acts or practices, whether the CARD Act affects the cost and availability of credit, whether the CARD Act has had an impact on issuer safety and soundness, whether the CARD Act had any effect on the use of risk-based pricing, and whether the CARD Act had any impact on credit card innovation. In response to the RFIs, comments were submitted by a variety of stakeholders, including trade groups representing credit card issuers and other market participants, card issuers, other industry-side market participants, individual consumers, and consumer advocacy groups. Each of the four Reports discussed the comments

[73] In response to the initial regulatory flexibility analysis in relation to the January 2009 Regulation Z Rule, a commenter that provides insurance and related financial services to credit unions reported that based on internal records, over 1,900 credit unions with assets under $50 million and that offer multifeatured plans would incur an average cost of $100,000 per credit union to switch to closed-end disclosures if clarifications related to the definition of open-end credit were adopted as proposed. 74 FR 5244, 5391 (Jan. 29, 2009).

[74] Nat'l Credit Union Admin., *Multi-Featured Open-End Lending (MFOEL)* (July 2012), *https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/multi-featured-open-end-lending-mfoel-0.*

[75] *See* Press Release, Bureau of Consumer Fin. Prot., *CFPB Launches Public Inquiry on the Impact of the Card Act* (Dec. 19, 2012), *https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-public-inquiry-on-the-impact-of-the-card-act/.*

[76] 15 U.S.C. 1637(r)(3).

[77] Bureau of Consumer Fin. Prot., *Student banking reports to Congress, https://www.consumerfinance.gov/data-research/student-banking/student-banking-reports-congress/* (last visited July 29, 2020). The Board published two such reports subsequent to the passage of the CARD Act but prior to the transfer of this CARD Act mandate to the Bureau.

[78] *See* Bureau of Consumer Fin. Prot., *Quarterly consumer credit trends: End-of-year credit card borrowing* (June 2018), *https://www.consumerfinance.gov/data-research/research-reports/quarterly-consumer-credit-trends-end-year-credit-card-borrowing/*; Bureau of Consumer Fin. Prot., *Data point: Credit card revolvers* (July 2019), *https://www.consumerfinance.gov/data-research/research-reports/data-point-credit-card-revolvers/.*

[79] 15 U.S.C. 1632(d)(2) and (3).

[80] Bureau of Consumer Fin. Prot., *Credit card agreement database, https://www.consumerfinance.gov/credit-cards/agreements/* (last visited July 29, 2020).

[81] 15 U.S.C. 1637(r)(2); Bureau of Consumer Fin. Prot., *College credit card marketing agreements and data, https://www.consumerfinance.gov/data-research/student-banking/marketing-agreements-and-data/* (last visited July 29, 2020).

[82] 15 U.S.C. 1646; Bureau of Consumer Fin. Prot., *Terms of credit card plans (TCCP) survey, https://www.consumerfinance.gov/data-research/credit-card-data/terms-credit-card-plans-survey/* (last visited July 29, 2020).

[83] 12 U.S.C. 5512(c)(4).

[84] 76 FR 75825 (Dec. 5, 2011).

[85] 15 U.S.C. 1616(b).

[86] 77 FR 75410 (Dec. 20, 2012); 80 FR 14365 (Mar. 19, 2015); 82 FR 13313 (Mar. 10, 2017); 84 FR 647 (Jan. 31, 2019).

received, as applicable, in response to the relevant RFI.

The Bureau also received information about credit card accounts and open-end (not home-secured) credit generally in response to the Bureau's 2018 Call for Evidence Initiative, which included requesting input on all inherited regulations and rulemaking authorities.[87] The Bureau received 13 comments that included information about credit card accounts and open-end (not home-secured) credit generally. These comments came from a variety of stakeholders, including trade groups representing credit card issuers and other market participants, card issuers, and consumer advocacy groups.

Through the RFIs discussed above, market monitoring, and other measures, the Bureau has heard concerns expressed by some card issuers and trade groups about several of the CARD Act Rules' provisions and how they apply to credit card accounts, such as concerns about (1) application, account-opening, periodic statement, and advertising disclosure rules; (2) format and font size requirements for disclosures; (3) change-in-terms notice and penalty rate notice requirements; (4) billing error rights and procedures; (5) ability-to-pay requirements; (6) restrictions on rate and fee increases; (7) restrictions on certain fees imposed during the first year after account opening; (8) restrictions on penalty fees; (9) rules for reevaluating rate increases; (10) restrictions on how payments may be allocated; and (11) submission of account agreements to the Bureau.

The Bureau's experience suggests there is little overlap, duplication, or conflict between the CARD Act Rules and Federal, State, or other rules. The Bureau has not received any requests for a determination that the CARD Act Rules preempt State law.

B. Request for Comment

Consistent with the section 610 review plan, the Bureau asks the public to comment on the CARD Act Rules, including the following topics:

(1) The current scale of the economic impacts of the rules as a whole on small entities and of their major components on small entities, including impacts on reporting, recordkeeping, and other compliance requirements.

(2) Whether and how those impacts on small entities could be reduced, consistent with the stated objectives of applicable statutes and the rules.

(3) Current information relevant to the factors that the Bureau is required to consider in completing a section 610 review under the RFA, as described above.

Where possible, please submit detailed comments, data, and other information to support any submitted positions.

II. CARD Act Section 502(a) Review

As discussed in part I.A.2, section 502(a) of the CARD Act[88] requires the Bureau to conduct a review, within the limits of its existing resources available for reporting purposes, of the consumer credit card market every two years. As discussed in part I.A.4, to inform that review, CARD Act section 502(b) instructs the Bureau to seek public comment.[89]

As discussed in part I.A.2, the Bureau has issued four Reports in relation to these reviews. The Bureau's first Report describing this review was published in October 2013; the Bureau's second such Report was published in December 2015; the Bureau's third such Report was published in December 2017; and the Bureau's fourth such Report was published in August 2019. To inform the Bureau's next review, the Bureau invites members of the public, including consumers, credit card issuers, industry analysts, consumer groups, and other interested persons to submit information and other comments relevant to the issues expressly identified in part II.B below, as well as any information they believe is relevant to a review of the credit card market.

A. Background: The CARD Act

The CARD Act was signed into law in May 2009.[90] Passage of the CARD Act was expressly intended to ''establish fair and transparent practices related to the extension of credit'' in the credit card market.[91] As discussed in part I.A.1, to achieve these agreed-upon purposes, the CARD Act changed the requirements applicable to credit card practices in a number of significant respects.[92]

B. Request for Comment

In connection with its pending review, the Bureau seeks information from members of the public about how the credit card market is functioning. The Bureau seeks comments on the experiences of consumers and providers in the credit card market and on the overall health of the credit card market, as outlined in CARD Act section 502(a) and in (1) through (7) below. As noted above, while the Bureau identifies specific topics of interest below, the Bureau wants to be alerted to and understand the information that consumers, credit card issuers, industry analysts, consumer groups, and other interested persons believe is most relevant to the Bureau's review of the credit card market, so this list of subjects should not be viewed as exhaustive. Commenters are encouraged to address any other aspects of the consumer credit card market that they consider would be of interest or concern to the Bureau.

Please feel free to comment generally and/or respond to any or all of the questions below but please indicate in your comments on which topic areas or questions you are commenting:

(1) *The terms of credit card agreements and the practices of credit card issuers.*

a. How have the substantive terms and conditions of credit card agreements or the length and complexity of such agreements changed over the past two years?

b. How have issuers changed their pricing, marketing, underwriting, or other practices?

c. How are the terms of, and practices related to, major supplementary credit card features (such as credit card rewards, deferred interest promotions, balance transfers, and cash advances) evolving?

d. How have issuers changed their practices related to deferment, forbearance, or other forms of debt relief or assistance offered to consumers?

e. How have creditors as well as third-party collectors changed their practices over the past two years of collecting on delinquent and charged-off credit card debt?

f. Has the use of electronic communication (*e.g.,* email or SMS) by creditors and debt collectors in connection with credit card debt grown or otherwise evolved?

g. How are the practices of for-profit debt settlement companies changing and what trends are occurring in the debt settlement industry? How are creditors and non-profit credit counseling agencies responding to these changes and trends?

(2) *The effectiveness of disclosure of terms, fees, and other expenses of credit card plans.*

a. How effective are current disclosures of rates, fees, and other cost terms of credit card accounts in conveying to consumers the costs of credit card plans?

b. What further improvements in disclosure, if any, would benefit consumers and what costs would card

[87] 83 FR 12881 (Mar. 26, 2018).

[88] *See* 15 U.S.C. 1616(a).

[89] *See* 15 U.S.C. 1616(b).

[90] The CARD Act's provisions took effect in three stages: August 2009, February 2010, and October 2011.

[91] Public Law 111–24, 123 Stat. 1734 (2009).

[92] *See also* 2013 Report at 10–13.

issuers or others incur in providing such disclosures?

c. How well are current credit card disclosure rules and practices adapted to the digital environment? What adaptations to credit card disclosure regimes in the digital environment would better serve consumers or reduce industry compliance burden?

(3) *The adequacy of protections against unfair or deceptive acts or practices relating to credit card plans.*

a. What unfair, deceptive, or abusive acts and practices exist in the credit card market? How prevalent are these acts and practices and what effect do they have? How might any such conduct be prevented and at what cost?

(4) *The cost and availability of consumer credit cards.*

a. How have the cost and availability of consumer credit cards (including with respect to non-prime borrowers) changed since the Bureau reported on the credit card market in 2019? What is responsible for changes (or absence of changes) in cost and availability? Has the impact of the CARD Act on cost and availability changed over the past two years?

b. How, if at all, are the characteristics of consumers with lower credit scores changing? How are groups of consumers in different score tiers faring in the market? How do other factors relating to consumer demographics or financial lives affect consumers' ability to successfully obtain and use card credit?

(5) *The safety and soundness of credit card issuers.*

a. How is the credit cycle evolving? What, if any, safety and soundness risks are present or growing in this market, and which entities are disproportionately affected by these risks? How, if at all, do these safety and soundness risks to entities relate to long-term indebtedness on the part of some consumers, or changes in consumers' ability to manage and pay their debts? Has the impact of the CARD Act on safety and soundness changed over the past two years?

(6) *The use of risk-based pricing for consumer credit cards.*

a. How has the use of risk-based pricing for consumer credit cards changed since the Bureau reported on the credit card market in 2019? What has driven those changes or lack of changes? Has the impact of the CARD Act on risk-based pricing changed over the past two years?

b. How have CARD Act provisions relating to risk-based pricing impacted (positively or negatively) the evolution of practices in this market?

(7) *Consumer credit card product innovation.*

a. How has credit card product innovation changed since the Bureau reported on the credit card market in 2019? What has driven those changes or lack of changes? Has the impact of the CARD Act on product innovation changed over the past two years?

b. How have broader innovations in finance, such as (but not limited to) new products and entrants, evolving digital tools, greater availability of and new applications for consumer data, and new technological tools (like machine learning), impacted the consumer credit card market, either directly or indirectly? In what ways do CARD Act provisions or its implementing regulations encourage or discourage innovation? In what ways do innovations increase or decrease the impact of certain CARD Act provisions, or change the nature of those impacts?

Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

Dated: August 24, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–18855 Filed 8–26–20; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. 2011–0014]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

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) announces that the Commission has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a generic clearance for the collection of qualitative feedback on agency service delivery. OMB previously approved the collection of information under control number 3041–0148. OMB's most recent extension of approval will expire on September 30, 2020. On June 15, 2020, the CPSC published a notice in the **Federal Register** to announce the agency's intention to seek extension of approval of the collection of information. The Commission received no comments. Therefore, by publication of this notice, the Commission announces that CPSC has submitted to the OMB a request for extension of approval of that collection of information, without change.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by September 28, 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. In addition, written comments that are sent to OMB also should be submitted electronically at: *http://www.regulations.gov,* under Docket No. CPSC–2011–0014.

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: On June 15, 2020, the CPSC published a notice in the **Federal Register** to announce the agency's intention to seek extension of approval of the collection of information. 85 FR 36189. The Commission received no comments. CPSC seeks to renew the following currently approved collection of information:

Burden Hours

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner to improve service delivery. Below we provide the CPSC's projected average estimates of qualitative surveys, focus groups, customer satisfaction surveys, and usability tests for the next 3 years.

Current Actions: Renewal of collection of information.

Type of Review: Renewal.

Affected Public: Individuals and households, businesses and organizations, state, local, or tribal government.

Average Expected Annual Number of Activities: Eight activities, including qualitative surveys, focus groups, customer satisfaction surveys, and usability tests.

Annual Number of Respondents: 1,600.

Annual responses: 1,600.

Frequency of Response: Once per request.

Average minutes per response: 45 minutes per response.

Annual Burden hours: 1,200.

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 currently valid OMB control number. *General Description of Collection:* The CPSC will collect, analyze, and interpret information gathered through this generic clearance to identify strengths and weaknesses of current services and make improvements in service delivery based on feedback. 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.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2020–18891 Filed 8–26–20; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0046]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer Focus Groups

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) announces that the Commission has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information from persons who may voluntarily participate in consumer focus groups. OMB previously approved the collection of information under control number 3041–0136. OMB's most recent extension of approval will expire on September 30, 2020. On June 15, 2020, the CPSC published a notice in the **Federal Register** to announce the agency's intention to seek extension of approval of the collection of information. The Commission received no comments. Therefore, by publication of this notice, the Commission announces that CPSC has submitted to the OMB a request for extension of approval of that collection of information, without change.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by September 28, 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. In addition, written comments that are sent to OMB also should be submitted electronically at: *http://www.regulations.gov,* under Docket No. CPSC–2010–0046.

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: On June 15, 2020, the CPSC published a notice in the **Federal Register** to announce the agency's intention to seek extension of approval of the collection of information. 85 FR 36190. The Commission received no comments. CPSC seeks to renew the following currently approved collection of information:

Burden Hours

Title: Consumer Focus Groups.

OMB Number: 3041–0136.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Consumers.

Estimated Number of Respondents: 650 participants.

Estimated Time per Response: 3 hours.

Total Estimated Annual Burden: 1,950 hours (650 participants × 3 hours).

General Description of Collection: Section 5(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2054(a), authorizes the Commission to conduct studies and investigations relating to the causes and prevention of deaths, accidents, injuries, illnesses, other health impairments, and economic losses associated with consumer products. Section 5(b) of the CPSA, 15 U.S.C. 2054(b), further provides that the Commission may conduct research, studies, and investigations on the safety of consumer products, or test consumer products and develop product safety test methods and testing devices.

To help identify and evaluate product-related incidents, Commission staff invites and obtains direct feedback from consumers on issues related to product safety, such as recall effectiveness, product use, and perceptions regarding safety issues. The information that the CPSC collects from future focus groups will help inform the Commission's identification and evaluation of consumer products and product use, by providing insight and information into consumer perceptions and usage patterns. In some cases, one-on-one interviews may be conducted as a more in-depth extension of a focus group, or in place of a traditional focus group. This information may also assist the Commission in its efforts to support voluntary standards activities and help CPSC identify consumer safety issues requiring additional research. In addition, based on the information obtained, CPSC may be able to provide safety information to the public that is easier to read and understood by a wider range of consumers.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2020–18893 Filed 8–26–20; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2020–OS–0034]

Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 28, 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: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Regular Generic Clearance for the Collection of Focus Groups, Usability Studies, Preliminary and Formative Research, Routine Reports and Survey Testing; OMB Control Number 0704–XXXX.

Type of Request: New.

Number of Respondents: 300,000.

Responses per Respondent: 1.

Annual Responses: 300,000.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 50,000.

Needs and Uses: The proposed information collection activity provides a means to gather data science, conduct qualitative analysis, statistical experiments, program evaluation, test development, and forecasting in an efficient, timely manner in order to improve and monitor DoD programs and policies that impact the general public. These collections will provide insights into existing programs and support the construction of new studies and programs. In accordance with the Executive Services Directorate commitment to be the preeminent provider of knowledge managements services to the warfighter, Department and throughout the Federal government, these collections will allow for ongoing collaborative and actionable communications between the Agency and its customers and stakeholders. The information collected will contribute directly to the improvement of program management, surveys, studies and research.

The information collections will be used to plan and design surveys, conduct initial testing, and the collections will not raise substantive policy issues, issues of significant concern to other agencies, be used to make high-level policy or resource allocation decisions or involve potentially controversial topics. Data collected will not be generalized to the overall population. However, the collections will be low-burden, may involve the use of statistical rigor, and may publish their results. The participation of respondents will be voluntary and Personally Identifiable Information (PII) is collected only to the extent necessary and is not retained.

Affected Public: Business or other for-profit; not for profit institutions; individuals or households; State, local, or tribal governments; Federal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 18, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2020–18868 Filed 8–26–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2020–OS–0054]

Submission for OMB Review; Comment Request

AGENCY: Office of the Chief Information Officer, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 28, 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: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Industrial Base (DIB) Cybersecurity (CS) Program Point of Contact Information; OMB Control Number 0704–0490.

Type of Request: Revision.

Number of Respondents: 7,590.

Responses per Respondent: 1.

Annual Responses: 7,590.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 2,530.

Needs and Uses: DoD's Defense Industrial Base (DIB) Cybersecurity (CS) Program enhances and supports DIB CS participants' capabilities to safeguard DoD information that resides on, or transits, DIB unclassified information systems. The operational implementation of this Program requires DoD to collect, share, and manage point of contact (POC) information for Program administration and management purposes. The Government will collect typical business POC information from all DIB CS participants to facilitate communication and share cyber threat information. To implement and execute this Program within their companies, DIB CS participants provide POC information to DoD during the application process to join the Program. This information includes the names, company names and mailing address, work divisions/groups, work email addresses, and work telephone numbers of company-identified POCs. DIB CS Program POCs include the Chief Executive Officer (CEO), Chief Information Officer (CIO), Chief Information Security Officer (CISO), General Counsel, Corporate or Facility Security Officer, and the Chief Privacy Officer, or their equivalents, as well as those administrative, policy, technical staff, and personnel designated to interact with the Government in executing the DIB CS Program (*e.g.,* typically 3–10 company designated POCs). After joining the Program, DIB CS participants provide updated POC information to DoD when personnel changes occur.

Affected Public: Individuals and Households, Private Sector and Small Businesses.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 19, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–18869 Filed 8–26–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Notice of Interim Approval of Rate Schedules for Kerr-Philpott System

AGENCY: Southeastern Power Administration, Energy (DOE).

ACTION: Notice of interim approval.

SUMMARY: The Administrator for the Southeastern Power Administration (Southeastern) has confirmed and approved, on an interim basis, new rate schedules VA–1–D, VA–2–D, VA–3–D, VA–4–D, DEP–1–D, DEP–2–D, DEP–3–D, DEP–4–D, AP–1–D, AP–2–D, AP–3–D, AP–4–D, NC–1–D, and Replacement–2–C. These rate schedules are applicable to Southeastern power sold to existing preference customers in the Virginia and North Carolina service area. The rate schedules are approved on an interim basis through September 30, 2025, and are subject to confirmation and approval by the Federal Energy Regulatory Commission (FERC) on a final basis.

DATES: The approval of rates on an interim basis is effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Cathy Stillson, Power Marketing Advisor, Finance and Marketing, Southeastern Power Administration, U.S. Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3847; Email: *Cathy.Stillson@sepa.doe.gov.*

SUPPLEMENTARY INFORMATION: FERC, by order issued February 24, 2016, 154 FERC ¶ 62,129, confirmed and approved Rate Schedules VA–1–C, VA–2–C, VA–3–C, VA–4–C, DEP–1–C, DEP–2–C, DEP–3–C, DEP–4–C, AP–1–C, AP–2–C, AP–3–C, AP–4–C, NC–1–C, and Replacement–2–B, for the period October 1, 2015, through September 30, 2020. This order replaces these rate schedules on an interim basis, subject to final approval by FERC.

Signing Authority

This document of the Department of Energy was signed on August 18, 2020, by Virgil G. Hobbs, III, Administrator for Southeastern Power Administration, 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 August 21, 2020.

Treena V. Garrett,

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

DEPARTMENT OF ENERGY

ADMINISTRATOR, SOUTHEASTERN POWER ADMINISTRATION

In the Matter of:

Southeastern Power Administration
Kerr-Philpott System Power Rates
Rate Order No. SEPA–63

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Section 302(a) of the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7152(a)), the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), relating to the Southeastern Power Administration (Southeastern), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated to Southeastern's Administrator the authority to develop power and transmission rates, to the Deputy Secretary of Energy the authority to confirm, approve, and place such rates into effect on an interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place into effect on a final basis, or to disapprove, rates developed by the Administrator under the delegation. By Delegation Order No. 00–002.00S, effective January 15, 2020, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary of Energy. By Redelegation Order No. 00–002.10E, effective February 14, 2020, the Under Secretary of Energy further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. By Redelegation Order No. 00–002.10–03, effective July 8, 2020, the Assistant Secretary for Electricity further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Administrator, Southeastern Power Administration. This rate is issued by the Administrator, Southeastern Power Administration pursuant to the authority delegated in Redelegation Order No. 00–002.10–03.

Background

Power from the Kerr-Philpott Projects is presently sold under Wholesale Power Rate Schedules VA–1–C, VA–2–C, VA–3–C, VA–4–C, DEP–1–C, DEP–2–C, DEP–3–C, DEP–4–C, AP–1–C, AP–2–C, AP–3–C, AP–4–C, NC–1–C, and Replacement–2–B. These rate schedules were approved by FERC on February 24, 2016, for a period ending September 30, 2020 (154 FERC ¶ 62,129).

Public Notice and Comment

Notice of proposed rates and opportunities for public review and comment for the Kerr-Philpott System was published in the **Federal Register** (85 FR 17572) on March 30, 2020. Southeastern proposed to update and extend existing schedules of rates and charges applicable to the sale of power from the Kerr Philpott System effective October 1, 2020, through September 30, 2025. The notice advised interested parties of Southeastern's determination that holding a public information and comment forum for this rate action, in accordance with 10 CFR 903.23(a), would not be necessary. Instead, Southeastern announced a 30-day

consultation and comment period to give the public an opportunity to comment, with written comments due on or before April 29, 2020.

The proposed rate schedules extended the existing initial base rate of $4.40 per kilowatt per month for capacity and the initial base rate of 17.80 mills per kilowatt-hour charge for energy, which expire September 30, 2020, through September 30, 2025. The rates are based on a repayment study estimating the Kerr-Philpott System will produce the following net revenue available for repayment (rounded to the nearest $10,000):

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
2023	2,360,000	8,060,000
2024	2,430,000	10,490,000
2025	2,130,000	12,620,000
2026	2,210,000	14,830,000
2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The proposed rates continue a true-up of the capacity and energy rates based on the cumulative net revenue available for repayment from the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt-hour. For every $100,000 over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt-hour, to be implemented April 1 of the next fiscal year. The extension of rates and the continuation of the true-up based on the updated amounts of cumulative net revenue available for repayment ensure repayment within cost recovery criteria.

Public Comments

Southeastern received no comments in response to the ''Notice of proposed rates and opportunities for public review and comment'' published in the **Federal Register** at 85 FR 17572 on March 30, 2020.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in March 2020 for the Kerr-Philpott System, shows that with the proposed rates, all system power costs are repaid within the appropriate repayment period and meet the cost recovery criteria set forth in DOE Order RA 6120.2. The Administrator of Southeastern Power Administration has certified that the rates are consistent with applicable law, and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, as amended, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Determination Under Executive Order 12866

Southeastern has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

Information regarding these rates, including studies and other supporting materials is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635, and in the Power Marketing Liaison Office, James Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585.

Order

In view of the foregoing and pursuant to the authority redelegated to me by the Assistant Secretary for Electricity, I hereby confirm and approve on an interim basis, effective October 1, 2020, attached Wholesale Power Rate Schedules VA–1–D, VA–2–D, VA–3–D, VA–4–D, DEP–1–D, DEP–2–D, DEP–3–D, DEP–4–D, AP–1–D, AP–2–D, AP–3–D, AP–4–D, NC–1–D, and Replacement–2–C. The Rate Schedules shall remain in effect on an interim basis through September 30, 2025, unless such period is extended or until FERC confirms and approves them or substitutes Rate Schedules on a final basis.

Dated: August 18, 2020.

Virgil G. Hobbs, III,

Administrator, Southeastern Power Administration.

Wholesale Power Rate Schedule VA–1–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government, Virginia Electric and Power Company (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. This rate schedule is applicable to customers receiving power from the Government on an arrangement where the Company schedules the power and provides the Customer a credit on their bill for Government power. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge:

$4.40 per kilowatt of total contract demand per month.

Initial Base Energy Charge:

17.80 mills per kilowatt-hour.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year and cumulative net revenue available for repayment by fiscal year:

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
2023	2,360,000	8,060,000
2024	2,430,000	10,490,000
2025	2,130,000	12,620,000
2026	2,210,000	14,830,000
2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual cumulative net revenue available for repayment from the planned cumulative net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and any ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company or PJM. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission

$7.32 per kilowatt of total contract demand per month estimated as of February 2020, is presented for illustrative purposes.

Ancillary Services

0.81 mills per kilowatt-hour of energy estimated as of February 2020, is presented for illustrative purposes.

The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.34 per kilowatt of total contract demand per month, as an estimated cost as of February 2020.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Duke Energy Progress System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Capacity Performance Non-Performance Charge

Requirements of the PJM capacity performance market may lead to non-performance charges to Southeastern. These non-performance charges, if incurred, will be allocated to the capacity delivered in PJM (currently 120,100 kilowatts) in the month incurred.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by FERC, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule VA–2–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted pursuant to contracts between the Government, Virginia Electric and Power Company (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government. The Government is responsible for arranging transmission with the Company and PJM. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge: $4.40 per kilowatt of total contract demand per month.

Initial Base Energy Charge: 17.80 mills per kilowatt-hour.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year and cumulative net revenue available for repayment by fiscal year:

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
2023	2,360,000	8,060,000
2024	2,430,000	10,490,000
2025	2,130,000	12,620,000
2026	2,210,000	14,830,000
2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual cumulative net revenue available for repayment from the planned cumulative net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and any ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company or PJM. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission

$7.32 per kilowatt of total contract demand per month estimated as of February 2020, is presented for illustrative purposes.

Ancillary Services

0.81 mills per kilowatt-hour of energy estimated as of February 2020, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.34 per kilowatt of total contract demand per month, as an estimated cost as of February 2020.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Duke Energy Progress System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Capacity Performance Non-Performance Charge

Requirements of the PJM capacity performance market may lead to non-performance charges to Southeastern. These non-performance charges, if incurred, will be allocated to the capacity delivered in PJM (currently 120,100 kilowatts) in the month incurred.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is

obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by FERC, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule VA–3–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be scheduled pursuant to contracts between the Government, Virginia Electric and Power Company (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. The Government is responsible for providing the scheduling. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge:

$4.40 per kilowatt of total contract demand per month.

Initial Base Energy Charge:

17.80 mills per kilowatt-hour.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year and cumulative net revenue available for repayment by fiscal year:

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
2023	2,360,000	8,060,000
2024	2,430,000	10,490,000
2025	2,130,000	12,620,000
2026	2,210,000	14,830,000
2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual cumulative net revenue available for repayment from the planned cumulative net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company or PJM. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Ancillary Services

0.81 mills per kilowatt-hour of energy estimated as of February 2020, is presented for illustrative purposes.

The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.34 per kilowatt of total contract demand per month, as an estimated cost as of February 2020.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Duke Energy Progress System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Capacity Performance Non-Performance Charge

Requirements of the PJM capacity performance market may lead to non-performance charges to Southeastern. These non-performance charges, if incurred, will be allocated to the capacity delivered in PJM (currently 120,100 kilowatts) in the month incurred.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule VA–4–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina served through the transmission facilities of Virginia Electric and Power Company (hereinafter called the Company) and PJM Interconnection LLC (hereinafter called PJM). The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge:

$4.40 per kilowatt of total contract demand per month.

Initial Base Energy Charge:

17.80 mills per kilowatt-hour.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year and cumulative net revenue available for repayment by fiscal year:

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
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2025	2,130,000	12,620,000
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2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual cumulative net revenue available for repayment from the planned cumulative net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company or PJM. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Ancillary Services

0.81 mills per kilowatt-hour of energy estimated as of February 2020, is presented for illustrative purposes.

The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.34 per kilowatt of total contract demand per month, as an estimated cost as of February 2020.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power

Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Duke Energy Progress System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Capacity Performance Non-Performance Charge

Requirements of the PJM capacity performance market may lead to non-performance charges to Southeastern. These non-performance charges, if incurred, will be allocated to the capacity delivered in PJM (currently 120,100 kilowatts) in the month incurred.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by FERC, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule DEP–1–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and Duke Energy Progress (formerly known as Carolina Power & Light Company and hereinafter called the Company) and the Customer. This rate schedule is applicable to customers receiving power from the Government on an arrangement where the Company schedules the power and provides the Customer a credit on their bill for Government power. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge:

$4.40 per kilowatt of total contract demand per month.

Initial Base Energy Charge:

17.80 mills per kilowatt-hour.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year and cumulative net revenue available for repayment by fiscal year:

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
2023	2,360,000	8,060,000
2024	2,430,000	10,490,000
2025	2,130,000	12,620,000
2026	2,210,000	14,830,000
2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual cumulative net revenue available for repayment from the planned cumulative net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission

$1.5297 per kilowatt of total contract demand per month as of February 2020, is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The rate is subject to periodic adjustment and will be computed in accordance with the terms of the Government-Company contract.

Proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT) or the distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.34 per kilowatt of total contract demand per month, as an estimated cost as of February 2020.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Duke Energy Progress System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule DEP–2–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted pursuant to contracts between the Government and Duke Energy Progress (formerly known as Carolina Power & Light Company and hereinafter called the Company) and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government. The Government is responsible for arranging transmission with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge:

$4.40 per kilowatt of total contract demand per month.

Initial Base Energy Charge:

17.80 mills per kilowatt-hour.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year and cumulative net revenue available for repayment by fiscal year:

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
2023	2,360,000	8,060,000
2024	2,430,000	10,490,000
2025	2,130,000	12,620,000
2026	2,210,000	14,830,000
2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual cumulative net revenue available for repayment from the planned cumulative net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission

$1.5297 per kilowatt of total contract demand per month as of February 2020, is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The rate is subject to periodic adjustment and will be computed in accordance with the terms of the Government-Company contract.

Proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT) or the distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate

transmission and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.34 per kilowatt of total contract demand per month, as an estimated cost as of February 2020.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Duke Energy Progress System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule DEP–3–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Duke Energy Progress (formerly known as Carolina Power & Light Company and hereinafter called the Company) and the Customer. The Government is responsible for providing the scheduling. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge:

$4.40 per kilowatt of total contract demand per month.

Initial Base Energy Charge:

17.80 mills per kilowatt-hour.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year and cumulative net revenue available for repayment by fiscal year:

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
2023	2,360,000	8,060,000
2024	2,430,000	10,490,000
2025	2,130,000	12,620,000
2026	2,210,000	14,830,000
2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual cumulative net revenue available for repayment from the planned cumulative net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Proceedings before FERC involving the Company's Open Access Transmission Tariff (OATT) or the distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Tandem Transmission Charge

$1.34 per kilowatt of total contract demand per month, as an estimated cost as of February 2020.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the

border of the Duke Energy Progress System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) percent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule DEP–4–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina served through the transmission facilities of Duke Energy Progress (formerly known as Carolina Power & Light Company and hereinafter called the Company). The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge:

$4.40 per kilowatt of total contract demand per month.

Initial Base Energy Charge:

17.80 mills per kilowatt-hour.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year and cumulative net revenue available for repayment by fiscal year:

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
2023	2,360,000	8,060,000
2024	2,430,000	10,490,000
2025	2,130,000	12,620,000
2026	2,210,000	14,830,000
2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual cumulative net revenue available for repayment from the planned cumulative net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Tandem Transmission Charge

$1.34 per kilowatt of total contract demand per month, as an estimated cost as of February 2020.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Duke Energy Progress System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying

energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–1–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia to whom power may be transmitted and scheduled pursuant to contracts between the Government, American Electric Power Service Corporation (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. This rate schedule is applicable to customers receiving power from the Government on an arrangement where the Company schedules the power and provides the Customer a credit on their bill for Government power. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge:

$4.40 per kilowatt of total contract demand per month.

Initial Base Energy Charge:

17.80 mills per kilowatt-hour.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year and cumulative net revenue available for repayment by fiscal year:

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
2023	2,360,000	8,060,000
2024	2,430,000	10,490,000
2025	2,130,000	12,620,000
2026	2,210,000	14,830,000
2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual cumulative net revenue available for repayment from the planned cumulative net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission

$7.32 per kilowatt of total contract demand per month estimated as of February 2020, is presented for illustrative purposes.

Ancillary Services

0.81 mills per kilowatt-hour of energy estimated as of February 2020, is presented for illustrative purposes.

The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.34 per kilowatt of total contract demand per month, as an estimated cost as of February 2020.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Duke Energy Progress System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Capacity Performance Non-Performance Charges

Requirements of the PJM capacity performance market may lead to non-performance charges to Southeastern. These non-performance charges, if incurred, will be allocated to the capacity delivered in PJM (currently 120,100 kilowatts) in the month incurred.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–2–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia to whom power may be transmitted pursuant to contracts between the Government, American Electric Power Service Corporation (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government. The Government is responsible for arranging transmission with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge:

$4.40 per kilowatt of total contract demand per month.

Initial Base Energy Charge:

17.80 mills per kilowatt-hour.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year and cumulative net revenue available for repayment by fiscal year:

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
2023	2,360,000	8,060,000
2024	2,430,000	10,490,000
2025	2,130,000	12,620,000
2026	2,210,000	14,830,000
2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual cumulative net revenue available for repayment from the planned cumulative net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Transmission

$7.32 per kilowatt of total contract demand per month estimated as of February 2020, is presented for illustrative purposes.

Ancillary Services

0.81 mills per kilowatt-hour of energy estimated as of February 2020, is presented for illustrative purposes.

The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.34 per kilowatt of total contract demand per month, as an estimated cost as of February 2020.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border

of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Duke Energy Progress System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Capacity Performance Non-Performance Charges

Requirements of the PJM capacity performance market may lead to non-performance charges to Southeastern. These non-performance charges, if incurred, will be allocated to the capacity delivered in PJM (currently 120,100 kilowatts) in the month incurred.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by American Electric Power Service Corporation under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–3–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia to whom power may be scheduled pursuant to contracts between the Government, American Electric Power Service Corporation (hereinafter called the Company), PJM Interconnection LLC (hereinafter called PJM), and the Customer. The Government is responsible for providing the scheduling. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge:

$4.40 per kilowatt of total contract demand per month.

Initial Base Energy Charge:

17.80 mills per kilowatt-hour.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year and cumulative net revenue available for repayment by fiscal year:

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
2023	2,360,000	8,060,000
2024	2,430,000	10,490,000
2025	2,130,000	12,620,000
2026	2,210,000	14,830,000
2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual cumulative net revenue available for repayment from the planned cumulative net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Ancillary Services

0.81 mills per kilowatt-hour of energy estimated as of February 2020, is presented for illustrative purposes.

The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be

recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.34 per kilowatt of total contract demand per month, as an estimated cost as of February 2020.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Duke Energy Progress System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Capacity Performance Non-Performance Charges

Requirements of the PJM capacity performance market may lead to non-performance charges to Southeastern. These non-performance charges, if incurred, will be allocated to the capacity delivered in PJM (currently 120,100 kilowatts) in the month incurred.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by FERC, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–4–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia served through the facilities of American Electric Power Service Corporation (hereinafter called the Company) and PJM Interconnection LLC (hereinafter called PJM). The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge:

$4.40 per kilowatt of total contract demand per month.

Initial Base Energy Charge:

17.80 mills per kilowatt-hour.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year and cumulative net revenue available for repayment by fiscal year:

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
2023	2,360,000	8,060,000
2024	2,430,000	10,490,000
2025	2,130,000	12,620,000
2026	2,210,000	14,830,000
2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual cumulative net revenue available for repayment from the planned cumulative net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of the Company's rate.

Ancillary Services

0.81 mills per kilowatt-hour of energy estimated as of February 2020, is presented for illustrative purposes.

The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based

upon the determination in proceedings before FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.34 per kilowatt of total contract demand per month, as an estimated cost as of February 2020.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Duke Energy Progress System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's OATT.

Capacity Performance Non-Performance Charges

Requirements of the PJM capacity performance market may lead to non-performance charges to Southeastern. These non-performance charges, if incurred, will be allocated to the capacity delivered in PJM (currently 120,100 kilowatts) in the month incurred.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule NC–1–D

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted pursuant to a contract between the Government and Virginia Electric and Power Company (hereinafter called the Virginia Power) and PJM Interconnection LLC (hereinafter called PJM), scheduled pursuant to a contract between the Government and Duke Energy Progress (formerly known as Carolina Power & Light and hereinafter called DEP), and billed pursuant to contracts between the Government and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Virginia Power's transmission and distribution system.

Monthly Rate

The initial base monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Initial Base Capacity Charge:

$4.40 per kilowatt of total contract demand per month.

Initial Base Energy Charge:

17.80 mills per kilowatt-hour.

The rates are based on a repayment study that projects that the Kerr-Philpott System will produce the following net revenue available for repayment by fiscal year and cumulative net revenue available for repayment by fiscal year:

Fiscal year	Estimated annual net revenue available for repayment	Cumulative net revenue available for repayment
2020	$200,000	$200,000
2021	2,560,000	2,760,000
2022	2,940,000	5,700,000
2023	2,360,000	8,060,000
2024	2,430,000	10,490,000
2025	2,130,000	12,620,000
2026	2,210,000	14,830,000
2027	2,310,000	17,140,000
2028	2,420,000	19,560,000
2029	2,530,000	22,090,000

The rates include a true-up of the capacity and energy rates based on the variance of the actual cumulative net revenue available for repayment from the planned cumulative net revenue available for repayment in the table above. For every $100,000 under-recovery of the planned cumulative net revenue available for repayment, Southeastern will increase the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and increase the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. For every $100,000 of over-recovery of the planned cumulative net revenue available for repayment, Southeastern will reduce the base capacity charge by $0.02 per kilowatt per month, up to a maximum of $0.75 per kilowatt per month, and reduce the base energy charge by 0.10 mills per kilowatt-hour, up to a maximum of 3.0 mills per kilowatt per hour, to be implemented April 1 of the next fiscal year. Southeastern will give written notice to the customers of the amount of the true-up to the capacity and energy rates by February 1 of the next fiscal year.

Additional rates for transmission and ancillary services provided under this rate schedule shall be the rates charged Southeastern Power Administration by

the Virginia Power and DEP. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission (FERC) of Virginia Power's or DEP's rate.

Transmission

$7.32 per kilowatt of total contract demand per month estimated as of February 2020, is presented for illustrative purposes.

Ancillary Services

0.81 mills per kilowatt-hour of energy estimated as of February 2020, is presented for illustrative purposes.

The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before FERC involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge

$1.34 per kilowatt of total contract demand per month, as an estimated cost as of February 2020.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Duke Energy Progress System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving the Virginia Power or PJM's OATT.

Transmission, System Control, Reactive, and Regulation Services

The charges for transmission and ancillary services shall be governed by and subject to refund based upon the determination in the proceeding involving Virginia Power's, DEP's, or PJM's OATT.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to Virginia Power (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Virginia Power's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by FERC, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Replacement–2–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and Virginia to whom power is provided pursuant to contracts between the Government and the customer from the John H. Kerr and Philpott Projects (or Kerr-Philpott System).

Applicability

This rate schedule shall be applicable to the sale of wholesale energy purchased to meet contract minimum energy and sold under appropriate contracts between the Government and the Customer.

Character of Service

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Charge

The customer will pay its ratable share of Southeastern's monthly cost for replacement energy. The ratable share will be the cost allocation factor for the customer listed in the table below times Southeastern's monthly cost for replacement energy purchased for the Kerr-Philpott System, rounded to the nearest $0.01.

Contract Number 89–00–1501–	Customer	Capacity allocation	Average energy	Cost allocation factor (percent)
1230	Albemarle EMC	2,593	6,978,071	1.5868510
1221	B–A–R–C EC	3,740	10,099,971	2.2967870
853	Brunswick EMC	3,515	10,069,899	2.2899490
854	Carteret-Craven EMC	2,679	7,674,895	1.7453120
869	Carteret-Craven EMC	56	42,281	0.0096150
855	Central EMC	1,239	3,549,532	0.8071830
1220	Central Virginia EC	7,956	21,618,671	4.9162010
1203	City of Bedford	1,200	906,166	0.2060670
1204	City of Danville	5,600	4,228,775	0.9616460
895	City of Elizabeth City	2,073	1,565,205	0.3559360

Contract Number 89–00–1501–	Customer	Capacity allocation	Average energy	Cost allocation factor (percent)
1215	City of Franklin	1,003	754,359	0.1715450
878	City of Kinston	1,466	1,106,893	0.2517130
880	City of Laurinburg	415	313,343	0.0712560
881	City of Lumberton	895	675,764	0.1536720
1205	City of Martinsville	1,600	1,208,222	0.2747560
882	City of New Bern	1,204	909,072	0.2067280
1206	City of Radford	1,300	981,575	0.2232150
885	City of Rocky Mount	2,538	1,916,300	0.4357770
1208	City of Salem	2,200	1,661,127	0.3777490
892	City of Washington	2,703	2,040,882	0.4641070
889	City of Wilson	2,950	2,227,377	0.5065170
1222	Community EC	4,230	11,439,200	2.6013350
1211	Craig-Botetourt EC	1,692	4,593,320	1.0445460
1231	Edgecombe-Martin County EMC	4,155	11,327,753	2.5759920
875	Fayetteville Public Works Commission	5,431	4,100,640	0.9325070
856	Four County EMC	4,198	12,026,581	2.7349090
891	Greenville Utilities Commission	7,534	5,688,496	1.2935940
857	Halifax EMC	585	1,675,929	0.3811150
1232	Halifax EMC	2,021	5,499,876	1.2507010
1216	Harrisonburg Electric Commission	2,691	2,050,360	0.4662630
858	Jones-Onslow EMC	5,184	14,851,310	3.3772670
859	Lumbee River EMC	3,729	10,682,974	2.4293650
1223	Mecklenburg EMC	11,344	30,927,112	7.0329910
1224	Northern Neck EC	3,944	10,613,786	2.4136320
1225	Northern Virginia EC	3,268	8,910,499	2.0262950
860	Pee Dee EMC	2,968	8,502,833	1.9335900
861	Piedmont EMC	1,086	3,111,400	0.7075490
862	Pitt & Greene EMC	1,580	4,526,441	1.0293370
1226	Prince George EC	2,530	6,808,541	1.5482990
863	Randolph EMC	3,608	10,336,328	2.3505360
1227	Rappahannock EC	22,427	60,687,959	13.8007690
1233	Roanoke EMC	5,528	14,963,086	3.4026860
1228	Shenandoah Valley EMC	9,938	27,049,304	6.1511560
864	South River EMC	6,119	17,529,931	3.9864000
1229	Southside EC	14,575	39,223,111	8.9195450
865	Tideland EMC	680	1,948,088	0.4430060
1234	Tideland EMC	2,418	6,579,856	1.4962940
870	Town of Apex	145	109,482	0.0248970
871	Town of Ayden	208	157,049	0.0357140
893	Town of Belhaven	182	137,418	0.0312500
872	Town of Benson	120	90,605	0.0206040
1212	Town of Blackstone	389	292,568	0.0665320
873	Town of Clayton	161	121,562	0.0276440
1213	Town of Culpepper	391	297,916	0.0677480
894	Town of Edenton	775	585,159	0.1330680
1214	Town of Elkton	171	128,609	0.0292460
1218	Town of Enfield	259	194,810	0.0443010
874	Town of Farmville	237	178,946	0.0406930
876	Town of Fremont	60	45,303	0.0103020
896	Town of Hamilton	40	30,202	0.0068680
897	Town of Hertford	203	153,274	0.0348550
898	Town of Hobgood	46	34,732	0.0078980
877	Town of Hookerton	30	22,651	0.0051510
879	Town of La Grange	93	70,219	0.0159680
868	Town of Louisburg	857	2,455,632	0.5584240
883	Town of Pikeville	40	30,202	0.0068680
884	Town of Red Springs	117	88,340	0.0200890
1207	Town of Richlands	500	377,569	0.0858610
899	Town of Robersonville	232	175,170	0.0398350
900	Town of Scotland Neck	304	229,533	0.0521970
886	Town of Selma	183	138,173	0.0314210
887	Town of Smithfield	378	285,407	0.0649030
901	Town of Tarboro	2,145	1,619,568	0.3682980
888	Town of Wake Forest	149	112,501	0.0255830
1217	Town of Wakefield	106	79,723	0.0181290
1219	Town of Windsor	331	248,946	0.0566120
866	Tri-County EMC	3,096	8,869,532	2.0169790
867	Wake EMC	2,164	6,199,505	1.4098010

Contract Number 89–00–1501–	Customer	Capacity allocation	Average energy	Cost allocation factor (percent)
Total	.....	196,500	439,743,400	100.0000000

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

[FR Doc. 2020–18821 Filed 8–26–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Notice of Interim Approval of Rate Schedules for Cumberland System

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of interim approval.

SUMMARY: The Administrator for the Southeastern Power Administration (Southeastern) has confirmed and approved, on an interim basis, new rate schedules CBR–1–J, CSI–1–J, CEK–1–J, CM–1–J, CC–1–K, CK–1–J, CTV–1–J, CTVI–1–C, and Replacement–3. The rate schedules are approved on an interim basis through September 30, 2025, and are subject to confirmation and approval by the Federal Energy Regulatory Commission (FERC) on a final basis.

DATES: The approval of rates on an interim basis is effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Cathy Stillson, Power Marketing Advisor, Finance and Marketing, Southeastern Power Administration, U.S. Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3847; Email: *Cathy.Stillson@sepa.doe.gov.*

SUPPLEMENTARY INFORMATION: FERC, by order issued May 6, 2016, 155 FERC ¶ 62,092, confirmed and approved Rate Schedules CBR–1–I, CSI–1–I, CEK–1–I, CM–1–I, CC–1–J, CK–1–I, CTV–1–I, CTVI–1–B and Replacement–3 for the period from October 1, 2015, to September 30, 2020. This order replaces these rate schedules on an interim basis, subject to final approval by FERC.

The power marketing policy provides peaking capacity, along with 1500 kilowatt-hours (kWh) of energy with each kilowatt of capacity, to customers outside the Tennessee Valley Authority (TVA) transmission system.

A current repayment study using present rates, under the original marketing policy and the application of an annual true-up adjustment, shows that revenues will not be adequate to meet repayment criteria. A revised study shows that a revenue requirement increase of $2,650,000, or about four percent, would be adequate to meet repayment criteria. The rate schedules CBR–1–J, CSI–1–J, and CM–1–J, include rates for customers who receive 1500 kWh of energy annually for each kilowatt of capacity. The transmission and scheduling arrangements under each of these rate schedules are different. Rate Schedule CEK–1–J is for East Kentucky Power Cooperative, which receives a fixed quantity of energy annually from projects connected to the TVA transmission system plus the output of the Laurel Project. Rate Schedule CK–1–J is for customers in Kentucky who receive 1800 kWh of energy annually for each kilowatt of capacity. Rate Schedule CC–1–K is for customers on the Duke Energy Progress, Western Division. Rate Schedule CTV–1–J is for TVA and Tennessee Valley Public Power Association (TVPPA). Rate Schedule CTVI–1–C is for customers inside the TVA system who choose a power supplier other than TVA. The rate schedules continue adjustments annually on April 1 of each year, based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year, to the base demand charge and base additional energy charge. The annual adjustment will be, for each increase of $1,000,000 to specific power plant-in-service, an increase of $0.003 per kilowatt per month added to the base capacity rate and an increase of 0.013 mills per kWh added to the base additional energy rate. Southeastern will give written notice to the customers of the amount of the true-up by February 1 of each year.

Signing Authority

This document of the Department of Energy was signed on August 18, 2020, by Virgil G. Hobbs, III, Administrator for Southeastern Power Administration, 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 August 21, 2020.

Treena V. Garrett,

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

Department of Energy

Administrator, Southeastern Power Administration

In the Matter of:
Southeastern Power Administration
Cumberland System Power Rates
Rate Order No. SEPA–64

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Section 302(a) of the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7152(a)), the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), relating to the Southeastern Power Administration (Southeastern), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated to Southeastern's Administrator the authority to develop power and

transmission rates, to the Deputy Secretary of Energy the authority to confirm, approve, and place such rates into effect on an interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place into effect on a final basis, or to disapprove, rates developed by the Administrator under the delegation. By Delegation Order No. 00–002.00S, effective January 15, 2020, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary of Energy. By Redelegation Order No. 00–002.10E, effective February 14, 2020, the Under Secretary of Energy further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. By Redelegation Order No. 00–002.10–03, effective July 8, 2020, the Assistant Secretary for Electricity further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Administrator, Southeastern Power Administration. This rate is issued by the Administrator, Southeastern Power Administration pursuant to the authority delegated in Redelegation Order No. 00–002.10–03.

Background

Power from the Cumberland Projects is presently sold under Wholesale Power Rate Schedules CBR–1–I, CSI–1–I, CEK–1–I, CM–1–I, CC–1–J, CK–1–I, CTV–1–I, CTVI–1–B, and Replacement–3. These rate schedules were approved by FERC on May 6, 2016, for a period ending September 30, 2020 (155 FERC ¶ 62,092). The power marketing policy provides peaking capacity, along with 1500 kilowatt-hours (kWh) of energy with each kilowatt (kW) of capacity, to customers outside the Tennessee Valley Authority (TVA) transmission system.

Public Notice and Comment

Notice of a proposed rate adjustment was published in the **Federal Register** on March 30, 2020 (85 FR 17574). Southeastern proposed an increase to existing rate schedules and to the annual true-up adjustment for the sale of power from the Cumberland System effective October 1, 2020, through September 30, 2025. The notice advised interested parties of a public information and comment forum to be held in Elberton, Georgia, and also by webinar, on May 12, 2020. Written comments were due on or before June 29, 2020.

The rate schedules recover cost from capacity, energy, and additional energy. The revenue requirement is $66,150,000 per year. The rates would be as follows:

Cumberland System Rates

Original Marketing Policy

Inside TVA Preference Customers

Capacity and Base Energy: $3.430 per kW/Month.

Additional Energy: 12.835 mills per kWh.

Transmission: Pass-through.

Outside TVA Preference Customers (Excluding Customers Served Through Duke Energy Progress or East Kentucky Power Cooperative)

Capacity and Base Energy: $3.430 per kW/Month.

Additional Energy: 12.835 mills per kWh.

Transmission: Monthly TVA Transmission Charge divided by 545,000.

Customers Served Through Duke Energy Progress

Capacity and Base Energy: $3.904 per kW/Month.

TVA Transmission: TVA rate at border as computed above, adjusted for DEP delivery.

East Kentucky Power Cooperative

Capacity: $1.826 per kW/Month.

Energy: 12.835 mills per kWh.

Transmission: Monthly TVA Transmission Charge divided by 545,000.

The proposed rate schedules continue adjustments annually on April 1 of each year, based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year, to the base demand charge and base additional energy charge. The annual adjustment will be, for each increase of $1,000,000 to specific power plant-in-service, an increase of $0.003 per kilowatt per month added to the base capacity rate and an increase of 0.013 mills per kilowatt-hour added to the base additional energy rate. Southeastern will give written notice to the customers of the amount of the true-up by February 1 of each year.

Public Comments

Southeastern received three written comments in response to the ''Notice of proposed rates, public forum, and opportunities for public review and comment'' published in the **Federal Register** at 85 FR 17574 on March 30, 2020. Southeastern received oral comments from five participants as part of the public information and comment forum on May 12, 2020.

The comments have been combined and condensed into the following categories:

1. Dam Safety Act
2. Corps O&M Cost Increases
3. Non-hydropower Cost Inclusion and Operational Effect
4. Rate Competitiveness
5. Capital Cost Recovery for Rehabilitations
6. Appreciation for Corps Operations & Southeastern Efforts

Southeastern's response follows each comment category.

1. Dam Safety Act

Comment: [Commenter 3] SEPA's conclusions regarding the recovery of major rehabilitation projects for the Cumberland System is in accordance with SEPA precedent and recent Army Corps of Engineers (''Corps'') guidance. On April 17, 2019, the Corps issued revised implementation guidance for Section 1139 of the Water Resources Development Act of 2016 addressing ''the application of Section 1203 cost sharing for modifications related to changes in the state-of-the-art design or construction criteria.'' The April 17th guidance does not provide direction that indicates SEPA's prior determination of applying the Dam Safety Act was incorrect. Therefore, SEPA's March 30, 2020 proposed rate structure and the application of the Dam Safety Act should remain intact with regard to the major rehabilitation costs.

Response: The Corps issued Engineering and Construction Bulletin No. 2019–17 (Bulletin) in December 2019. The Bulletin supersedes all prior guidance related to cost sharing for dam safety and provides interim guidance for deciding when dam safety modifications would qualify as changes in state-of-the-art design or construction criteria. The Bulletin does not indicate that Southeastern's prior determination of applying the Dam Safety Act was incorrect, and the cost sharing guidance in the Bulletin will only apply prospectively. Southeastern, under its statutory authority to determine rates, will continue to apply the Dam Safety Act with regard to the applicable major rehabilitation costs.

2. Corps Operation and Maintenance (O&M) Cost Increases

Comment: [Commenter 1] In reviewing the O&M report, we were struck by the significant escalations in the USACE's O&M costs. These increases are significantly higher than the national inflationary rate and are in stark contrast to O&M increase in the electric industry in general.

[Commenter 3] is concerned that the Corps' costs attributed to the hydropower program continue to rise and may undermine the financial viability and value of the SEPA hydropower resource.

Response: Southeastern continues to work with preference customers and the Corps to review O&M actual costs and estimates to ensure accuracy of cost assignment and projections to establish the lowest possible rates consistent with sound business principles within the meaning of Section 5 of the Flood Control Act of 1944.

3. Non-Hydropower Cost Inclusion and Operational Effect

Comment: [Commenter 1] Non-hydropower costs incurred by the USACE and included in the SEPA rates continue to be a significant issue. Hydropower customers should not have to cover the USACE's costs for work associated with other water interest groups. Additionally, we would request SEPA to re-examine the shared costs to ensure the rates do not cover shared costs for other interest entities.

[Commenter 2] We are concerned about non-hydropower related expenses and other unauthorized costs being charged to preference power customers for the Cumberland System. Environmental concerns, water supply issues, and other competing uses are being prioritized above water availability for power production. As [Commenter 2] communicated to USACE in our 6/13/18 letter . . . regarding J. Percy Priest Draft Water Supply Reallocation comments, it is important to correctly determine impacts to hydropower so the proper amount of revenue from all sources is collected and applied to offset power repayment. Other revisions, such as the May 2019 revision of the 1998 Dale Hollow Dam and Reservoir Control Manual are likely to divert resources away from the capability for hydropower to effectively and efficiently produce power.

Response: Southeastern is working with the Corps to assure that costs are correctly allocated to joint costs versus the hydropower purpose and to specific purposes, if applicable, versus joint costs. Southeastern leadership is part of the Federal Hydropower Council and is working with the Corps, the US Bureau of Reclamation, and the other Power Marketing Administrations to discuss changes and to improve cost charging practices for the Federal hydropower program.

4. Rate Competitiveness

Comment: [Commenter 1] Recent events in the power generation field have led to unprecedented decreases in market rates for energy purchases; this has principally been fueled by significant reduction in the cost of natural gas. The hydropower that SEPA markets is desirable due to its negligible impact on the environment; however ultimately the power purchase decision is principally driven by cost.

[Commenter 2] Proposed rate could exceed prevailing alternative power resources in a depressed energy market. Other industry forecasts show forward prices for power, renewables, and natural gas remaining soft for the foreseeable future.

[Commenter 3] is concerned that the Corps' costs attributed to the hydropower program continue to rise and may undermine the financial viability and value of the SEPA hydropower resource.

Response: Southeastern works to ensure the rates for Cumberland System power remain competitive with the customers' resource alternatives. We strive to keep rates as low as possible and meet all revenue requirements and repayment criteria. Southeastern will work with the preference customers and the Corps to remain competitive in providing energy and capacity.

5. Capital Cost Recovery for Rehabilitations

Comment: [Commenter 1] Given that there is a total of 28 hydroelectric units in the Cumberland river system and that virtually all of them will need to be rehabilitated over the next few years, the upward pressure on the rates is considerable. We would strongly recommend that every effort be made to contain costs and optimize operations.

[Commenter 2] appreciates that these valuable assets must be rehabilitated and maintained to produce energy and remain available at peak times. However, rates should not result in total costs exceeding prevailing market prices of alternative sources of power.

[Commenter 3] SEPA precedent and Corps guidance clearly supports SEPA's conclusions in regard to the recovery of the major rehabilitation projects for the Cumberland Systems. As such, SEPA's March 30, 2020 proposed rate structure and the application of the Dam Safety Act should remain intact.

Response: Southeastern, the Corps, and the preference customers work together in reviews of planned rehabilitation specifications and the related costs to facilitate discussion and decision input for cost containment and operation optimization. Customer Funding agreements for rehabilitation projects specify amounts, work items and provide estimated rate impacts. Southeastern will continue these coordination efforts to meet cost and operational goals. Southeastern notes it retains authority to ensure rates for power will be the lowest possible rates consistent with sound business principles within the meaning of Section 5 of the Flood Control Act of 1944. Southeastern continues to apply the cost sharing provision of the Dam Safety Act to the repair costs at Wolf Creek and Center Hill.

6. Appreciation for Corps Operations & Southeastern Efforts

Comment: [Commenter 1] I would like to express our appreciation to SEPA for its ongoing efforts in managing the hydropower rates. I would also like to express our appreciation to the USACE for its faithful attention to the Cumberland River system and more specifically its efforts to maintain, rehabilitate and operate the associated hydropower system.

[Commenter 2] We hope Southeastern Power Administration will continue to prudently manage factors impacting rates to minimize costs. Similar to [Commenter 2]'s mission to safely deliver competitive and reliable wholesale power to our Member-Owners, the Flood Control Act of 1944 requires SEPA to set the ''lowest possible rates'' consistent with sound business principles. To that end, we respectfully request continued efforts to lower the overall rate.

Response: Southeastern Power Administration is committed to the Federal hydropower program and its preference customers. Working relationships between Southeastern, its customers, and the Corps are valued and support our priorities to improve Federal hydropower's competitiveness in the energy market and in the delivery of reliable wholesale power.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in March, 2020, for the Cumberland System, shows that with the proposed rates, all system power costs are paid within the appropriate repayment period and meet the cost recovery criteria set forth in DOE Order RA 6120.2. The Administrator of Southeastern Power Administration has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers

consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, as amended, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Determination Under Executive Order 12866

Southeastern has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials, is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635–6711.

Order

In view of the foregoing and pursuant to the authority redelegated to me by the Assistant Secretary for Electricity, I hereby confirm and approve on an interim basis, effective October 1, 2020, attached Wholesale Power Rate Schedules CBR–1–J, CSI–1–J, CEK–1–J, CM–1–J, CC–1–K, CK–1–J, CTV–1–J, CTVI–1–C, and Replacement–3. The rate schedules shall remain in effect on an interim basis through September 30, 2025, unless such period is extended or until FERC confirms and approves them or substitute rate schedules on a final basis.

Dated: August 18, 2020.

Virgil G. Hobbs, III,

Administrator, Southeastern Power Administration.

Wholesale Power Rate Schedule CBR–1–J

Availability

This rate schedule shall be available to Big Rivers Electric Corporation and the City of Henderson, Kentucky (hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and Tennessee Valley Authority (TVA).

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Monthly Rate

The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1,500 hours of energy annually): $3.430 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 12.835 mills per kilowatt-hour.

True-up Adjustment: The base demand charge and base additional energy charge will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. The adjustment is for each increase of $1,000,000 to specific power plant-in-service an increase of $0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.013 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Transmission Charge: Monthly TVA Transmission Charge divided by 545,000.

Energy To Be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{c}\textit{Number of kilowatts unavailable}\\ \textit{for at least 12 hours in any calendar day}\end{array}\right) \times \left(\frac{\textit{Monthly Capacity Charge}}{\textit{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule CSI–1–J

Availability

This rate schedule shall be available to Southern Illinois Power Cooperative (hereinafter the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and Tennessee Valley Authority (TVA).

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Monthly Rate

The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1500 hours of energy annually): $3.430 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 12.835 mills per kilowatt-hour.

True-up Adjustment: The base demand charge and base additional energy charge will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. The adjustment is for each increase of $1,000,000 to specific power plant-in-service an increase of $0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.013 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Transmission Charge: Monthly TVA Transmission Charge divided by 545,000.

Energy To Be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{c}\textit{Number of kilowatts unavailable}\\ \textit{for at least 12 hours in any calendar day}\end{array}\right) \times \left(\frac{\textit{Monthly Capacity Charge}}{\textit{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule CEK–1–J

Availability

This rate schedule shall be available to East Kentucky Power Cooperative (hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and power available from the Laurel Project and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of the Customer.

Points of Delivery

The points of delivery will be the 161,000 volt bus of the Wolf Creek Power Plant and the 161,000 volt bus of the Laurel Project. Other points of delivery may be as agreed upon.

Billing Month

The billing month for power sold under this schedule shall end at 2400

hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service

The Customer shall, at its own expense, provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Tennessee Valley Authority (TVA) on its side of the delivery point.

Monthly Rate

The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge: $1.826 per kilowatt/month of total contract demand.

Initial Base Energy Charge: 12.835 mills per kilowatt-hour.

True-up Adjustment: The base demand charge and base energy charge will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. The adjustment is for each increase of $1,000,000 to specific power plant-in-service an increase of $0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.013 mills per kilowatt-hour added to the energy rate.

Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Transmission Charge: Monthly TVA Transmission Charge divided by 545,000.

Energy To Be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand plus 369 kilowatt-hours of energy delivered for each kilowatt of contract demand to supplement energy available at the Laurel Project. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{c}\textit{Number of kilowatts unavailable}\\ \textit{for at least 12 hours in any calendar day}\end{array}\right) \times \left(\frac{\textit{Monthly Capacity Charge}}{\textit{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule CM–1–J

Availability

This rate schedule shall be available to Cooperative Energy (formerly the South Mississippi Electric Power Association), Municipal Energy Agency of Mississippi, and Mississippi Delta Energy Agency (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Mississippi Power and Light.

Points of Delivery

The points of delivery will be at interconnection points of the Tennessee Valley Authority (TVA) system and the Mississippi Power and Light system. Other points of delivery may be as agreed upon.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Monthly Rate

The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1500 hours of energy annually): $3.430 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 12.835 mills per kilowatt-hour.

True-Up Adjustment

The base demand charge and base additional energy charge will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. The adjustment is for each increase of $1,000,000 to specific power plant-in-service an increase of $0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.013 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the Customers of the amount of the true-up by February 1 of each year.

Transmission Charge: Monthly TVA Transmission Charge divided by 545,000.

Energy To Be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the

Customer will schedule and accept an allocation of 1500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{c}\textit{Number of kilowatts unavailable}\\ \textit{for at least } 12 \textit{ hours in any calendar day}\end{array}\right) \times \left(\frac{\textit{Monthly Capacity Charge}}{\textit{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule CC–1–K

Availability

This rate schedule shall be available to public bodies and cooperatives served through the facilities of Duke Energy Progress (formerly known as Carolina Power & Light Company), Western Division (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Duke Energy Progress, Western Division.

Points of Delivery

The points of delivery will be at interconnecting points of the Tennessee Valley Authority (TVA) system and the Duke Energy Progress, Western Division system. Other points of delivery may be as agreed upon.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Monthly Rate

The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1500 hours of energy annually at the TVA Border): $3.904 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 12.835 mills per kilowatt-hour.

True-up Adjustment: The base demand charge and base additional energy charge will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. The adjustment is for each increase of $1,000,000 to specific power plant-in-service an increase of $0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.013 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the Customers of the amount of the true-up by February 1 of each year.

Transmission Charge: Monthly TVA Transmission Charge divided by 545,000, and adjusted for Duke Energy Progress delivery. The adjustment under the current contract is 14,000/12,300.

Energy To Be Furnished by the Government

The Government will sell to the Customers and the Customers will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to Duke Energy Progress (less applicable losses). The Customer's contract demand and accompanying energy allocation will be divided pro rata among its individual delivery points served from the Duke Energy Progress, Western Division transmission system.

Wholesale Power Rate Schedule CK–1–J

Availability

This rate schedule shall be available to public bodies served through the facilities of Kentucky Utilities Company (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of

161,000 volts to the transmission systems of Kentucky Utilities Company.

Points of Delivery

The points of delivery will be at interconnecting points between the Tennessee Valley Authority (TVA) system and the Kentucky Utilities Company system. Other points of delivery may be as agreed upon.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Monthly Rate

The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1,500 hours of energy annually): $3.430 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 12.835 mills per kilowatt-hour.

True-up Adjustment: The base demand charge and base additional energy charge will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. The adjustment is for each increase of $1,000,000 to specific power plant-in-service an increase of $0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.013 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the Customers of the amount of the true-up by February 1 of each year.

Transmission Charge

Monthly TVA Transmission Charge divided by 545,000.

Energy To Be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects and the Customer will accept an allocation of 1500 kilowatt-hours of energy for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customers may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

For billing purposes, each kilowatt of capacity will include 1500 kilowatt-hours of energy per year. Customers will pay for additional energy at the additional energy rate.

Wholesale Power Rate Schedule CTV–1–J

Availability

This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA) on behalf of members of the Tennessee Valley Public Power Association (hereinafter called TVPPA).

Applicability

This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the ''Cumberland Projects'') and the Laurel Project sold under agreement between the Department of Energy and TVA.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Billing Month

The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Contract Year

For purposes of this rate schedule, a contract year shall be as in Section 13.1 of the Southeastern Power Administration—Tennessee Valley Authority Contract.

Power Factor

TVA shall take capacity and energy from the Department of Energy at such power factor as will best serve TVA's system from time to time; provided, that TVA shall not impose a power factor of less than .85 lagging on the Department of Energy's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

Monthly Rate

The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1500 hours of energy annually): $3.430 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 12.835 mills per kilowatt-hour.

True-up Adjustment: The base demand charge and base additional energy charge will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. The adjustment is for each increase of $1,000,000 to specific power plant-in-service an increase of $0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.013 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the TVA and TVPPA of the amount of the true-up by February 1 of each year.

Energy To Be Made Available

The Department of Energy shall determine the energy that is available from the projects for declaration in the billing month.

To meet the energy requirements of the Department of Energy's customers outside the TVA area (hereinafter called Outside Customers), 768,000 megawatt-hours of net energy shall be available annually (including 36,900 megawatt-hours of annual net energy to supplement energy available at Laurel Project). The energy requirement of the Outside Customers shall be available annually, divided monthly such that the maximum available in any month shall not exceed 240 hours per kilowatt of total Outside Customers contract demand, and the minimum amount available in any month shall not be less than 60 hours per kilowatt of total Outside Customers demand.

In the event that any portion of the capacity allocated to Outside Customers is not initially delivered to the Outside Customers as of the beginning of a full contract year (July through June), the

1,500 hours, plus any such additional energy required as discussed above, shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

The energy scheduled by TVA for use within the TVA System in any billing month shall be the total energy delivered to TVA less (1) an adjustment for fast or slow meters, if any, (2) an adjustment for Barkley-Kentucky Canal of 15,000 megawatt-hours of energy each month which is delivered to TVA under the agreement from the Cumberland Projects without charge to TVA, (3) the energy scheduled by the Department of Energy in said month for the Outside Customers plus losses of two percent [2%], and (4) station service energy furnished by TVA.

Each kilowatt of capacity will include 1500 kilowatt-hours of energy per year, which is defined as base energy. Energy received in excess of 1500 kilowatt-hours per kilowatt will be subject to an additional energy charge identified in the monthly rates section of this rate schedule.

Service Interruption

When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system that are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available.

For such interruption or reduction (exclusive of any restrictions provided in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to TVA will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{l}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{c}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)\times\left(\frac{\text{Contract Demand}}{\text{880,000 Kilowatts}}\right)$$

Wholesale Power Rate Schedule CTVI–1–C

Availability

This rate schedule shall be available to customers (hereinafter called the Customer) who are or were formerly in the Tennessee Valley Authority (hereinafter called TVA) service area.

Applicability

This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the ''Cumberland Projects'') and the Laurel Project sold under agreement between the Department of Energy and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Billing Month

The billing month for capacity and energy sold under this schedule shall end at 2,400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Contract Year

For purposes of this rate schedule, a contract year shall be as in Section 13.1 of the Southeastern Power Administration—Tennessee Valley Authority Contract.

Monthly Rate

The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1,500 hours of energy annually): $3.430 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 12.835 mills per kilowatt-hour.

True-up Adjustment: The base demand charge and base additional energy charge will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. The adjustment is for each increase of $1,000,000 to specific power plant-in-service an increase of $0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.013 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Transmission Charge: The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before FERC or other overseeing entity involving the TVA's and other transmission provider's Open Access Transmission Tariff (OATT).

Proceedings before FERC or other overseeing entity involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Energy To Be Made Available

The energy will be scheduled by TVA and the Customer will receive their ratable share, in accordance with the Government-Customer Contract. Energy shall be accounted for, in accordance with agreements with TVA.

The Customer will receive a ratable share of their capacity, in accordance with the Government-Customer Contract.

Service Interruption

When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system that are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available. The customer will receive a ratable share of this capacity.

For such interruption or reduction (exclusive of any restrictions provided in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to the Customer will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{l}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{c}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)\times\left(\frac{\text{Contract Demand}}{\text{880,000 Kilowatts}}\right)$$

Wholesale Rate Schedule Replacement–3

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Alabama, Georgia, Illinois, Kentucky, North Carolina, Mississippi, Tennessee, and Virginia to whom power is provided pursuant to contracts between the Government and the customer from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, Cordell Hull, and Laurel Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'').

Applicability

This rate schedule shall be applicable to the sale of wholesale energy purchased to meet contract minimum energy sold under appropriate contracts between the Government and the Customer.

Character of Service

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Charge

The rate for replacement energy will be a formulary capacity charge based on the monthly cost to the Government to purchase replacement energy necessary to support capacity in the Cumberland System divided by the capacity available from the Cumberland System, which is 950,000 kilowatts in the published power marketing policy. The capacity rate will be adjusted for any capacity retained by the Customer's transmission facilitator.

Conditions of Service

The customer shall—at its own expense—provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system.

[FR Doc. 2020–18822 Filed 8–26–20; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2020–0413; FRL–10013–96–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; TSCA Section 8(b) Reporting Requirements for Toxic Substance Control Act (TSCA) Inventory Notifications (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), TSCA Section 8(b) Reporting Requirements for TSCA Inventory Notifications (EPA ICR Number 2565.03, OMB Control Number 2070–0201), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through August 31, 2020. Public comments were previously requested via the **Federal Register** on November 8, 2019 during a 60-day comment period. EPA is providing an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 28, 2020.

ADDRESSES: Submit your comments to EPA, referencing Docket ID Number EPA–HQ–OPPT–2020–0413, online using *https://www.regulations.gov.* Follow the online instructions for submitting comments. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: *For technical information contact:* Myrta R. Christian, Chemistry, Economics, and Sustainable Strategies Division (MC7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8498; email address: *christian.myrta@epa.gov. For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This information collection request (ICR) addresses the reporting and recordkeeping requirements under section 8(b) of the Toxic Substance Control Act (TSCA) that are associated with the TSCA Chemical Substance Inventory (TSCA Inventory), as codified in 40 CFR part 710. TSCA section 8(b) specifically requires that EPA compile and keep current a list of chemical substances manufactured or processed for commercial purposes in the United States. That mandate was amended in 2016 and TSCA section 8(b)(4) requires EPA to designate chemical substances on the TSCA Chemical Substance Inventory as either ''active'' or ''inactive'' in U.S. commerce. The first TSCA Inventory with all chemical substances designated as ''active'' or ''inactive'' published in February 2019. Starting August 5, 2019, manufacturers and processors are required to notify EPA before reintroducing inactive substances into U.S. commerce. The implementing regulations allow manufacturers and processors to notify EPA that it must change the commercial activity designation of the subject chemical substance from inactive to active on the TSCA Inventory. This ICR covers that notice, which is made online using EPA Form No. 9600–06 (Notice of Activity Form B). Other one-time activities that are covered by the existing ICR are now complete.

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Form Numbers: EPA Form Number 9600–06, Notice of Activity Form B.

Respondents/Affected Entities: Potential respondents to the information collection activities covered by this ICR are expected to include entities that manufacture (defined by statute to include import) or process chemical substances that are regulated under TCSA. These entities are typically identified under North American Industrial Classification System (NAICS) codes 325 (Chemical Manufacture) and 324 (Petroleum and Coal Products). Although such entities are generally companies, respondents can include anyone who engages in the covered activities.

Respondent's obligation to respond: Mandatory (40 CFR 710).

Estimated total number of potential respondents: 20 (total).

Frequency of response: On occasion.

Total estimated burden: 234 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated burden: $17,795 (per year), which includes no annualized capital investment or maintenance and operational costs.

Changes in the estimates: There is a decrease of 1,174,682 hours in the total estimated burden compared with the ICR currently approved by OMB. This decrease is largely the result of the completion of several activities associated with the initial rule familiarization and one-time reporting activities (−1,174,608 hours); a decrease in the estimated number of respondents that will need to register for CDX or otherwise update their CDX registrations (−85 hours); and the addition of CBI substantiation burden associated with the 2020 rule amendments (+7 hours). This additional burden is only applicable to submissions that include CBI claims for specific chemical identities, which are expected to be five percent of submissions. This change is considered an adjustment.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–18897 Filed 8–26–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0572; FRL–10012–81–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Chemical-Specific Rules Under the Toxic Substances Control Act Section 8(a), Certain Nanoscale Materials (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Chemical-Specific Rules under the Toxic Substances Control Act Section 8(a); Certain Nanoscale Materials to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through August 31, 2020. Public comments were previously requested via the **Federal Register** on January 28, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 28, 2020.

ADDRESSES: Submit your comments to EPA, referencing Docket ID Number EPA–HQ–OPPT–2010–0572 online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: *For technical information contact:* Jim Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics, 7405M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–8974; email address: *alwood.jim@epa.gov. For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This information collection request (ICR) covers reporting and

recordkeeping requirements for persons who manufacture or process chemical substances as nanoscale materials. Under the Toxic Substances Control Act (TSCA) section 8(a), EPA requires reporting and recordkeeping for certain chemical substances as nanoscale materials. EPA requires that persons who manufacture or process these nanoscale materials notify EPA of certain information which includes production volume, methods of manufacture and processing, exposure and release information, and available health and safety information. The reporting of these activities will provide EPA with an opportunity to evaluate the information and consider appropriate action under TSCA to reduce any risk to human health or the environment. The information will also inform EPA's assessments of new chemical nanoscale materials submitted to EPA under TSCA section 5.

EPA's Office of Pollution Prevention and Toxics (OPPT), other EPA Offices and/or other Federal agencies will generally be the primary groups for which information will be collected. However, to the extent that reported information is not considered to be confidential business information (CBI), environmental groups, environmental justice advocates, state and local government entities and other members of the public will have access to this information for their own use.

Form Numbers: 9600–07.

Respondents/affected Entities: Entities potentially affected by this ICR are nanomaterial manufacturers and nanomaterial processors.

Respondent's obligation to respond: Mandatory (40 CFR 704).

Estimated number of respondents: 285 per year.

Frequency of response: On occasion.

Total estimated burden: 40,089 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $3,067,546 (per year), includes $0 annualized capital or operation and maintenance costs.

Changes in the estimates: There is a decrease of 106,766 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease reflects EPA's expectation of decreased submissions. In the previous ICR period, the rule required an initial one-time reporting on current nanomaterials, while the reporting covered in this period only requires the reporting of new nanomaterials. Furthermore, burden estimates assume that the same manufacturers will report each year and, therefore, will have already undertaken rule familiarization in the previous ICR period. This change is an adjustment to the estimates.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–18887 Filed 8–26–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0320, OMB 3060–0489, OMB 3060–0634; FRS 17015]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written comments should be submitted on or before October 26, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0489.

Title: Section 73.37, Applications for Broadcast Facilities, Showing Required.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 365 respondents; 365 responses.

Estimated Hours per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 365 hours.

Total Annual Cost: $1,331,250.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: The information collection requirements contained in this collection are found under 47 CFR 73.37(d) which require an applicant for a new AM broadcast station, or for a

major change in an authorized AM broadcast station, to make a satisfactory showing that objectionable interference will not result to an authorized AM station as a condition for its acceptance if new or modified nighttime operation by a Class B station is proposed. The information collection requirements under 47 CFR 73.37(f) require applicants seeking facilities modification that would result in spacing that fail to meet any of the separation requirements to include a showing that an adjustment has been made to the radiated signal which effectively results in a site-to-site radiation that is equivalent to the radiation of a station with standard Model I facilities. FCC staff use the data to ensure that objectionable interference will not be caused to other authorized AM stations.

OMB Control Number: 3060–0320.

Title: Section 73.1350, Transmission System Operation.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 505 respondents; 505 responses.

Estimated Hours per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 253 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained under 47 CFR 73.1350(g) require licensees to submit a ''letter of notification'' to the FCC in Washington, DC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, whenever a transmission system control point is established at a location other than at the main studio or transmitter within three days of the initial use of that point. The letter should include a list of all control points in use for clarity. This notification is not required if responsible station personnel can be contacted at the transmitter or studio site during hours of operation.

OMB Control Number: 3060–0634.

Title: Section 73.691, Visual Modulation Monitoring.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 50 respondents; 106 responses.

Estimated Hours per Response: One hour.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 106 hours.

Total Annual Cost: None.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained under 47 CFR 73.691(b) require TV stations to enter into the station log the date and time of the initial technical problems that make it impossible to operate a TV station in accordance with the timing and carrier level tolerance requirements. If this operation at variance is expected to exceed 10 consecutive days, a notification must be sent to the FCC. The licensee must also notify the FCC upon restoration of normal operations. Furthermore, a licensee must send a written request to the FCC if causes beyond the control of the licensee prevent restoration of normal operations within 30 days. The FCC staff use the data to maintain accurate and complete technical information about a station's operation. In the event that a complaint is received from the public regarding a station's operation, this information is necessary to provide an accurate response.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–18836 Filed 8–26–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0812; FRS 17020]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before October 26, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0812.

Title: Regulatory Fee True-Up, Waiver or Exemption.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions, State, local or Tribal governments.

Number of Respondents and Responses: 19,820 respondents and 19,920 responses.

Estimated Time per Response: 0.25 hours–1 hour.

Frequency of Response: On occasion reporting requirements; annual recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 158 and 159.

Total Annual Burden: 10,030 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Licensees or regulatees concerned about disclosure of sensitive information in any submissions to the Commission may request confidential treatment pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from them.

The Commission provides broadcast licensees and commercial mobile radio service (CMRS) licensees with a ''true-up'' opportunity to update or otherwise correct their assessed fee amounts well before the actual due date for payment of regulatory fees. Providing a ''true-up'' opportunity is necessary because the data sources that are used to generate the fee assessments are subject to change at time of transfer or assignment of the license. The ''true-up'' is also an opportunity for regulatees to correct inaccuracies. Per 47 CFR 1.1119 and 1.1166, the FCC may, upon a properly submitted written request, waive or defer collection of an application fee or waive, reduce, or defer payment of a regulatory fee in a specific instance for good cause shown where such action would promote the public interest. When submitting the request, no specific form is required.

FCC requires that when licensees or regulates request exemption from regulatory fees based on their non-profit status, they must file a one-time documentation sufficient to establish their non-profit status. The documentation may take the form of an IRS Determination Letter, a state charter indicating non-profit status, proof of church affiliation indicating tax exempt status, etc.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–18901 Filed 8–26–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0805; FRS 17016]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before October 26, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0805.

Title: 700 MHz Eligibility, Regional Planning Requirements, and 4.9 GHz Guidelines (47 CFR 90.523, 90.527, and 90.1211).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit; not-for-profit institutions; state, local or tribal government.

Number of Respondents and Responses: 1,161 respondents; 1,161 responses.

Estimated Time per Response: 1 hour–628 hours.

Frequency of Response: On occasion reporting and one-time reporting requirements; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits (47 CFR 90.523, 90.527), and voluntary (47 CFR 90.1211). Statutory authority for this information collection is contained in 4(i), 11, 303(g), 303(r), 332(c)(7), and 337(f) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and 337(f), unless otherwise noted.

Total Annual Burden: 35,646 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: Section 90.523 requires that nongovernmental organizations that provide services which protect the safety of life or property obtain a written statement from an authorizing state or local government entity to support the nongovernmental organization's application for assignment of 700 MHz frequencies. *Section 90.527* requires 700 MHz regional planning regions to submit an initial plan for use of the 700 MHz general use spectrum in the consolidated narrowband segment 769–775 MHz and 799–805 MHz. Regional planning committees may modify plans by written request, which must contain the full text of the modification and certification that the modification was successfully coordinated with adjacent regions. Regional planning promotes a fair and open process in developing allocation assignments by requiring input from eligible entities in the allocation decisions and the application technical review/approval process. Entities that seek inclusion in the plan to obtain future licenses are considered

third party respondents. *Section 90.1211* authorizes the fifty-five 700 MHz regional planning committees to develop and submit on a voluntary basis a plan on guidelines for coordination procedures to facilitate the shared use of the 4940–4990 MHz (4.9 GHz) band. The Commission has stayed this requirement indefinitely. Applicants are granted a geographic area license for the entire fifty MHz of 4.9 GHz spectrum over a geographical area defined by the boundaries of their jurisdiction—city, county or state. Accordingly, licensees are required to coordinate their operations in the shared band to avoid interference, a common practice when joint operations are conducted.

Commission staff will use the information to assign licenses, determine regional spectrum requirements and to develop technical standards. The information will also be used to determine whether prospective licensees operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate regional requirements or provide for the efficient use of the available frequencies. This information collection includes rules to govern the operation and licensing of the 700 MHz and 4.9 GHz bands rules and regulation to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information will continue to be used to verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–18837 Filed 8–26–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 17006]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC or Commission or Agency) has transferred (within the FCC), renamed, and modified an existing system of records, FCC/OMD–31, Private or Civil Injury Claimants (formerly FCC/OGC–6, Private or Civil Injury Claimants), subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency. Staff in the Office of the Managing Director (OMD) and the Office of General Counsel (OGC) use the personally identifiable information (PII) in this system for purposes that include, but are not limited to, determining whether a damage claim filed against the FCC should be paid and for reference purposes when similar cases arise. As necessary, the records may be transferred to the appropriate Federal agency charged with the responsibility of disposition.

DATES: This action will become effective on September 28, 2020. Written comments on the system's routine uses are due by September 28, 2020. The routine uses in this action will become effective on September 28, 2020, unless written comments are received that require a contrary determination.

ADDRESSES: Send comments to Leslie F. Smith, Privacy Manager, Information Technology (IT), Federal Communications Commission (FCC), Washington, DC 20554, or to *Leslie.Smith@fcc.gov* or *Privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov* or *Privacy@fcc.gov* (and to obtain a copy of the Narrative Statement and the Supplementary Document, which includes details of the modifications to this system of records).

SUPPLEMENTARY INFORMATION: FCC/OMD–31 helps the FCC to determine whether a damage claim filed against the FCC should be paid and for reference purposes when similar cases arise. This notice serves to update and modify FCC/OMD–31 to reflect various necessary changes and updates, including an increased use of information technology, the expansion of the system's coverage of issues related to torts, and format changes required by OMB Circular A–108, since its previous publication. The substantive changes and modifications to the previously published version of the FCC/OMD–31 (formerly: FCC/OGC–6, Private or Civil Injury Claimants) system of records include:

1. Changing the name of the system of records to FCC/OMD–31, Private or Civil Injury Claimants, to note that this system is being transferred to the FCC's Office of the Managing Director. Both the Office of the Managing Director and the Office of General Counsel are the joint managers for this system of records. The joint management of this SORN is also reflected in the information in the System Manager's section.

2. Updating the Security Classification to follow OMB guidance and FCC guidance.

3. Adding 28 U.S.C. 1346(b), 1402(b), 2401(b), 2671 *et seq.,* 31 U.S.C. 3711; and Military Personnel and Civilian Employees' Claims Act, 31 U.S.C. 3721, to the Authorities for Maintenance of the System as part of the necessary updates to the system to add military and civilian employees to the groups who are private or civil injury claimants.

4. Modifying the Purposes, Categories of Individuals, and Categories of Records to add military and civilian employees to those individuals who are private or civil injury claimants.

5. Deleting routine use (1) Public Access, since releases under the FOIA are covered by 5 U.S.C. 552a(b)(2), so a separate routine use for them is not needed.

6. Updating language and/or renumbering four routine uses: (1) Adjudication and Litigation; (2) Law Enforcement and Investigation; (3) Congressional Inquiries; and (4) Government-wide Program Management and Oversight.

7. Adding four new routine uses: (5) Breach Notification to address real or suspected data breach situations at the FCC; (6) Assistance to Federal Agencies and Entities to allow the FCC to provide assistance to other Federal agencies in their data breach situations; (7) For Non-Federal Personnel to allow contractors performing or working on a contract for the Federal Government access to this system's information; and (8) Non-FCC Individuals and Organizations to provide information to individuals and organizations as necessary to obtain information related to an investigation. Routine Uses (5) and (6) are required by OMB Memorandum 17–12.

8. Adding two new sections: Reporting to a Consumer Reporting Agency to address valid and overdue debts owed by individuals to the FCC under the Debt Collection Act, as recommended by OMB; and History to reference the previous publication of this SORN in the **Federal Register**, as required by OMB Circular A–108.

The system of records is also updated to reflect various administrative changes related to policy and practices for storage, retrieval, and retention and disposal of the records; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

SYSTEM NAME AND NUMBER:

FCC/OMD–31, Private or Civil Injury Claimants.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Managing Director (OMD) and Office of General Counsel (OGC), Federal Communications Commission, Washington, DC 20554.

SYSTEM MANAGER(S):

Office of the Managing Director (OMD) and Office of General Counsel (OGC), Federal Communications Commission (FCC), Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 1346(b), 1402(b), 2401(b), 2671 *et seq.;* 31 U.S.C. 3711; Military Personnel and Civilian Employees' Claims Act, 31 U.S.C. 3721.

PURPOSE(S) OF THE SYSTEM:

Staff in OMD and OGC use information in the system's records for purposes that include, but are not limited to, determining whether the damage claim(s) (including claims filed by military personnel and civilian employees) filed against the FCC should be paid and for reference purposes when similar cases arise.[1] As necessary, the records may be transferred to the appropriate Federal agency charged with the responsibility of disposition.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals in this system include, but are not limited to, any individuals who are claimants under the Federal Tort Claims Act (FTCA), or the Military Personnel and Civilian Employees' Claims Act, or who assert a tort claim against an FCC employee.[2]

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system of records includes, but is not limited to, claims and supporting documentation (i.e., SF 95, Claim for Damage, Injury or Death), accident and incident reports, witness statements, tort claim vouchers, correspondence, memoranda, medical bills and payment receipts, repair and payment estimates and receipts, and pictures and other supporting documentation, and related types of records, reports, files, and materials, which are associated with individuals who are claimants under the Federal Tort Claims Act (FTCA), or the Military Personnel and Civilian Employees' Claims Act, or who assert a tort claim against an FCC employee.[3]

RECORD SOURCE CATEGORIES:

The sources for the information in this system of records include, but are not limited to:

(a) Individuals filing such claims;

(b) Individuals who are the subjects of such claims;

(c) Attorneys or representatives of the claimants and the subjects of the claims;

(d) Communication between FCC bureaus and offices (B/Os); and

(e) Investigative materials and related documentation and decisions involved in appeals, amendments, and litigation concerning such claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

1. Adjudication and Litigation—To disclose information to the Department of Justice (DOJ), or to other administrative or adjudicative bodies before which the FCC is authorized to appear, when: (a) The FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC have agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ or the FCC is deemed by the FCC to be relevant and necessary to the litigation.

2. Law Enforcement and Investigation—To disclose pertinent information to the appropriate Federal, State, local, or tribal agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

3. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

4. Government-wide Program Management and Oversight—To disclose information to the National Archives and Records Administration (NARA) for use in its records management inspections; to the Government Accountability Office (GAO) for oversight purposes (including determinations concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters); to the U.S. Treasury to disburse payment determination information to pay a claimant once the compensation decision has been reached; to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

5. Breach Notification—To appropriate agencies, entities, and persons when: (a) The Commission suspects or has confirmed that there has been a breach of data maintained in the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

6. Assistance to Federal Agencies and Entities—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national

[1] OGC reviews tort claims made against the FCC. Claimants should complete a Standard Form 95, Claim for Damage, Injury or Death, and are encouraged to submit the form by email to *tort.claims@fcc.gov.* If email is impracticable, claimants may also submit a claim by U.S. Mail as noted on the FCC's web page at: *www.fcc.gov.*

[2] Information in this system may also be covered by the FCC/OMD–29, Motor Vehicle Maintenance Program, system of records, See *https://www.fcc.gov/general/privacy-act-information#systems.*

[3] Ibid.

security, resulting from a suspected or confirmed breach.

7. For Non-Federal Personnel—To disclose information to non-Federal personnel, *i.e.,* contractors, performing or working on a contract in connection with private or civil injury claims and/or IT services for the Federal Government, who may require access to this system of records.

8. Non-FCC Individuals and Organizations—To disclose information to individuals, including former FCC employees, and organizations, in the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

REPORTING TO A CONSUMER REPORTING AGENCY:

In addition to the routine uses cited above, the Commission may share information from this system of records with a consumer reporting agency regarding an individual who has not paid a valid and overdue debt owed to the Commission, following the procedures set out in the Debt Collection Act, 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information in this system includes both paper and electronic records. The paper records, documents, and files are maintained in file cabinets that are located in OMD and OGC, and in the bureaus and offices (B/Os) of the FCC staff who provide the responses to such claims. The electronic records, files, and data are stored in the FCC's computer network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the name of the individual who filed the private or civil injury claims.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with the agency records control schedule N1–173–91–001, Item 6, approved by the National Archives and Records Administration (NARA).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records, files, and data are stored within FCC accreditation boundaries and maintained in a database housed in the FCC's computer network databases. Access to the electronic files is restricted to authorized OMD and OGC employees and contractors, and to employees and contractors in other B/Os who require access, as required, for specific purposes related to the private or civil injury claim processes; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other FCC employees and contractors may be granted access on a need-to-know basis.

The FCC's electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal IT privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

Paper records (*e.g.,* SF Form 95 and related claims' documents and materials) are kept in file cabinets in the OMD and OGC office suites. The file cabinets containing these paper records are maintained in non-public rooms in the OMD, OGC, and B/O suites. The file cabinets are locked at the end of the day, or when not in use. Access to these office suites is through card-coded doors. The access points to these offices are also monitored. Only authorized OMD, OCG, and B/O supervisors and staff who are responsible for responding to these claims have access to these paper records. Other FCC employees and contractors in other B/Os may be granted access as required, on a temporary or limited basis for specific purposes related to the private or civil injury claim processes. The same storage and security measures apply to these loaned documents.

RECORDS ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about them should follow the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment of records about them should follow the Notification Procedure below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to Leslie F. Smith, Privacy Manager, Information Technology, Federal Communications Commission, Washington, DC 20554, or email *Leslie.Smith@fcc.gov* or *Privacy@fcc.gov.* Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to records as required under 47 CFR part 0, subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The FCC previously gave full notice of FCC/OMD–31, Private or Civil Injury Claimants (formerly: FCC/OGC–6, Private or Civil Injury Claimants), by publication in the **Federal Register** on April 5, 2006 (71 FR 17234, 17245).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–18888 Filed 8–26–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1271; FRS 17018]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before September 28, 2020.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in

www.reginfo.gov also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1271.

Title: Promoting Telehealth for Low-Income Consumers, COVID–19 Telehealth Program.

Form Numbers: FCC Forms 460, 461, 462, and 463.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal governments.

Number of Respondents and Responses: 7,300 respondents; 34,623 responses.

Estimated Time per Response: 0.30–25 hours.

Frequency of Response: One-time and annual reporting requirements; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in sections 1–4, 201–205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 254, 303(r), and 403, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136, 134 Stat. 281 (2020).

Total Annual Burden: 198,347 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: The Name, Address, DUNS Number and Business Type will be disclosed in accordance with the FFATA/DATA Act reporting requirements as part of the COVID–19 Telehealth Program. Also, COVID–19 Telehealth Program award and disbursement amounts will be made public. We intend to keep other information submitted under the COVID–19 Telehealth Program confidential to the extent permitted by law. There is no assurance of confidentiality provided to respondents as part of the Connected Care Pilot Program, the selected applicants and estimated funding will be made public. Respondents under both programs may request materials or information submitted to the Commission to be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On March 31, 2020, the Commission adopted a Report and Order entitled *Promoting Telehealth for Low-Income Consumers; COVID–19 Telehealth Program,* WC Docket No. 18–213, WC Docket No. 20–89 (FCC 20–44), establishing two programs designed to assist health care providers in providing connected care services to consumers—the COVID–19 Telehealth Program and the Connected Care Pilot Program (collectively, Programs). The information collected herein is necessary in order to facilitate the Commission's and the Universal Service Administrative Company's administration of the Programs and to prevent waste, fraud, and abuse. The information also will allow the Commission to evaluate the extent to which the Programs are complying with the applicable rules and procedures for each program, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–18838 Filed 8–26–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201346.

Agreement Name: HLAG/ONE Cooperative Working Agreement.

Parties: Hapag-Lloyd AG; Hapag-Lloyd USA, LLC; and Ocean Network Express Pte. Ltd.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The Agreement authorizes the joint procurement of fuel at the ports covered by the agreement.

Proposed Effective Date: 10/6/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/33502.

Dated: August 24, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–18845 Filed 8–26–20; 8:45 am]

BILLING CODE 6730–02–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0250; Docket No. 2020–0001; Sequence No. 7]

Information Collection; General Services Administration Acquisition Regulation; Zero Burden Information Collection Reports

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding Zero Burden Information Collection Reports.

DATES: Submit comments on or before: October 26, 2020.

ADDRESSES: Submit comments identified by Information Collection 3090–0250, Zero Burden Information Collection Reports via *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 3090–0250. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0250, Zero Burden Information Collection Reports''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0250, Zero Burden Information Collection Reports'' on your attached document.

Instructions: Please submit comments only and cite Information Collection 3090–0250, Zero Burden Information Collection Reports, in all correspondence related to this collection. Comments received generally will be posted without change to *regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, General Services Acquisition Policy, at 202–445–0390 or via email at *Thomas.olinn@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information requirement consists of reports that do not impose collection burdens upon the public. These collections require information which is already available to the public at large, or that is routinely exchanged by firms during the normal course of business. A general control number for these collections decreases the amount of paperwork generated by the approval process.

Under clause 552.238–73, ''Identification of Electronic Office Equipment Providing Accessibility for the Handicapped,'' (previous clause number 552.238–70) the offeror is encouraged to identify office equipment, including any special peripheral that will facilitate electronic office equipment accessibility for handicapped individuals in its commercial catalogs and pricelists accepted by the Government.

B. Annual Reporting Burden

None.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 3090–0250, Zero Burden Information Collection Reports, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2020–18799 Filed 8–26–20; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment for the Institute for Safe Medication Practices (ISMP)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of delisting.

SUMMARY: The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) authorizes AHRQ, on behalf of the Secretary of HHS, to list as a patient safety organization (PSO) an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ accepted a notification of proposed voluntary relinquishment from the Institute for Safe Medication Practices (ISMP), PSO number P0009, of its status as a PSO, and has delisted the PSO accordingly.

DATES: The delisting was effective at 12:00 Midnight ET (2400) on August 17, 2020.

ADDRESSES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. Both directories can be accessed electronically at the following HHS website: *http://www.pso.ahrq.gov/listed.*

FOR FURTHER INFORMATION CONTACT: Cathryn Bach, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, MS 06N100B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, 42 U.S.C. 299b–21 to 299b–26, and the related Patient Safety Rule, 42 CFR part 3, published in the **Federal Register** on November 21, 2008 (73 FR 70732–70814), establish a framework by which individuals and entities that meet the definition of provider in the Patient Safety Rule may voluntarily report information to PSOs listed by AHRQ, on a privileged and confidential basis, for

the aggregation and analysis of patient safety events.

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of PSOs.

AHRQ has accepted a notification of proposed voluntary relinquishment from the Institute for Safe Medication Practices (ISMP) to voluntarily relinquish its status as a PSO. Accordingly, the Institute for Safe Medication Practices (ISMP), P0009, was delisted effective at 12:00 Midnight ET (2400) on August 17, 2020. Institute for Safe Medication Practices (ISMP) has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO and of section 3.108(c)(2)(ii) regarding disposition of PSWP consistent with section 3.108(b)(3). According to section 3.108(b)(3) of the Patient Safety Rule, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO website at *http://www.pso.ahrq.gov.*

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–18877 Filed 8–26–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2020–0088]

Privacy Act of 1974; System of Records

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is establishing a new system of records to be maintained by the Centers for Disease Control and Prevention, 09–20–0180, ''Electronic Import Permit Program Portal (eIPP Portal).'' The system of records will be used by CDC to monitor the importation of infectious biological agents, infectious substances, and vectors of human disease.

DATES: The modified system of records is applicable August 27, 2020, subject to a 30-day period in which to comment on the routine uses. Written comments must be received on or before September 28, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0088 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Beverly Walker, Chief Privacy Officer, CDC Privacy Unit, CyberSecurity Program Office (CSPO), Centers for Disease Control and Prevention, 4770 Buford Hwy., Mailstop S101, Atlanta, GA 30341.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *https://regulations.gov,* including any personal information provided. Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Beverly Walker, Chief Privacy Officer, CDC Privacy Unit, CyberSecurity Program Office (CSPO), Centers for Disease Control and Prevention, 4770 Buford Hwy., Mailstop S101, Atlanta, GA 30341. Telephone: 770–488–8524.

SUPPLEMENTARY INFORMATION:

I. Background on the CDC Import Permit Program

Under the authority of Section 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 264), the HHS Secretary makes and enforces such regulations as in his/her judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the U.S. states or territories. For purposes of carrying out and enforcing such regulations, the HHS Secretary may authorize a variety of public health measures, including inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be sources of dangerous infection to human beings, and other measures. The Foreign Quarantine regulations (42 CFR part 71) set forth provisions to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Part 71, Subpart F (Importations) contains provisions governing the importation of infectious biological agents, infectious substances, and vectors (42 CFR 71.54), including requiring persons to obtain a permit issued by the CDC before importing, or distributing after import, any of these materials. The purpose of the import permit requirement and permitting process is to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the U.S. states or territories. Before issuing an import permit, the CDC Division of Select Agents and Toxins, Import Permit Program (CDC/IPP) reviews the application to ensure the applicant has appropriate safety measures in place for importing and working safely with the applicable infectious biological agent(s), substance(s), and/or vector(s). Regulations of the U.S. Department of Transportation apply to such materials while in transit in the U.S. states and territories.

II. New System of Records 09–20–0180

The proposed new system of records, ''Electronic Import Permit Program Portal (eIPP Portal),'' will cover records about individual applicants, which the CDC/IPP maintains in the new eIPP Portal information technology (IT) system for the purpose of overseeing—and issuing permits allowing—the importation of infectious biological agents, infectious substances, and vectors of human disease as outlined in the import permit regulations at 42 CFR 71.54. The eIPP Portal IT system is a single web-based information

management system that will track permit applications submitted to and permits issued by CDC/IPP. It will allow the regulated community to submit the applications and engage in related information exchanges with CDC/IPP electronically via a single web portal. This will enable the regulated community to interact with CDC/IPP more efficiently, allow for faster processing of permit applications, and reduce program burdens and reliance on labor-intensive and paper-based processes.

A report on the new system of records was sent to Congress and OMB in accordance with 5 U.S.C. 552a(r).

Dated: August 21, 2020.

Suzi Connor,

Chief Information Officer, Centers for Disease Control and Prevention.

SYSTEM NAME AND NUMBER:

Electronic Import Permit Program Portal (eIPP Portal), 09–20–0180.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of the HHS component responsible for this system of records is: Division of Select Agents and Toxins (DSAT), Center for Preparedness and Response, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd. NE, Atlanta, GA 30329.

SYSTEM MANAGER(S):

The System Manager is: Director, Division of Select Agents and Toxins (DSAT), Center for Preparedness and Response, MS A–46, CDC, 1600 Clifton Rd. NE, Atlanta, GA 30329, (404) 718–2000, *lrsat@cdc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 361, ''Regulations to Control Communicable Diseases'' (42 U.S.C. 264).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to support CDC/IPP's oversight of, and permitting process for, the importation and any subsequent distribution of infectious biological agents, infectious substances, and vectors of human disease into the United States, the purpose of which is to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the states or possessions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records in the system will cover those individuals who apply for an import permit from CDC/IPP under 42 CFR 71.54.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records will include the following categories of records. The three applications are forms approved by the Office of Management and Budget (OMB).

- *Application for Permit to Import Biological Agents and Vectors of Human Disease into the United States.* An applicant submits this application to CDC/IPP to request a permit for the importation, and any subsequent distribution after importation, of infectious biological agents, infectious substances, or vectors of human disease.
- *Application for Permit to Import or Transfer Live Bats.* An applicant submits this application to CDC/IPP to request a permit for the importation, and any subsequent distribution after importation, of live bats.
- *Application for Permit to Import Infectious Human Remains into the United States.* An applicant submits this application to CDC/IPP to request a permit for the importation of human remains or body parts that contain biological agents, infectious substances, or vectors of human disease.
- *Import Permit.* CDC/IPP issues a permit on an approved application, allowing the applicant to import biological agents and vectors of human disease human remains or body parts that contain biological agents, infectious substances, or vectors of human disease or live bats.
- *Documentation of Inspection.* CDC/IPP may inspect an applicant's or importer's premises to ensure compliance with the import permit regulations. As part of the inspection process, the applicant may need to respond to written requests from DSAT. DSAT has not developed standardized forms for this documentation.

RECORD SOURCE CATEGORIES:

The applicant will be the source of most information in the records. CDC/IPP will be the source of certain information in the permits, tracking records, and inspection records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to other disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(1) and (2) and (4) through (11), HHS may disclose records about a subject individual from this system of records to parties outside HHS as described in these routine uses, without the individual's prior written consent.

1. Records may be disclosed to contractors engaged to assist CDC/IPP with performing the functions listed in the Purpose section above. Contractors are required to maintain Privacy Act safeguards with respect to such records.

2. Records may be disclosed to state health departments, other public health agencies, cooperating medical authorities, or federal law enforcement agencies to effectively manage outbreaks and conditions of public health significance.

3. Information may be disclosed to the Department of Justice (DOJ) or to a court or other adjudicative body in litigation or other proceedings when:

a. HHS or any of its component thereof, or

b. any employee of HHS acting in the employee's official capacity, or

c. any employee of HHS acting in the employee's individual capacity where the DOJ or HHS has agreed to represent the employee, or

d. the United States Government, is a party to the proceeding or has an interest in such proceeding and, by careful review, HHS determines that the records are both relevant and necessary to the proceeding.

4. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

5. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to agency concerned, whether federal, state, Tribal, local, territorial, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

6. For the purpose of combatting fraud, waste, and abuse, records may be disclosed to a relevant federal agency or instrumentality of any governmental jurisdiction within or under the control of the United States for the purpose of investigating potential fraud, waste, or abuse.

7. Records may be disclosed to representatives of the National Archives and Records Administration (NARA) in records management inspections conducted pursuant to 44 U.S.C. 2904 and 2906.

8. Records may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records, (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security, and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. Records may be disclosed to another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records will be maintained electronically, but paper printouts may be generated.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records will be retrieved by the applicant's name or assigned permit number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records will be retained for 10 years in compliance with the records retention schedule requirements, or until such time as the records are no longer needed for litigation or other records purposes, in accordance with CDC/IPP disposition schedule DAA–0441–2019–0001. Records will be transferred to a Federal Records Center for storage when no longer in active use. Final disposition of records stored offsite at the Federal Records Center will be accomplished by a controlled process requesting final disposition approval from the HHS record owner prior to any destruction to ensure the records are not needed for litigation or other records purposes.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Safeguards will conform to the HHS Information Security and Privacy Program, *https://www.hhs.gov/ocio/securityprivacy/index.html,* the HHS Information Security and Privacy Policy (IS2P), and applicable federal laws, rules and policies, including: The E-Government Act of 2002, which includes the Federal Information Security Management Act of 2002 (FISMA), 44 U.S.C. 3541–3549, as amended by the Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551–3558; all pertinent National Institutes of Standards and Technology (NIST) publications; and OMB Circular A–130, Managing Information as a Strategic Resource.

ADMINISTRATIVE AND TECHNICAL SAFEGUARDS:

- Security measures will be implemented on government computers to control unauthorized access to the system. Attempts to gain access by unauthorized individuals will be automatically recorded and reviewed by IPP on a regular basis. The individuals permitted to access these records will be limited to staff (FTEs and contractors having security clearances at T3 (Non-Critical Sensitive positions requiring Secret clearance) or T4 (Non-Sensitive High Risk (Public Trust)) levels) who have responsibility for conducting regulatory oversight.
- Protection for computerized records will include programmed verification of valid user identification code and password prior to logging on to the system; mandatory password changes, limited log-ins, virus protection, encryption, firewalls, and intrusion detection systems, and user rights/file attribute restrictions. The password protection will impose username and password log-in requirements to prevent unauthorized access. Each user name will be assigned limited access rights to files and directories at varying levels to control file sharing. There will be routine daily backup procedures, and backup files will be securely stored off-site. Security controls will be reviewed on an ongoing basis.
- Knowledge of individual tape passwords will be required to access backups, and access to the system will be limited to users obtaining prior supervisory approval. To avoid inadvertent data disclosure, a special additional procedure will be performed to ensure that all Privacy Act data are removed from computer hard drives. Additional safeguards may also be built into the program by the system analyst as warranted by the sensitivity of the data set.
- FTEs and contractor employees who maintain records will be instructed in specific procedures to protect the security of records, and will be required to check with the system manager prior to making disclosure of data. When individually identifiable data are being used in a room, admittance at either federal or contractor sites will be restricted to specifically authorized personnel.
- Appropriate Privacy Act provisions and breach notification provisions will be included in applicable contracts, and the CDC Project Director, contract officers, and project officers will oversee compliance with these requirements. Upon completion of a contract, all data will be either returned to federal government or destroyed, as specified by the contract.
- Records that are eligible for destruction will be disposed of using destruction methods prescribed by NIST SP 800–88. Hard copy records will be placed in a locked container or designated secure storage area while awaiting destruction. Records will be destroyed in a manner that precludes its reconstruction, such as secured cross shredding. Utilizing the HHS Security Rule Guidance Material found at *https://www.hhs.gov/hipaa/for-professionals/security/guidance/index.html,* electronic information will be deleted or overwritten using Department of Defense National Institute of Standards and Technology/General Services Administration (NIST/GSA) approved overwriting software that wipes the entire physical disk and not just the virtual disk. In addition, the physical destruction will be obtained by using a National Security Agency/Central Security Service (NSA/CSS) approved degaussing device.

PHYSICAL SAFEGUARDS:

- Paper records (*i.e.,* hard copy printouts) will be maintained in locked cabinets in secured rooms through electronic access in a restricted access location that is controlled by an electronic cardkey system that is limited to staff who have responsibility for conducting regulatory oversight. Electronic data files will be encrypted using Federal Information Processing Standards Publication (FIPS) 140–2, and will be stored in a restricted access location. The computer room will be protected by an automatic sprinkler system and numerous automatic sensors (*e.g.,* water, heat, smoke, etc.) which will be monitored, and a proper mix of portable fire extinguishers will be located throughout the computer room. Computer workstations, lockable

personal computers, and automated records will be located in secured areas.

RECORD ACCESS PROCEDURES:

An individual seeking access to records about that individual in this system of records must submit a written access request to the System Manager, identified in the ''System Manager'' section of this SORN. The request must contain the requester's full name, address, and signature, and permit number if known. To verify the requester's identity, the signature must be notarized or the request must include the requester's written certification that the requester is the individual who the requester claims to be and that the requester understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine of up to $5,000. An accounting of disclosures that have been made of the record, if any, may also be requested.

CONTESTING RECORD PROCEDURES:

An individual seeking to amend a record about that individual in this system of records must submit an amendment request to the System Manager identified in the ''System Manager'' section of this SORN, containing the same information required for an access request. The request must include verification of the requester's identity in the same manner required for an access request; must reasonably identify the record and specify the information contested, the corrective action sought, and the reasons for requesting the correction; and should include supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

An individual who wishes to know if this system of records contains records about that individual should submit a notification request to the System Manager identified in the ''System Manager'' section of this SORN. The request must contain the same information required for an access request, and must include verification of the requester's identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2020–18805 Filed 8–26–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–0938]

Evaluating Cancer Drugs in Patients With Central Nervous System Metastases; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Evaluating Cancer Drugs in Patients with Central Nervous System Metastases.'' This draft guidance document provides recommendations regarding the design of clinical trials of drugs and biological products regulated by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) that are intended to support product labeling describing the antitumor activity in patients with central nervous system (CNS) metastases from solid tumors originating outside the CNS. The draft guidance includes study design recommendations regarding the patient population, available therapy, prior therapies, assessment of CNS disease, study endpoints, and leptomeningeal disease.

DATES: Submit either electronic or written comments on the draft guidance by October 26, 2020, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–0938 for ''Evaluating Cancer Drugs in Patients with Central Nervous System Metastases.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting

of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Shanthi Marur, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2369, Silver Spring, MD 20993–0002, 240–402–6373; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Evaluating Cancer Drugs in Patients with Central Nervous System Metastases.'' This draft guidance provides recommendations for sponsors designing clinical trials of drugs and biological products regulated by CDER and CBER that are intended to support product labeling describing the antitumor activity in patients with central nervous system (CNS) metastases from solid tumors originating outside the CNS. Specifically, the draft guidance includes recommendations regarding the patient population, available therapy, prior therapies, assessment of CNS disease, study endpoints, and leptomeningeal disease. The draft guidance describes that CNS metastases should be evaluated in the context of the entire disease burden and discusses how treatment effects may be described in drug labeling. The recommendations pertain to clinical trials for systemic anticancer drugs where patients with CNS metastases are included in the study population. These recommendations are also applicable to trials conducted exclusively in patients with CNS metastases.

CNS metastases are associated with significant morbidity and mortality and development of therapeutic products for patients with CNS metastases is needed. FDA has participated in efforts to facilitate drug development for patients with CNS metastases including a March 2019 ''Workshop on Product Development for CNS Metastases''. Stakeholders at this meeting stated there is a need for further FDA guidance on specific topics including identifying optimal study endpoints. Study design challenges for CNS metastases include uncertainty regarding optimal endpoints, lack of standardized response assessments, understanding how CNS metastases are evaluated in the context of the entire burden of metastatic disease to characterize a drug's potential benefit (*e.g.,* timing of CNS radiographic assessments relative to other sites of metastases), and interpreting radiographic response in the setting of recent radiation therapy or surgery. This draft guidance is intended to provide recommendations on these study design challenges.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Evaluating Cancer Drugs in Patients with Central Nervous System Metastases.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 601 have been approved under 0910–0338; and the collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: August 24, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–18894 Filed 8–26–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Solicitation of Nominations for Membership To Serve on Tribal Advisory Council

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is seeking additional nominations of qualified tribal officials as candidates for consideration for appointment as voluntary delegate members of the HRSA Tribal Advisory Council (TAC), which is being established. Specifically, HRSA requests submissions of nominations of qualified tribal officials from the Indian Health Service (IHS) geographic areas of: Alaska; Albuquerque; Billings; Navajo; Phoenix; and Tucson. Nominations for membership must be received on or before September 30, 2020. This will allow tribes and tribal serving organizations from the IHS geographic areas noted above, the additional time needed to identify qualified tribal officials as candidates and submit comprehensive nomination packages.

FOR FURTHER INFORMATION CONTACT: CAPT Elijah K. Martin, Jr. EdD, MPH, Manager, Tribal Health Affairs, Office of Health Equity, HRSA, 5600 Fishers Lane, Room 13N44, Rockville, Maryland

20857, 301–443–7526, *aianhealth@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The HRSA TAC will be established to engage in regular and meaningful collaboration and consultation with tribal officials on policies that have tribal implications and substantial direct effect on Indian tribes. HRSA, an agency of the U.S. Department of Health and Human Services (HHS), is the primary federal agency for improving health care to people who are geographically isolated, and/or economically or medically vulnerable. This includes people living with HIV/AIDS; pregnant women, mothers, and their families; and those otherwise unable to access high-quality health care. HRSA supports the training of health professionals, the distribution of providers to areas where they are needed most, and improvements in health care delivery. HRSA also oversees organ, bone marrow, and cord blood donation. It also oversees the National Vaccine Injury Compensation Program which can provide compensation to individuals in the rare cases that they are harmed by certain covered vaccinations and maintains databases that flag providers with a record of health care malpractice, waste, fraud, and abuse for federal, state, and local use.

The HRSA TAC will be the vehicle for acquiring a broad range of tribal views, determining the impact of HRSA programs on the American Indian and Alaska Natives health systems and population, developing innovative approaches to deliver health care, and assisting with effective tribal consultation. The HRSA TAC will hold one meeting each calendar year, or at the discretion of HRSA in consultation with the Chair. These meetings may be held in-person or virtually. The HRSA TAC will support, not supplant, any other government-to-government consultation activities that HRSA undertakes. In addition to assisting HRSA in the planning and coordination of tribal consultation sessions, the HRSA TAC will advise HRSA regarding the government-togovernment consultation process and will help ensure that HRSA activities and policies that impact Indian country are brought to the attention of all tribal leaders.

Nominations: A previous notice regarding the HRSA TAC was published in the **Federal Register** on February 6, 2020. The deadline for submissions was extended to July 6, 2020, and while HRSA received additional nomination packets, it did not receive a sufficient number of nomination packets to consider for each of the 12 vacant positions. HRSA is requesting nominations of tribal officials to serve as HRSA TAC delegate members to fill up to 12 voluntary positions on the HRSA TAC; one authorized tribal representative (and one designated alternate) from each of the Indian Health Service geographic areas. HRSA continues to seek additional qualified nominees, specifically from eligible tribal officials from the IHS geographic areas of: Alaska; Albuquerque; Billings; Navajo; Phoenix; and Tucson. The HRSA Administrator will appoint HRSA TAC delegate members with the expertise needed to fulfill the duties of the Advisory Council. Nominees will be considered in the following priority order:

1. Tribal president, chairperson, or governor;
2. Tribal vice president, vice-chairperson, or lieutenant governor;
3. Elected or appointed tribal official; and
4. Designated tribal official.

Interested applicants may self-nominate or be nominated by another individual or organization.

Individuals selected for appointment to the HRSA TAC will be invited to serve terms of up to 2 years. Appointed delegate members will receive per diem and travel expenses incurred for attending HRSA TAC meetings and/or conducting other authorized and approved business on behalf of the HRSA TAC.

The following information must be included in the package of materials submitted for each individual nominated for consideration: (1) Name of the nominee, a description of the interests the nominee would represent, and a description of the nominee's experience and interest in American Indian and Alaska Native access to health care; (2) evidence that the nominee is a duly elected or appointed tribal leader or tribal officer, or has been designated with authority to act on behalf of the duly elected or appointed tribal leader or officer, and is authorized to represent a tribal government; (3) a written commitment from the nominee that they will actively participate in good faith in HRSA TAC meetings; and (4) a current copy of the nominee's curriculum vitae. Nomination packages may be submitted directly by the individual being nominated or by the person/organization recommending the candidate.

HHS endeavors to ensure that the membership of the HRSA TAC is fairly balanced in terms of points of view represented and that individuals from a broad representation of geographic areas, gender, and ethnic and minority groups, as well as individuals with disabilities, are considered for membership. Appointments shall be made without discrimination on the basis of age, ethnicity, gender, sexual orientation, or cultural, religious, or socioeconomic status.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–18865 Filed 8–26–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Be the Match® Patient Support Center Survey; OMB No. 0906–0004—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than September 28, 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Be the Match® Patient Support Center Survey OMB No. 0906–0004—Revision.

Abstract: The C.W. Bill Young Cell Transplantation Program (Program) was established by the Stem Cell Therapeutic and Research Act of 2005 (Public Law 109–129), as amended. The Program's Office of Patient Advocacy is operated by the National Marrow Donor Program® (NMDP)/Be The Match®. NMDP/Be The Match® has specific requirements under its HRSA contract to conduct surveys to assess patient satisfaction. As such, NMDP/Be The Match® will elicit feedback from marrow and cord blood transplant patients, caregivers, and family members who had contact with the Be The Match® Patient Support Center for navigation services, educational information, and support. The survey also includes demographic questions to determine the representativeness of findings. The objectives of the survey are to: (1) Determine the level of satisfaction with existing services of the Patient Support Center and (2) determine areas for improvement as well as opportunities for the development of new programs and services.

A 60-day notice published in the **Federal Register** on May 4, 2020, Vol. 85, No. 86; pp. 26483–84. There were no public comments.

The number of respondents figure published in the 60-day notice reflected the total surveys to be distributed and not the total respondents. This decreases the number of respondents from 4,000 to 1,320, and the burden hours from 680 to 220. The NMDP used new data to more accurately assess response rates based on past experience. NMDP also simplified its survey tool and aligned key metrics asked in the survey (Net Promoter Score) with industry evaluation standards and best practices to enhance the quality, utility, and clarity of the information collected. The NMDP has also minimized the collection burden by using the Qualtrics software platform to transmit the surveys and automated reminders.

Need and Proposed Use of the Information: Barriers restricting access to transplant-related care and educational information are multi-factorial. Feedback from participants is essential to understand the changing needs for services, and information, as well as to demonstrate the effectiveness of existing services. The primary use for information gathered through the survey is to determine the helpfulness of participants' initial contact with the Be The Match® Blood and Marrow Transplant (BMT) Navigators and to identify areas for improvement in the delivery of services. The BMT Navigators are Certified Oncology Patients or Nurse Navigators, who respond to requests for information and support. Stakeholders (*e.g.,* participants, program managers, Be The Match® leadership, and HRSA) use this evaluation data to share patients' experiences as well as make program decisions (by program managers and leadership) and resource allocation decisions (by HRSA).

Online and paper-based surveys will be administered to all participants (patients, caregivers, and family members) who have contact with the Be The Match® Patient Support Center. All participants that provided an email address will be invited to complete the survey online. All other participants will be mailed a survey with a pre-paid reply envelope. Survey respondents will be notified via email and cover letter and informed in the survey instructions that participation is voluntary, and responses will be kept confidential. A follow-up notification will be sent within two (2) weeks to non-respondents. The survey will be available in English and Spanish versions.

The survey will measure: (1) Overall satisfaction; (2) if the contact helped the participant feel more confident in coping with the area of concern regarding the call; (3) if the contact helped the participant feel more hopeful; (4) if the contact helped the participant feel less alone; (5) if the contact increased awareness of available resources; (6) if the contact helped the participant feel more informed about treatment options; (7) if participant's questions were answered through contact with the Be The Match® Patient Support Center, and (8) types of challenges faced by participant. The survey data will be analyzed quarterly and rolled up for an annualized analysis. The results of the analyses will be shared with program managers and HRSA. Feedback indicating a need for improvement will be reviewed by program managers biannually, and implementation of results, program changes, or additions will be documented.

Proposed changes to the survey instrument include minor changes to selected questions and a reduction in the overall number of questions. The estimated amount of respondents will increase as it will be easier for them to complete the survey online. As a result of fewer questions along with the addition of an online platform, the respondent's burden will decrease.

Likely Respondents: Respondents will include all patients, caregivers, and family members who have contact with Be The Match® Patient Services Coordinators via phone or email for transplant navigation services and support. The decision to survey all participants was made based on historical evidence of patients' unavailability due to frequent transitions in health status.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information as well as disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per rspondent	Total responses	Average burden per response (in hours)	Total burden hours
Be The Match® Patient Services Survey	1,320	1	1,320	0.167*	220**

* Decreased from .25 average burden per response as published in the May 4, 2020 60-day FRN.

** Decreased from 680 total burden hours as published in the May 4, 2020 60-day FRN due to a reduction in the estimated number of respondents.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–18895 Filed 8–26–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Center for Advancing Translational Sciences Special Emphasis Panel; COVID-related CCIA Applications (U01/R21).

Date: September 25, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1073, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1073, Bethesda, MD 20892, (301) 435–1348, *livingsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 24, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–18882 Filed 8–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel. The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC Review C–SEP.

Date: September 30, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 959, Bethesda, MD 20892, (301) 451–3397, *sukharem@mail.nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Institutional Training Program (T32) Review SEP.

Date: October 23, 2020.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Plaza, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John K. Hayes, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 959, Bethesda, MD 20892, (301) 451–3398, *hayesj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, HHS)

Dated: August 21, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–18817 Filed 8–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel; NIDCR Clinical Studies SEP.

Date: October 7, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 670, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yun Mei, MD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 670, Bethesda, MD 20892, (301) 827–4639, *yun.mei@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 24, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–18880 Filed 8–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel; NIDCR Endogenous Regeneration of Dental, Oral, and Craniofacial Tissue SEP.

Date: October 29, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research; National Institutes of Health; 6701 Democracy Boulevard, Suite 670, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Yun Mei, MD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 670, Bethesda, MD 20892, (301) 827–4639, *yun.mei@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 24, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–18881 Filed 8–26–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0190]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0106

AGENCY: Coast Guard, DHS.

ACTION: Thirty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0106, Unauthorized Entry Into Cuban Territorial Waters; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before September 28, 2020.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2020–0190]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2020–0190], and must be received by September 28, 2020.

Submitting Comments

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. Documents mentioned in this notice, and all public comments, are 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.

We accept anonymous comments. All comments to the Coast Guard 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 to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to

OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0106.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (85 FR 35946, June 12, 2020) required by 44 U.S.C. 3506(c)(2). We received one comment in response to our 60 day notice. The commenter expressed their support for the collection of information stating that the USCG should be allowed to collect the necessary information from all U.S. vessels and vessels with no nationality transiting these waters. The commenter also stated that this rule not only will reinforce the embargo, but it will increase security.

The U.S. Coast Guard enforces these requirements on all applicable vessels. Under exsiting authority, the Coast Guard can request this information from operators of vessels identified as being without nationality or stateless. No changes have been made to the information collection request in response to the comment.

Information Collection Request

Title: Unauthorized Entry Into Cuban Territorial Waters.

OMB Control Number: 1625–0106.

Summary: The Coast Guard, pursuant to Presidential proclamation and order of the Secretary of Homeland Security, is requiring U.S. vessels, and vessels without nationality, less than 100 meters, located within the internal waters or the 12 nautical mile territorial sea of the United States, that thereafter enter Cuban territorial waters, to apply for and receive a Coast Guard permit.

Need: The information is collected to regulate departure from U.S. territorial waters of U.S. vessels, and vessels without nationality, and entry thereafter into Cuban territorial waters. The need to regulate this vessel traffic supports ongoing efforts to enforce the Cuban embargo, which is designed to bring about an end to the current government and a peaceful transition to democracy. Accordingly, only applicants that demonstrate prior U.S. government approval for exports to and transactions with Cuba will be issued a Coast Guard permit.

The permit regulation requires that applicants hold United States Department of Commerce, Bureau of Industry and Security (BIS) and U.S. Department of Treasury the Office of Foreign Assets Control (OFAC) licenses that permit exports to and transactions with Cuba. The USCG permit process thus allows the agency to collect information from applicants about their status vis-à-vis BIS and OFAC licenses and monitor compliance with BIS and OFAC regulations. These two agencies minister statutes and regulations that proscribe exports to (BIS) and transactions with (OFAC) Cuba. Accordingly, in order to assist BIS and OFAC in the enforcement of these license requirements, as directed by the President and the Secretary of Homeland Security, the Coast Guard is requiring certain U.S. vessels, and vessels without nationality, to demonstrate that they hold these licenses before they depart for Cuban waters.

Forms: CG–3300, Application for Permit to Enter Cuban Territorial Seas.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has been decreased to 5 hours per year due to the reinforced restrictions and current status of diplomatic relations between the United States and Cuban governments resulting in fewer individuals are attempting to travel to Cuba via the maritime realm.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: August 21, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–18854 Filed 8–26–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0034]

Agency Information Collection Activities: Customs Regulations Pertaining to Customhouse Brokers

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than October 26, 2020 to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0034 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to

minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Customs Regulations Pertaining to Customhouse Brokers.

OMB Number: 1651–0034.

Form Number: 3124 and 3124E.

Current Actions: CBP proposes to extend the expiration date of this collection of information. There is no change to the burden hours or the information collected.

Type of Review: Extension (without change).

Affected Public: Customhouse Brokers.

Abstract: The information contained in Part 111 of the CBP regulations (19 CFR) governs the licensing and conduct of customs brokers. An individual who wishes to take the broker exam must complete the electronic application CBP Form 3124E, ''Application for Customs Broker License Exam,'' or to apply for a broker license, CBP Form 3124, ''Application for Customs Broker License.'' The procedures to request a local or national broker permit can be found in 19 CFR 111.19, and a triennial report is required under 19 CFR 111.30. This information collected from customs brokers is provided for by 19 U.S.C. 1641. CBP Forms 3124 and 3124E may be found at *http://www.cbp.gov/xp/cgov/toolbox/forms/.* Further information about the customs broker exam and how to apply for it may be found at *https://www.cbp.gov/trade/programs-administration/customs-brokers.*

Application for Broker License Exam (Form 3124E)

Estimated Number of Respondents: 2,300.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 2,300.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 2,300.

Application for Broker License Exam (Form 3124)

Estimated Number of Respondents: 750.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 750.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 750.

Trienniel Report

Estimated Number of Respondents: 4,550.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 4,550.

Estimated Time per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 2,275.

National Broker's Permit Application

Estimated Number of Respondents: 200.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 200.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 200.

Dated: August 28, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–18853 Filed 8–26–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0036]

Agency Information Collection Activities: Temporary Scientific or Educational Purposes

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than September 28, 2020) to be assured of consideration.

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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (85 FR 27233) on May 7, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request

for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Declaration of the Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes.

OMB Number: 1651–0036.

Form Number: None.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The Declaration of the Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes is used to document duty free entry under conditions when articles are temporarily exported solely for scientific or educational purposes. This declaration, which is completed by the ultimate consignee and submitted to CBP by the importer or the agent of the importer, is used to assist CBP personnel in determining whether the imported articles should be free of duty. It is provided for under 19 U.S.C. 1202, HTSUS Subheading 9801.00.40, and 19 CFR 10.67(a)(3) which requires a declaration to CBP stating that the articles were sent from the United States solely for temporary scientific or educational use and describing the specific use to which they were put while abroad.

Estimated Number of Respondents: 55.

Estimated Number of Annual Responses per Respondent: 3.

Estimated Number of Total Annual Responses: 165.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 27.

Dated: August 24, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–18873 Filed 8–26–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0088]

Agency Information Collection Activities: Passenger and Crew Manifest

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than September 28, 2020) to be assured of consideration.

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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (85 FR 29469) on May 15, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Passenger and Crew Manifest (Advance Passenger Information System).

OMB Number: 1651–0088.

Form Number: None.

Abstract: The Advance Passenger Information System (APIS) is an automated method in which U.S. Customs and Border Protection (CBP) receives information on passengers and crew onboard inbound and outbound international flights and commercial vessels before their arrival in, or departure from, the United States. APIS data includes biographical information for travelers arriving in or departing from the United States, allowing the data to be checked against CBP databases to target for high-risk travelers and facilitate legitimate travel for the general public.

The information is submitted for both commercial and private aircraft flights, commercial vessels, and voluntarily for some rail carriers and bus carriers. Specific data elements required for each passenger and crew member include: Full name; date of birth; gender; citizenship; travel document type; passport number; country of issuance and expiration date; and alien registration number where applicable. The statutory authority for APIS

includes the Aviation and Transportation Security Act, Public Law 107–71, 115 Stat. 597 (49 U.S.C. 44909). The APIS regulatory requirements for air carriers are specified in 19 CFR 122.49a, 122.49b, 122.49c, 122.75a, 122.75b, and 122.22. These provisions list the required APIS data.

Respondents submit their electronic manifest either through a direct interface with CBP, or using eAPIS which is a web-based system that can be accessed at *https://eapis.cbp.dhs.gov/.*

Current Actions: This submission is being made to revise this collection of information to include bus and rail carriers into this OMB control number.

Proposed Changes

CBP is currently running a pilot with nine respondents in which bus carriers are submitting passenger manifest data voluntarily to assist CBP in the development of the Land Pre-Arrival System (LPAS) application. The LPAS application will improve the current method of transmission by allowing carriers to scan the Machine-Readable Zone (MRZ) of travelers' documents which will result in time-savings for the carriers and increased accuracy for CBP. CBP would like to revise this information collection to include bus and rail respondents which would allow CBP to expand the bus pilot beyond the current nine respondents, as well as make the LPAS application available to pilot for rail carriers in the future.

For this pilot, bus carriers submit their APIS information to CBP via Land Pre-Arrival System Application (LPAS), embedded in the CBP ROAM application which is available free of charge for Android and Apple mobile devices.

In the LPAS application, the collection of traveler information is primarily done through electronic submission. The bus carrier designee submits traveler information by scanning the MRZ of each traveler's document which is automatically loaded into the application. Should the MRZ not automatically transfer into the application, the bus carrier will manually input the traveler's document information. This is the only point at which information is collected from travelers for CBP.

The user registers bus as the mode of travel and is prompted to complete information on the company. Information includes:

- Mode of Travel (Bus)
- License Country
- Registration Province
- License Number
- Sender ID
- Carrier Code (APIS code assigned by CBP)
- Bus Company

Each carrier will be required to create a 'Driver Profile' by entering in their documentation using the MRZ or manually. This profile is saved to be associated with each bus that the driver operates and will have to be selected prior to submitting the trip. The driver is prompted to enter his or her information, including:

- Name
- Date of Birth
- Sex
- Country of Citizenship
- Country of Residence
- Document Type
- Document Number
- Date of Issue
- Date of Expiration
- Country of Issue

This process is duplicated for all additional travelers boarding the bus. Each traveler profile is saved for the trip, but is deleted from the application immediately after the information is submitted to CBP.

Prior to submitting traveler information to CBP, the user must fill in required information about the trip. These fields include items such as:

- Arrival Location in the US
- Estimated Arrival Date
- Estimated Arrival Time
- Arrival Code (Port of Entry)
- Entry State
- Last Country Visited
- Contact Email

Previously, the ROAM application also permitted self-reported submission of information to CBP officers through a face-time feature. This self-reporting feature has been disabled for LPAS and will not be used at any time in conjunction with the Bus APIS pilot or the resulting program that arises from the pilot. The bus carrier, either through the bus driver, another employee, or a designated representative or service provider, will be the only party submitting data to CBP via the LPAS feature within the ROAM application. The basis for this decision arose out of the necessity to collect traveler information prior to arrival in the land environment as it is done in the air environment. For pre-arrival or pre-departure vetting and targeting to be conducted, officers must be able to collect information on travelers prior to their arrival at the border to promote officer safety and increase security. In air Ports of Entry, officers have access to traveler information 72 hours prior to arrival. However, this standard does not exist in the land environment, as travelers can board a bus within minutes of arriving at the border. In the air environment, airline carriers or their designated representatives or service providers are the users submitting traveler information. Therefore, in order to closely mirror this successful process, bus carriers will submit traveler data in the land environment. In order to reduce the burden of manual data entry, the LPAS feature includes a technology that reads the MRZ on a passport. As a result, the bus driver can simply scan a passenger's passport in order to populate the required data fields and accurately submit that data to CBP. CBP is considering the development of LPAS for rail carriers in the future.

Type of Review: Revision.

Affected Public: Businesses, Individuals.

Commercial Airlines

Estimated Number of Respondents: 1,130.

Estimated Number of Total Annual Responses: 1,850,878.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 307,246.

Commercial Airline Passengers (3rd party)

Estimated Number of Respondents: 184,050,663.

Estimated Number of Total Annual Responses: 184,050,663.

Estimated Time per Response: 10 seconds.

Estimated Total Annual Burden Hours: 496,937.

Private Aircraft Pilots

Estimated Number of Respondents: 460,000.

Estimated Number of Total Annual Responses: 460,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 115,000.

Commercial Passenger Rail Carrier

Estimated Number of Respondents: 2.

Estimated Number of Total Annual Responses: 9,540.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 1,590.

Bus Passenger Carrier

Estimated Number of Respondents: 9.

Estimated Number of Total Annual Responses: 309,294.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 77,324.

Dated: August 24, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–18872 Filed 8–26–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2020–N020; FXES11140 200000F2–201–FF02ENEH00]

Proposed American Burying Beetle Habitat Conservation Plan and Low-Effect Screening Form; NS–374 Bridge Over Leader Creek, Hughes County, OK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of several documents related to an incidental take permit (ITP) application under the Endangered Species Act of 1973, as amended. Circuit Engineering District #4 applied for the requested ITP, which would be in effect for a 3-year period in Hughes County, Oklahoma. If granted, the permit would authorize American burying beetle incidental take resulting from construction of a bridge and off-set alignment of the road over Leader Creek. The documents available for comment include the low-effect screening form that supports a categorical exclusion under the National Environmental Policy Act of 1969, a draft low-effect habitat conservation plan, and the ITP application.

DATES: To ensure consideration, written comments must be received or postmarked on or before 11:59 p.m. eastern time on September 28, 2020. We may not consider any comments we receive after the closing date in the final decision on this action.

ADDRESSES: *Accessing Documents:*

- *Internet:* NEPA screening form, HCP, and the permit application: You may obtain electronic copies of these documents at *https://www.fws.gov/southwest/es/oklahoma/*.
- *U.S. Mail:* You may obtain the documents at the following addresses. In your request for documents, please reference ''NS–374 Bridge over Leader Creek HCP.''

○ Draft CatEx form and HCP: A limited number of CD–ROM and printed copies of the Draft CatEx form and HCP are available, by request, from the Field Supervisor, Oklahoma Ecological Services Field Office (ES FO), U.S. Fish and Wildlife Service, 9014 E 21st St., Tulsa, OK 74129; telephone 918–382–4504; fax 918–581–7467.

○ ITP application: The ITP application is available by mail from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103, Attention: Environmental Review Branch.

Submitting Comments: Regarding any of the documents available for review, you may submit written comments by one of the following methods. In your comments, please reference ''NS–374 Bridge over Leader Creek HCP.''

- *Email: OKES_NEPA@fws.gov.*
- *Fax:* 918–581–7467.
- *U.S. Mail:* Field Supervisor, Oklahoma ES FO (see **ACCESSING DOCUMENTS**).

We request that you send comments by only one of the methods described above.

FOR FURTHER INFORMATION CONTACT: Jonna Polk, by U.S. mail at the Oklahoma ES FO (see **ACCESSING DOCUMENTS**), or by phone at 918–581–7458. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct'' (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take/the enhancement of survival of listed/candidate species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing such take of endangered and threatened/candidate species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Background

Circuit Engineering District #4 has applied to the U.S. Fish and Wildlife Service (Service) for an ITP under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested ITP, which would be in effect for a period of 3 years, if granted, would authorize incidental take of the American burying beetle. The proposed incidental take would result from activities associated with otherwise lawful activities, including building a new bridge and off-set road alignment of the road across Leader Creek.

We have determined the proposed action qualifies as a low-effect habitat conservation plan (HCP) and is categorically excluded from the NEPA process. The proposed incidental take would occur along 1.88 acres (ac) where County Road NS–374 crosses Leader Creek near the town of Atwood in Hughes County, Oklahoma, as a result of activities associated with the applicant's construction activities. Such actions may require disturbance within potential American burying beetle habitat. Circuit Engineering District #4 has proposed to mitigate the impacts to 0.75 ac of suitable American burying beetle habitat, including 0.5 ac of permanent cover change impacts and 0.25 ac of permanent change. These habitat acres will be mitigated in perpetuity according to Service approved mitigation ratios through purchasing credits at an approved conservation bank. Avoidance and minimization measures to reduce impacts to the American burying beetle include reducing motor vehicle, machinery, and heavy equipment use areas, reducing soil erosion, increasing soil stability, providing education to on-site personnel, limiting the use of artificial lighting, and preventing invasive species establishment.

Next Steps

We will evaluate the HCP and comments we receive to determine whether the ITP application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue an ITP. If all necessary requirements are met, we will issue the ITP to the applicant.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that

we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy L. Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2020–18899 Filed 8–26–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Draft National Spatial Data Infrastructure Strategic Plan; Comment Request

AGENCY: Geological Survey, Interior.

ACTION: Request for public comment.

SUMMARY: The Federal Geographic Data Committee (FGDC) is soliciting public comments on the draft strategic plan for the National Spatial Data Infrastructure (NSDI). The draft strategic plan, along with instructions for submitting comments, is posted at: *www.fgdc.gov/nsdi-plan.*

The FGDC is the interagency committee that serves as the lead entity in the executive branch for the development, implementation, and review of policies, practices, and standards relating to geospatial data. The FGDC operates under the authority of the Geospatial Data Act of 2018 (GDA) and Office of Management and Budget (OMB) Circular A–16. One of the FGDC's responsibilities under the GDA is to ''prepare and maintain a strategic plan for the development and implementation of the National Spatial Data Infrastructure in a manner consistent with national security, national defense, and emergency preparedness program policies regarding data accessibility.'' The GDA describes the NSDI as ''the technology, policies, criteria, standards, and employees necessary to promote geospatial data sharing throughout the Federal Government, State, tribal, and local governments, and the private sector (including nonprofit organizations and institutions of higher education).''

DATES: Interested persons are invited to submit comments on or before September 17, 2020.

ADDRESSES: You may provide comments by either of the following methods:

- Submit comments electronically to: *nsdicomments@fgdc.gov.*
- Submit comments by mail to: Federal Geographic Data Committee, 12201 Sunrise Valley Drive, Mail Stop 590, Reston, VA 20192.

Instructions for submitting comments are posted at: *www.fgdc.gov/nsdi-plan.*

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206–220–4621).

SUPPLEMENTARY INFORMATION: The draft NSDI strategic plan has been developed with inputs from a variety of sources, including FGDC member agencies, the National Geospatial Advisory Committee, and geospatial partner organizations. The plan describes a broad national vision for the NSDI and includes goals and objectives for the sustainable development of the NSDI. Following the public comment period, a revised draft of the plan will be prepared for final review and adoption by the FGDC Steering Committee. Following adoption of the strategic plan, the FGDC will develop more detailed project plans for the goals and objectives in the strategic plan.

Additional information about the FGDC is available at *www.fgdc.gov.* Additional information about the NSDI strategic plan is available at: *www.fgdc.gov/nsdi-plan.*

Kenneth M. Shaffer,

Deputy Executive Director, Federal Geographic Data Committee, U.S. Geological Survey.

[FR Doc. 2020–18879 Filed 8–26–20; 8:45 am]

BILLING CODE 4311–AM–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–579]

Lobsters: Effects of the Canada-EU Trade Agreement on the U.S. Industry; Institution of Investigation and Scheduling of Hearing

AGENCY: United States International Trade Commission.

ACTION: Notice of investigation and scheduling of a public hearing.

SUMMARY: Following receipt of a request dated July 29, 2020 from the U.S. Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission (Commission) instituted investigation No. 332–579: *Lobsters: Effects of the Canada-EU Trade Agreement on the U.S. Industry.*

DATES:

September 15, 2020: Deadline for filing requests to appear at the public hearing.

September 17, 2020: Deadline for filing pre-hearing briefs and statements.

September 28, 2020: Deadline for filing electronic copies of oral hearing statements.

October 1, 2020: Public hearing.

October 16, 2020: Deadline for filing post-hearing briefs and statements.

October 16, 2020: Deadline for filing all other written submissions.

January 29 2021: Transmittal of Commission report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions must be submitted electronically and should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Project Leader Christopher Robinson (202–205–2602 or *christopher.robinson@usitc.gov*) or Deputy Project Leader Amelia Shister (202–205–2047 or *amelia.shister@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). 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.

Background: In his letter, the USTR stated that the President, on June 24, 2020, issued a Memorandum on Protecting the United States Lobster

Industry (Memorandum). He indicated that the Memorandum states, in part, that U.S. exports of lobster to the European Union (EU) appear to have been significantly and negatively affected by the recent implementation of the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union. The Memorandum directed the USTR to request that the Commission provide a report that details any negative effects of the CETA on the United States lobster industry. The Memorandum requires the USTR to submit the report to the President, and, in consultation with the Secretary of Agriculture and Secretary of Commerce, recommend appropriate actions that may. be taken to minimize or eliminate any negative effects identified in the Commission's report.

Accordingly, the USTR, under authority delegated by the President and pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), requested that the Commission conduct an investigation and prepare a report that details any. negative effects of the CETA on the United States lobster industry.

More specifically, the USTR asked that the Commission's report contain:

- An overview of the U.S. and Canadian lobster industries, including information on production/catch levels, employment, processing capacity, supply chains, prices, domestic consumption, and key factors that affect industry competitiveness;
- A description of trends in lobster exports from the U.S. and Canada to the EU and the United Kingdom (UK), as well as other major destination markets, including but not limited to China, over the last five years, covering the period before and after implementation of the CETA;
- Information on the tariff treatment of U.S. and Canadian exports of lobster to the EU, the UK, and other major destination markets, including China, since the implementation of the CETA; and
- A quantitative assessment of the economic effects of the CETA on the volume of U.S. exports of lobster to the EU and the UK.

The USTR asked that the Commission transmit its report not later than six months after receipt of the request, and the Commission will transmit its report by January 29, 2021. The USTR also stated that he intends to make the Commission's report available to the public in its entirety and asked that the report not include any confidential business information.

Public Hearing: A public hearing in connection with this investigation will be held via an online videoconferencing platform, beginning at 9:30 a.m. on October 1, 2020. Information about how to participate in or view the hearing, will be posted on the Commission's website at (*https://usitc.gov/research_and_analysis/what_we_are_working_on.htm*). Once on that web page, scroll down to the entry for investigation No. 332–579, Lobsters: Effects of the Canada-EU Trade Agreement on the U.S. Industry, and click on the link to ''hearing instructions.'' All written submissions in connection with the investigation must be submitted in electronic form. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., September 15, 2020 in accordance with the requirements in the ''Submissions'' section below. Persons appearing at the hearing must file, with the Secretary, a copy of the oral statement they plan to present at the hearing no later than 5:15 p.m., September 28, 2020. All pre-hearing briefs and statements should be filed no later than 5:15 p.m., September 17, 2020; and all post-hearing briefs and statements should be filed no later than 5:15 p.m., October 16, 2020. In the event that, as of the close of business on September 15, 2020, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202–205–2000 after September 15, 2020, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., October 16, 2020. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission's Handbook on Filing Procedures.

Confidential Business Information. Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

As requested by the USTR, the Commission will not include any confidential business information in the report that it sends to the USTR or makes available to the public. However, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a manner that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: The Commission intends to publish summaries of the positions of interested persons in an appendix to the report. Persons wishing to have a summary of their position included in the report should include a summary with their written submission, titled ''Public Summary,'' and should mark the summary as having been provided for that purpose. The summary may not exceed 500 words, should be in a format that can be easily converted to MS Word, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will identify the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: August 24, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–18889 Filed 8–26–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0046]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Friction Ridge Cards: Arrest and Institution FD–249; Applicant FD–258; Identity History Summary Request FD–1164; FBI Standard Palm Print FD–884; Supplemental Finger and Palm Print FD–884a

AGENCY: Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division

ACTION: 60-Day notice.

SUMMARY: Department of Justice (DOJ), Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 26, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306 (telephone: 304–625–5093) or email *glbrovey@fbi.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted via email to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how quality, utility, and clarity of the information to be collected and be enhanced;

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Friction Ridge Cards: Arrest and Institution; Applicant; Identity History Summary Request; FBI Standard Palm Print; Supplemental Finger and Palm Print.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Agency form number: Forms FD–249 (Arrest and Institution), FD–258 (Applicant), and FD–1164 (Identity History Summary Request) Identification); FD–884 (FBI Standard Palm Print); FD–884a (Supplemental Finger and Palm Print) encompassed under OMB 1110–0046; CJIS Division, FBI, DOJ.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies; civil entities requesting security clearance and background checks. This collection is needed to collect information on individuals requesting background checks, security clearance, or those individuals who have been arrested for or accused of criminal activities. Acceptable data is stored as part of the Next Generation Identification System (NGI) of the FBI.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 399, 813 respondents will complete each form within approximately 10 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 11.5 million total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: August 24, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–18871 Filed 8–26–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0004]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension Without Change, of a Currently Approved Collection; Number of Full-Time Law Enforcement Employees as of October 31

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 26, 2020.

FOR FURTHER INFORMATION CONTACT: All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Ms. Amy C. Blasher, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; Email: *acblasher@fbi.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should

address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Number of Full-time Law Enforcement Employees as of October 31.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is: 1–711. The applicable component within the Department of Justice is the Criminal Justice Information Services Division, in the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal, state, county, city, and tribal law enforcement agencies. Abstract: Under Title 34, United States Code (U.S.C.) Section 41303 and 28 U.S.C. § 534, this collection requests the number of full and part-time law enforcement employees by race/ethnicity for both officers and civilians, from federal, state, county, city, and tribal law enforcement agencies in order for the Federal Bureau of Investigation Uniform Crime Reporting Program to serve as the national clearinghouse for the collection and dissemination of police employee data and to publish these statistics in *Crime in the United States.*

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 18,667 law enforcement agency respondents that submit once a year for a total of 18,667 responses with an estimated response time of eight minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 2,489 hours, annual burden, associated with this information collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: August 24, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–18876 Filed 8–26–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

On August 20, 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Montana in the lawsuit entitled *United States and the State of Montana* v. *BNSF Railway Company,* Civil Action No. 9:20–cv–00126–DLC.

The proposed Consent Decree would resolve claims the United States and State of Montana have brought pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a), against the BNSF Railway Company (''BNSF'') related to the Operable Unit 6 (''OU6'') of the Libby Asbestos Superfund Site in Lincoln County, Montana.

The Consent Decree requires BNSF to implement an operation and maintenance plan, a health and safety plan, and institutional controls to minimize risk to railroad workers and the surrounding community from low levels of asbestos within OU6. BNSF has paid the costs EPA incurred in overseeing implementation of the OU6 Record of Decision. The proposed Consent Decree requires BNSF to pay future costs incurred at OU6.

The Consent Decree provides BNSF and certain related persons covenants not to sue relating to the OU6 under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Montana* v. *BNSF Railway Company,* D.J. Ref. No. 90–11–2–07106/9. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $92.50 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $8.25.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–18722 Filed 8–26–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0040]

SGS North America, Inc.: Grant of Expansion of Recognition and Modification to the Nationally Recognized Testing Laboratory (NRTL) Program's List of Appropriate Test Standards

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand

the scope of recognition for SGS North America, Inc., as a Nationally Recognized Testing Laboratory (NRTL). Additionally, OSHA announces the addition of four test standards to the NRTL Program's List of Appropriate Test Standards.

DATES: The expansion of the scope of recognition becomes effective on August 27, 2020.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

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

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of SGS of North America, Inc. (SGS), as a NRTL. SGS's expansion covers the addition of twenty test standards to the scope of recognition. Additionally, OSHA announces the addition of four test standards to the NRTL Program's List of Appropriate Test Standards.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details the scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

SGS submitted four applications to OSHA to expand recognition as a NRTL to include twenty additional test standards. The first application was submitted to OSHA on February 14, 2018 (OSHA–2006–0040–0051). The second and third applications were submitted to OSHA on April 18, 2018 (OSHA–2006–0040–0052) and (OSHA–2006–0040–0053). The fourth application (which was a revision to the first application) was submitted to OSHA on July 18, 2019 (OSHA–2006–0040–0054), to expand the scope of recognition to include the addition of twenty test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

OSHA published the preliminary notice announcing SGS's expansion application and proposed addition to the NRTL Program's List of Appropriate Test Standards in the **Federal Register** on March 5, 2020 (85 FR 12942). The agency requested comments by March 20, 2020, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of SGS's scope of recognition.

To obtain or review copies of all public documents pertaining to SGS's applications, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210. Docket No. OSHA–2006–0040 contains all materials in the record concerning SGS's recognition.

II. Final Decision and Order

OSHA staff examined SGS's expansion applications, the capability to meet the requirements of the test standards, and other pertinent information. Based on a review of this evidence, OSHA finds that SGS meets the requirements of 29 CFR 1910.7 for expansion of the recognition, subject to the specified limitation and conditions listed. OSHA, therefore, is proceeding with this final notice to grant expansion of SGS's scope of recognition. OSHA limits the expansion of SGS's scope of recognition to testing and certification of products for demonstration of conformance to the test standard listed in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 773A	Nonindustrial Photoelectric Switches for Lighting Control.
UL 1241	Junction Boxes for Swimming Pool Lighting Fixtures.
UL 1977	Component Connectors for Use in Data, Signal, Control and Power Applications.
UL 1994	Low-Level Path Marking and Lighting Systems.
UL 1776	Standard for High-Pressure Cleaning Machines.
UL 141	Garment Finishing Machines.
UL 283	Air Fresheners and Deodorizers.
UL 399	Drinking Water Coolers.
UL 474	Dehumidifiers.
UL 484	Room Air Conditioners.
UL 778	Motor-Operated Water Pumps.
UL 1030	Sheathed Heating Elements.
UL 1042	Electric Baseboard Heating Equipment.
UL 1081	Swimming Pool Pumps, Filters and Chlorinators.
UL 2202	Electric Vehicle (EV) Charging System Equipment.
UL 2594	Electric Vehicle Supply Equipment.
UL 62841–2–8 *.	Safety Requirements for Particular Requirements for Hand-Held Shears and Nibblers.
UL 62841–2–11 *.	Safety Requirements for Particular Requirements for Hand-Held Reciprocating Saws.
UL 62841–3–4 *.	Safety Requirements for Particular Requirements for Transportable Bench Grinders.
UL 62841–3–6 *.	Safety Requirements for Particular Requirements for Transportable Diamond Drills with Liquid System.

In this notice, OSHA also announces the addition of four new test standards to the NRTL Program's List of Appropriate Test Standards. Table 2, below, lists the test standards that are new to the NRTL Program. OSHA has determined that these test standards are appropriate test standards and will include it in the NRTL Program's List of Appropriate Test Standards.

TABLE 2—TEST STANDARDS OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 62841–2–8	Safety Requirements for Particular Requirements for Hand-Held Shears and Nibblers.
UL 62841–2–11.	Safety Requirements for Particular Requirements for Hand-Held Reciprocating Saws.
UL 62841–3–4	Safety Requirements for Particular Requirements for Transportable Bench Grinders.
UL 62841–3–6	Safety Requirements for Particular Requirements for Transportable Diamond Drills with Liquid System.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, SGS must abide by the following conditions of the recognition:

1. SGS must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in the operations as a NRTL, and provide details of the change(s);
2. SGS must meet all the terms of the recognition and comply with all OSHA policies pertaining to this recognition; and
3. SGS must continue to meet the requirements for recognition, including all previously published conditions on SGS's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of SGS, subject to the limitation and conditions specified above. OSHA also adds four new test standards to the NRTL Program's List of Appropriate Test Standards.

III. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on August 21, 2020.

Loren Sweatt,

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

[FR Doc. 2020–18833 Filed 8–26–20; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0024]

Information Collection: NRC Form 446, "Request for Approval of Official Foreign Travel By Non-Government Personnel"

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on this proposed collection of information. The information collection is entitled NRC Form 446, ''Request for Approval of Official Foreign Travel By Non-Government Personnel.'' The information will be collected from non-government personnel who are not travelling under the authority of an existing contract but are traveling to a foreign country on behalf of the NRC on official business. Providing the information will be voluntary but if not provided, the request for approval of foreign travel may be denied.

DATES: Submit comments by October 26, 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–2020–0024. 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–2020–0024 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–2020–0024. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0024 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 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 No. ML20064E970. The supporting statement and ADAMS under Accession No. ML20010E831.
- *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–2020–0024 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

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 446, ''Request for Approval of Official Foreign Travel By Non-Government Personnel.''
2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.
3. *Type of submission:* New.
4. *The form number, if applicable:* NRC Form 446.
5. *How often the collection is required or requested:* Approximately 20 times/year.
6. *Who will be required or asked to respond:* Non-government personnel who are not requesting official foreign travel on behalf of the NRC under an active contract.
7. *The estimated number of annual responses:* 20.
8. *The estimated number of annual respondents:* 20.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* One hour per form × 20 forms = 20 hours/year.
10. *Abstract:* The information collected is used to review and approve foreign travel by individuals who are traveling on behalf of or at the invitation of the NRC but are neither government employees on official travel nor individuals traveling in support of an NRC contract on behalf of the NRC.

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: August 24, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–18858 Filed 8–26–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0216]

Information Collection: Licenses, Certifications, and Approvals for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

DATES: Submit comments by September 28, 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: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice 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.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance 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–2019–0216 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–2019–0216.
- *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 reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML20160A404 and ML20013E096, respectively.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the 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

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. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 22, 2020 (85 FR 22463).

1. *The title of the information collection:* Part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Licenses, Certifications, and Approvals for Nuclear Power Plants.
2. *OMB approval number:* 3150–0151.
3. *Type of submission:* Extension.
4. *The form number if applicable:* Not Applicable.
5. *How often the collection is required or requested:* On occasion. Applications are submitted only when licensing action is sought.
6. *Who will be required or asked to respond:* Applicants for early site permits (ESPs), standard design approvals (SDAs) and certifications, manufacturing licenses (MLs), and licenses which combine construction permits (CPs) and conditional operating licenses (OLs), *e.g.* COLs, for commercial nuclear power reactors.
7. *The estimated number of annual responses:* 1,428 (1,411 reporting responses plus 17 recordkeepers).
8. *The estimated number of annual respondents:* 17.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 335,891 hours (318,716 reporting, plus 17,175 recordkeeping).
10. *Abstract:* The licensing processes in 10 CFR part 52 provide for issuance of ESPs, SDAs, MLs, CPs, and COLs for commercial nuclear power reactors. The applicants submit updated reports, applications for renewals, exemption requests and maintain records of changes to the facility and records of detailed design related information. These licensing procedures are options to the two-step licensing process in 10 CFR part 50, which provides for a CP and an OL. The part 52 licensing process places procedural requirements in part 52 and technical requirements in part 50. Part 52 reduces the overall paperwork burden borne by applicants for CPs and OLs because part 52 only requires a single application and provides options for referencing standardized designs. The information in 10 CFR part 52 is needed by the agency to assess the adequacy and suitability of an applicant's site, plant design, construction, training and experience, plans and procedures for the protection of public health and safety. Regulatory Guide 1.206 provides guidance for applicants for combined licenses for nuclear power plants. Section C.2.1 of Regulatory Guide 1.206 deals with pre-application activities for respondents who intend to submit applications for combined licenses for nuclear power plants. Pre-application activities encompass all the communications, correspondence, meetings, document submittals/reviews, and other interactions that occur between the NRC staff and a prospective applicant before the tendering of an application under 10 CFR part 52. Participation in pre-application activities is voluntary. Potential applicants who engage in pre-application activities benefit from an early NRC staff assessment of the completeness and level of detail of the information that the applicant proposes to submit and staff identification of potential deficiencies in the application. Pre-application activities are expected to increase the efficiency of the staff's review of those applications once they are submitted. Subpart B of 10 CFR part 52 establishes the process for obtaining design certifications. The addition of appendix F to 10 CFR part 52 allows interested parties to reference the Advanced Power Reactor 1400 (APR1400) standard design in an application for a combined license.

Dated: August 24, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–18856 Filed 8–26–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–456; 50–457; 50–259; 50–260; 50–296; 50–275; 50–323; 50–315; 50–316; 50–331; 50–341; 50–263; 50–282; 50–306; 72–010; 50–184; 50–266; 50–301; 50–335; 50–389; 50–443; 50–395; 50–250; 50–251; NRC–2020–0110]

Issuance of Multiple Exemptions in Response to COVID–19 Public Health Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued 13 exemptions in response to requests from 12 licensees. The exemptions allow these licensees temporary relief from certain requirements under NRC regulations. The exemptions are in response to the coronavirus disease 2019 (COVID–19) public health emergency (PHE). The NRC is issuing a single notice to announce the issuance of the exemptions.

DATES: The 13 exemptions were issued between July 6, 2020, and July 30, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0110 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0110. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

FOR FURTHER INFORMATION CONTACT: James Danna, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7422, email: *James.Danna@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC issued 13 exemptions to 12 licensees in response to requests dated between June 11, 2020, and July 23, 2020. These exemptions temporarily allow the licensees to deviate from certain requirements (as cited below) of various parts of chapter I of title 10 of the *Code of Federal Regulations* (10 CFR).

The exemptions from certain requirements of 10 CFR part 26, ''Fitness for Duty Programs,'' for NextEra Energy Duane Arnold, LLC (for Duane Arnold Energy Center); NextEra Energy Point Beach, LLC (for Point Beach Nuclear Plant, Units 1 and 2); NextEra Energy Seabrook, LLC (for Seabrook Station, Unit 1); and Florida Power & Light Company (for St. Lucie Plant, Unit Nos. 1 and 2; and Turkey Point Nuclear Generating Units 3 and 4) support the continued effectiveness of licensees' fitness for duty programs during the COVID–19 PHE. For 10 CFR 26.119(a), 26.165(b)(5), 26.169(a), 26.185(d)(3), and 26.185(p), flexibility is afforded by permitting a reasonable increase in the time to complete required activities. For 10 CFR 26.189(c), flexibility is afforded by permitting the use of an alternative method to conduct a determination of fitness for cause. The limited scope of the exemptions from these requirements, relatively short duration of the exemption period, licensee controls, and NRC conditions provide reasonable assurance that the above licensees will continue to meet the fitness for duty performance objectives described in the regulations in 10 CFR part 26.

The exemption from certain requirements of 10 CFR part 26 for DTE Electric Company (for Fermi 2) allows the licensee temporary relief from the work-hour controls under 10 CFR 26.205(d)(1) through (d)(7). This temporary exemption is an extension of a previous NRC-approved exemption (letter dated May 14, 2020, ADAMS Accession No. ML20133K055). The NRC determined that, because of the impacts the COVID–19 PHE has had on the licensee's ability to comply with the work-hour controls of 10 CFR 26.205(d), the importance of maintaining the operations of Fermi 2, and the controls the licensee has established, granting the requested exemption, as extended, was in the public interest.

The exemption from certain requirements of 10 CFR part 50, appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' section VI.F.2.b, related to biennial emergency preparedness exercises for the National Institute of Standards and Technology (for the National Bureau of Standards Test Reactor) does not adversely affect the emergency response capability of the test reactor facility because all personnel are currently qualified for all tasks, and the proposed compensatory measures will maintain their knowledge, skills, and abilities without the conduct of the biennial emergency preparedness exercise during the exemption term. The exemption also allows the affected licensee personnel to continue to be available to perform their functions during the COVID–19 PHE.

The exemptions from certain requirements of 10 CFR part 73 for Exelon Generation Company, LLC (for Braidwood Station, Units 1 and 2); Tennessee Valley Authority (for Browns Ferry Nuclear Plant, Units 1, 2, and 3); Pacific Gas and Electric Company (for Diablo Canyon Nuclear Power Plant, Units 1 and 2); Indiana Michigan Power Company (for Donald C. Cook Nuclear Plant, Units 1 and 2); Northern States Power Company (for Monticello Nuclear Generating Plant; Prairie Island Nuclear Generating Plant, Units 1 and 2, and Prairie Island Independent Spent Fuel Storage Installation (ISFSI)); and Dominion Energy South Carolina, Inc. (for Virgil C. Summer Nuclear Station, Unit 1) allow these licensees temporary exemptions from certain requirements of 10 CFR part 73, appendix B, ''General Criteria for Security Personnel,'' section VI. The exemptions will help to ensure that these regulatory requirements do not unduly limit licensee flexibility in using personnel resources in a manner that most effectively manages the impacts of the COVID–19 PHE on maintaining the safe and secure operation of these facilities and the implementation of a licensee's NRC-approved security plans, protective strategy, and implementing procedures. These licensees have committed to certain security measures to ensure response readiness and for their security personnel to maintain performance capability.

The exemption from certain requirements of 10 CFR part 73 for Northern States Power Company (for the Prairie Island ISFSI) allows this licensee temporary exemption from certain requirements of 10 CFR part 73, appendix B, sections I, II, and IV. This licensee has committed to certain measures to ensure its security forces maintain their proficiency and readiness to adequately implement the licensee's protective strategies and protect the site.

The NRC is providing compiled tables of exemptions using a single **Federal Register** notice for COVID–19-related exemptions instead of issuing individual **Federal Register** notices for each exemption. The compiled tables below provide transparency regarding the number of exemptions the NRC has issued. Additionally, the NRC publishes tables of approved regulatory actions related to the COVID–19 PHE on its public website at *https://www.nrc.gov/about-nrc/covid-19/reactors/licensing-actions.html.*

II. Availability of Documents

The tables below provide the facility name, docket number, document title, and ADAMS accession number for each exemption issued. Additional details on each exemption issued, including the exemption request submitted by the respective licensee and the NRC's decision, are provided in each exemption approval listed in the tables below. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

BRAIDWOOD STATION, UNITS 1 AND 2—DOCKET NOS. 50–456 AND 50–457

Document title	ADAMS accession No.
Braidwood Station, Units 1 and 2, Request for Exemption from Certain 10 CFR [part] 73 Training Requirements Due to Coronavirus 2019 Public Health Emergency, dated June 15, 2020.	ML20167A321 (non-public, withheld under 10 CFR 2.390).
Braidwood Station, Units 1 and 2—Exemption Request From Certain Requirements of 10 CFR [p]art 73, Appendix B, ''General Criteria for Security Personnel'' [COVID–19] (EPID L–2020–LLE–0100), dated July 9, 2020.	ML20169A348.

BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2, AND 3—DOCKET NOS. 50–259, 50–260, AND 50–296

Document title	ADAMS accession No.
Browns Ferry Nuclear Plant, Units 1, 2, and 3, Request for Exemption from the Annual Force on Force Training Requirements of 10 CFR [part] 73, Appendix B, Section VI, Due to the COVID–19 Public Health Emergency, dated June 19, 2020.	ML20174A281.

BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2, AND 3—DOCKET NOS. 50–259, 50–260, AND 50–296—Continued

Document title	ADAMS accession No.
Browns Ferry Nuclear Plant, Units 1, 2 and 3—Exemption Request from Certain Requirements of 10 CFR [p]art 73, Appendix B, ''General Criteria from Security Personnel,'' Section VI (EPID L–2020–LLE–0105 [COVID–19]), dated July 6, 2020.	ML20175A198.

DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2—DOCKET NOS. 50–275 AND 50–323

Document title	ADAMS accession No.
Diablo Canyon Power Plant, Units 1 and 2—Request for Exemption from Specific Requirements of 10 CFR [part] 73, Firearms Requalification, dated July 21, 2020.	ML20203M197 (non-public, withheld under 10 CFR 2.390).
Diablo Canyon Nuclear Power Plant, Units 1 and 2, Exemption from Certain Requirements of 10 CFR [p]art 73, Appendix B, ''General Criteria For Security Personnel,'' Section VI (EPID L–2020–LLE–0117 [COVID–19]), dated July 30, 2020.	ML20209A050.

DONALD C. COOK NUCLEAR PLANT, UNITS 1 AND 2—DOCKET NOS. 50–315 AND 50–316

Document title	ADAMS accession No.
Donald C. Cook Nuclear Plant Units 1 and 2, Temporary Exemption Request from Security Training Requalification Requirements of 10 CFR [p]art 73, Appendix B, Section VI, dated June 18, 2020.	ML20177A375 (non-public, withheld under 10 CFR 2.390).
Donald C. Cook Nuclear Plant, Unit 1 and Unit 2—Supplement to Temporary Request from Security Training Requalification Requirements of 10 CFR [p]art 73, Appendix B, Section VI, dated July 6, 2020.	ML20191A170.
Donald C. Cook Nuclear Plant, Units 1 and 2—Temporary Exemption from Certain Requirements of 10 CFR [p]art 73, Appendix B, ''General Criteria For Security Personnel,'' Section VI (EPID L–2020–LLE–0104 [COVID–19]), dated July 21, 2020.	ML20171A686.

DUANE ARNOLD ENERGY CENTER—DOCKET NO. 50–331

Document title	ADAMS accession No.
NextEra Energy Duane Arnold, LLC Exemption Request for Access Authorization and Fitness for Duty Requirements due to COVID–19 Pandemic, dated May 21, 2020 (this letter was superseded and replaced with the letter dated June 15, 2020).	ML20142A192 (non-public, withheld under to 10 CFR 2.390).
Duane Arnold Energy Center—Supplement to Exemption Request for Access Authorization and Fitness for Duty Requirements Due to COVID–19 Pandemic, dated June 15, 2020.	ML20167A262.
Duane Arnold Energy Center—Approval of Exemption from Certain Requirements of 10 CFR [p]art 26, Fitness for Duty Programs (EPID L–2020–LLE–0079 [COVID–19]), dated July 24, 2020.	ML20202A594.

FERMI–2—DOCKET NO. 50–341

Document title	ADAMS accession No.
Fermi Unit 2 Work Hour Limits Exemption Request Due to COVID–19 Supplement, dated July 6, 2020	ML20188A339.
Fermi 2 Work Hour Limits Exemption Request due to COVID–19 Revised Second Supplement, dated July 11, 2020.	ML20193A003.
Fermi, Unit 2—Extension of Exemption from Select Requirements of 10 CFR [p]art 26 (EPID L–2020–LLE–0109 [COVID–19]), dated July 14, 2020.	ML20192A180.

MONTICELLO NUCLEAR GENERATING PLANT
PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2
PRAIRIE ISLAND ISFSI—DOCKET NOS. 50–263, 50–282, 50–306, AND 72–010

Document title	ADAMS accession No.
Monticello and Prairie Island, Units 1 and 2 and Prairie Island ISFSI, COVID–19 10 CFR [part] 73 Security Training and Requalification Exemption Request, dated June 25, 2020.	ML20177A372 (non-public, withheld under 10 CFR 2.390).
Monticello and Prairie Island, Units 1 and 2 and Prairie Island ISFSI, NSPM COVID–19 Security Exemption Supplement, dated July 14, 2020.	ML20197A005 (non-public, withheld under 10 CFR 2.390).
Monticello and Prairie Island, Units 1 and 2 and Prairie Island ISFSI—Exemption Request from Certain Requirements of 10 CFR [p]art 73, Appendix B, ''General Criteria for Security Personnel,'' Sections I, II, IV, and VI (EPID L–2020–LLE–0108 [COVID–19]), dated July 22, 2020.	ML20184A013.

NATIONAL BUREAU OF STANDARDS TEST REACTOR—DOCKET NO. 50–184

Document title	ADAMS accession No.
National Institute of Standards and Technology—Exemption Request for Emergency Exercise Final, dated July 23, 2020.	ML20206K842 (package).
National Institute of Standards and Technology—Exemption [Request] for Emergency Exercise Supplement to [July 23, 2020] Letter Final, dated July 24, 2020.	ML20210M006 (package) (non-public, withheld under 10 CFR 2.390).
National Institute of Standards and Technology; Approval of Exemption from Requirements of 10 CFR [p]art 50, Appendix E, Section IV.F.2 Related to Biennial Emergency Exercises [COVID–19], dated July 29, 2020.	ML20209A326.

POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2—DOCKET NOS. 50–266 AND 50–301

Document title	ADAMS accession No.
Point Beach Nuclear Plant, Units 1 and 2—Exemption Request for Access Authorization and Fitness for Duty Requirements due to COVID–19 Pandemic, dated May 21, 2020 (this letter was superseded and replaced with the letter dated June 12, 2020).	ML20142A369 (non-public, withheld under 10 CFR 2.390).
Point Beach Nuclear Plant, Units 1 and 2, Supplement to Exemption Request for Access Authorization and Fitness for Duty Requirements due to COVID–19 Pandemic, dated June 12, 2020.	ML20164A187.
Point Beach Nuclear Plant, Units 1 and 2—Approval of Exemption from Certain Requirements of 10 CFR Part 26, Fitness for Duty Programs (EPID L–2020–LLE–0080 [COVID–19]), dated July 24, 2020.	ML20202A531.

ST. LUCIE PLANT, UNIT NOS. 1 AND 2—DOCKET NOS. 50–335 AND 50–389

Document title	ADAMS accession No.
St. Lucie Nuclear Plant, Units 1 and 2, Exemption Request for Access Authorization and Fitness for Duty Requirements due to COVID–19 Pandemic, dated May 21, 2020 (this letter was superseded and replaced with the letter dated June 12, 2020).	ML20142A477 (non-public, withheld under 10 CFR 2.390).
St. Lucie Nuclear Plant, Units 1 and 2—Exemption Request for Access Authorization and Fitness for Duty Requirements due to COVID–19 Pandemic, dated June 12, 2020.	ML20164A055.
St. Lucie Nuclear Plant, Unit Nos. 1 and 2 Exemption Request from Certain Requirements of Title 10 Code of Federal Regulations part 26, Fitness-for-Duty Programs (EPID L–2020–LLE–0078 [COVID–19]), dated July 23, 2020.	ML20190A157.

SEABROOK STATION, UNIT 1—DOCKET NO. 50–443

Document title	ADAMS accession No.
Seabrook Station—Exemption Request for Access Authorization and Fitness for Duty Requirements due to COVID–19 Pandemic, dated May 27, 2020 (this letter was superseded and replaced with the letter dated June 16, 2020).	ML20149K615 (non-public, withheld under 10 CFR 2.390.
Seabrook Station—Supplement to Exemption Request for Access Authorization and Fitness for Duty Requirements Due to COVID–19 Pandemic, dated June 16, 2020.	ML20169A728.
Seabrook Station, Unit No. 1—Approval of Exemption from Certain Requirements of 10 CFR [p]art 26, ''Fitness for Duty Programs'' (EPID L–2020–LLE–0091 [COVID–19]), dated July 30, 2020.	ML20202A509.

VIRGIL C. SUMMER NUCLEAR STATION, UNIT 1—DOCKET NO. 50–395

Document title	ADAMS accession No.
Virgil C. Summer (VCS), Unit 1—Request for Exemption from Select Requirements of 10 CFR [p]art 73, Appendix B, Section B, dated June 25, 2020.	ML20181A188 (non-public, withheld under 10 CFR 2.390).
Virgil C. Summer Nuclear Station, Unit 1—Temporary Exemption from Certain Requirements of 10 CFR [p]art 73, Appendix B, ''General Criteria for Security Personnel,'' Section VI (EPID L–2020–LLE–0106 [COVID–19]), dated July 10, 2020.	ML20182A718.

TURKEY POINT NUCLEAR GENERATING UNIT NOS. 3 AND 4—DOCKET NOS. 50–250 AND 50–251

Document title	ADAMS accession No.
Turkey Point Nuclear Plant, Units 3 and 4—Exemption Request for Access Authorization and Fitness for Duty Requirements due to COVID–19 Pandemic, dated May 21, 2020 (this letter was superseded and replaced with the letter dated June 11, 2020).	ML20142A272.
Turkey Point Nuclear Plant, Units 3 and 4, Supplement to Exemption Request for Access Authorization and Fitness for Duty Requirements due to COVID–19 Pandemic, dated June 11, 2020.	ML20163A226.

TURKEY POINT NUCLEAR GENERATING UNIT NOS. 3 AND 4—DOCKET NOS. 50–250 AND 50–251—Continued

Document title	ADAMS accession No.
Turkey Point Nuclear Plant, Units 3 and 4—Approval of Exemption from Certain Requirements of 10 CFR [p]art 26, "Fitness For Duty Programs" (EPID L–2020–LLE–0068 [COVID–19]), dated July 30, 2020.	ML20204A765.

Dated: August 21, 2020.

For the Nuclear Regulatory Commission.

James G. Danna,

Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–18815 Filed 8–26–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–224 and CP2020–254]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 31, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–224 and CP2020–254; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 160 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 21, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 31, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–18870 Filed 8–26–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89636; File No. SR–CBOE–2020–051]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Its Automated Price Improvement Auction Rules in Connection With Agency Order Size Requirements

August 21, 2020.

I. Introduction

On June 11, 2020, Cboe Exchange, Inc. (''Exchange'' or ''Cboe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change permitting the Exchange to impose a maximum size requirement for an agency order submitted into the Automated Price Improvement Mechanism (''AIM'' or ''AIM Auction'') and the Complex Automated Price Improvement Mechanism (''C–AIM'' or ''C–AIM Auction'') in S&P 500® Index Options (''SPX''). The proposed rule change was published for comment in the **Federal Register** on June 18, 2020.[3] On July 23, 2020, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.[4] On July 27, 2020, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] The Commission is publishing this notice and order to solicit comment on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to amend Rule 5.37(a)(3) and Rule 5.38(a)(8) to adopt a maximum size of 10 contracts for Agency Orders in SPX submitted through the Automated Price Improvement Mechanism (''AIM'' or ''AIM Auction'') and the Complex Automated Price Improvement Mechanism (''C–AIM'' or ''C–AIM Auction'').[8]

Currently, Rules 5.37(a)(3) and 5.38(a)(3), which govern the size requirements for AIM and C–AIM Agency and Initiating Orders, provide that there is no minimum size for orders submitted into AIM and C–AIM Auctions, respectively, and that the Initiating Order must be for the same size as the Agency Order. As such, an Agency Order of any size may currently be submitted in an AIM or C–AIM Auction.

The Exchange now proposes to amend Rule 5.37(a)(3) to provide the maximum size for all Agency Orders in SPX is 10 contracts, and by amending Rule 5.38(a)(3) to provide that the maximum size for the smallest leg of all Agency Orders in SPX is 10 contracts.[9] The proposed maximum size limit for SPX Agency Orders submitted in an AIM or C–AIM Auction is designed to address the specific trading characteristics, market model, and investor basis of SPX. The Exchange notes that the maximum size requirement for Agency Orders in SPX would apply to all Agency Orders in the entire SPX class (including SPX Weeklys (''SPXW'')).

In particular, SPX has a different and more complicated market model, involves taking on greater risk, has a significantly higher notional value (*e.g.,* they are ten times the notional size of SPY options), tends to trade in much larger size, tends to have a larger percentage of volume executed in open outcry than other classes, and tends to execute increasingly more complex strategies (*e.g.,* SPX Combo orders) than in other options classes. The Exchange understands these factors may limit retail customer participation in SPX to simpler strategies and smaller-sized orders. While AIM and C–AIM have historically been activated for all other options classes, the unique and more complex characteristics of SPX have contributed to the Exchange's historical determination to not activate AIM and C–AIM in SPX when the floor is open so to encourage liquidity on the trading floor as well as in the electronic book to accommodate these large and complex trades.[10] Therefore, the Exchange believes the application of an Agency Order size ceiling may provide more price improvement opportunities in SPX geared towards retail customers when AIM and C–AIM are activated in SPX.[11] The Exchange believes this may incentivize increased retail customer auction participation in SPX and provide retail customers with execution and price improvement opportunities in SPX while incentivizing continued liquidity in the electronic book and on the trading floor for larger and more complex orders.

The Exchange has observed that smaller size order flow tends to attract liquidity provider responses, as such orders are generally easier to hedge than larger orders, which may encourage market participants to compete to provide price improvement in an electronic competitive auction process. This, in turn, may contribute to a deeper, more liquid auction process with additional price improvement opportunities for market participants that submit smaller size orders, particularly retail customers.

The Exchange notes that smaller orders in SPX are not commonly executed on the floor, and, without an opportunity to execute in AIM and C–AIM, smaller orders are primarily submitted into to the Book and trade at the market, whereas, with AIM and C–AIM, smaller orders may receive price improvement.[12] For example, the Exchange observed that during April and May 2020, while the trading floor was inoperable and AIM and C–AIM were activated for SPX, the average daily statistics for Agency Orders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89058 (June 12, 2020), 85 FR 36918. Comments received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-051/srcboe2020051.htm.*

[4] In Amendment No. 1, the Exchange: (1) Amended its proposal to modify the proposed maximum size requirement for AIM and C–AIM agency orders in SPX to ten contracts rather than a size determined by the Exchange of up to 100 contracts, specify that this size requirement would apply to all agency orders in SPX, and make related conforming changes to its proposed rule text; and (2) provided additional data, justification, and support for its modified proposal. The full text of Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-051/srcboe2020051-7470738-221292.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 89399, 85 FR 46202 (July 31, 2020). The Commission designated September 16, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Amendment No. 1 adopts a fixed maximum size requirement of 10 contracts for SPX Agency Orders submitted to AIM and C–AIM and amends the Initial Rule Filing to reflect this fixed maximum.

[9] Application of the maximum size to the smallest leg of complex orders is consistent with the application of a size requirement for the Exchange's Complex Solicitation Auction Mechanism, which is a similar price improvement auction mechanism on the Exchange. *See* Rule 5.40(a)(3).

[10] The Exchange notes that, due to the Covid-19 pandemic, the trading floor was inoperable from March 16, 2020 through June 12, 2020 and, as a result, AIM and C–AIM were activated for SPX for the duration of the floor closure.

[11] Amendment No. 1 adds additional clarification regarding the differences between SPX and other classes and the role of such differences in the Exchange's historical determination not to activate AIM and C–AIM for SPX.

[12] Amendment No. 1 provides additional detail regarding the typical order flow of smaller, retail-sized orders when the Exchange is operating in its historically normal environment (*i.e.,* when the trading floor is operable and AIM/C–AIM is not activated in SPX). The Exchange notes, too, that Rule 5.37(b)(1)(A) guarantees price improvement for smaller order submitted to AIM. It provides that if a buy (sell) Agency Order is for less than 50 standard option contracts (or 500 mini-option contracts), the stop price of the Initiating Order must be at least one minimum increment better than the then-current NBO (NBB) or the Agency Order's limit price (if the order is a limit order), whichever is better.

containing various quantities was as follows:

Order size category	AIM		C–AIM	
	Number of Agency orders	Number of contracts	Number of Agency orders	Number of contracts
1 to 10	1,668	4,229	2,123	17,231
11 to 50	103	2,759	189	17,226
51 to 100	19	1,654	30	12,696
101 to 250	5	977	21	16,373
251 to 500 [13]	3	1,335	12	19,144

The Exchange then observed that since the re-opening of the trading floor on June 15, 2020,[14] the average daily statistics for customer orders for various quantities has been as follows:

Order size category	Simple orders on floor		Complex orders on floor	
	Number of customer orders	Number of contracts	Number of customer orders	Number of contracts
1 to 10	11	50	12	1,481
11 to 50	11	376	41	11,894
51 to 100	8	688	44	16,305
101 to 250	9	1,487	30	20,635
251 to 500 [15]	6	2,240	19	22,489

The Exchange has observed that brokers generally cross customer orders on the trading floor, which is currently the only way to cross orders on the Exchange. Overall, as demonstrated in the tables above, the Exchange has observed that, when AIM and C–AIM were activated for SPX, there was a significant number of SPX orders (and resulting number of contracts) containing quantities of one to ten contracts submitted through the electronic auctions over any other order size category. However, once the trading floor was again operable in June 2020, and AIM and C–AIM consequently switched off for SPX, the volume of customer orders in SPX for one to ten contracts submitted to the trading floor decreased significantly (approximately a 99% decrease in number of simple orders, total number of simple order contracts and number of complex orders, and approximately a 91% decrease in total number of complex order contracts) from the volume that had previously been submitted to the electronic auctions, whereas, larger order sizes experienced a notable increase in volume once the trading floor was again operable. Thus, the data demonstrates that when AIM is not available, brokers do not take advantage of the ability to cross smaller-sized orders on the trading floor, but when AIM is available, brokers use the electronic auction to cross these smaller-sized orders.

In addition to this, the Exchange observed that, in a sample of SPX orders submitted into simple AIM during a week of trading in April 2020,[16] orders containing quantities from one to ten contracts submitted through AIM received an average price improvement of approximately $0.34 over their limit prices, whereas orders containing quantities from 11 to 50 contracts received an average price improvement of approximately $0.22, and orders for 51 to 250 contracts received an average price improvement of $0.08 and orders containing quantities of between 251 and 500 received an average of $0.15. That is approximately a 55% larger average price improvement that orders for one to ten contracts received than orders for 11 to 50 contracts, a 325% larger average price improvement than orders for 51 to 250 contracts and approximately 127% larger average price improvement than orders for 251 to 500 contracts. While the Exchange did not observe such a significant increase in price improvement for complex orders from one to ten contracts in the sample of SPX orders submitted to C–AIM, it notes that greater price improvement generally did occur for smaller sized complex orders as compared to larger sized orders. The Exchange notes, however, that it is simultaneously submitting a rule filing to amend the manner in which price improvement occurs for certain complex SPX orders submitted to C–AIM so that price improvement received through the C–AIM Auction is better aligned with pricing that typically occurs on the trading floor. The Exchange believes that this, paired with the proposed maximum quantity, will greatly incentivize more retail-sized order flow through C–AIM. Overall, as this data demonstrates, price improvement on smaller orders (particularly for one to ten contracts) in SPX, a class which generally exhibits more complicated trading characteristics and complex market factors, is generally more beneficial than price improvement on larger orders submitted through AIM and C–AIM, and customers are more inclined to submit smaller orders (1–10 contracts) in SPX into the electronic auctions when activated for SPX, rather

[13] The Exchange also notes that orders for over 500 contracts did not exceed a daily average of 2 orders (for up to an average daily total of 3,425 contracts) in AIM nor over a daily average of 4 orders (for up to an average daily total of 50,971 contracts) in C–AIM.

[14] Through July 16, 2020, when this data was compiled.

[15] The Exchange also notes that orders for over 500 contracts have had up to a daily average of 4 orders (for up to an average daily total of 9,120 contracts) in AIM and up to 10 orders (for up to an average daily total of 60,091 contracts) in C–AIM.

[16] Amendment No. 1 amends the data sample presented by expanding the time frame in which the sample was taken for average price improvement over the limit price of Agency Orders submitted into AIM and C–AIM from through.

than to the trading floor, when operable. As a result, if the Exchange is able to implement a maximum size requirement of up to 10 contracts for SPX as proposed,[17] it may determine to activate AIM and C–AIM when the trading floor is open. The Exchange believes this could provide incentive for the submission of smaller size SPX orders to the Exchange and into the electronic auction. As a result, the Exchange believes the proposed rule change will provide retail customers with additional price improvement opportunities overall when the trading floor is open while preserving liquidity available in the market, particularly on the trading floor, for larger and more complicated orders.

The Exchange notes that the trading floor is generally better suited for the larger complex orders typical in SPX. Therefore, while permitting retail-sized orders in SPX to execute in AIM and C–AIM will provide additional price improvement opportunities for smaller orders, it is also designed to maintain SPX liquidity, and incentive Market-Maker activity in SPX, on the trading floor and in the electronic book when AIM and C–AIM is activated for SPX, creating a liquid hybrid environment for orders in this class. Indeed, the Exchange has observed that open outcry trading is the generally preferred execution mechanism for orders in such a complex and nuanced class as SPX, which has been indicated, among other observations, by a significant decrease in SPX executions while the Exchange operated in an all-electronic environment. Data from February 3, 2020 through March 13, 2020 (the last trading day prior to the temporary close of the trading floor) shows that a total of 2,717,383 contracts for simple orders in SPX and 27,242,625 contracts for complex orders in SPX were executed in open outcry auctions, whereas data for approximately the same timeframe, from March 16, 2020 through April 21, 2020, shows that 534,790 contracts were executed in AIM in SPX and 13,059,041 contracts were executed in C–AIM in SPX. The Exchange notes, too, that the Exchange's trading floor may be better suited for crosses in SPX with more complex orders, complicated strategies and larger size. Such orders are more commonly executed on the trading floor as Trading Permit Holders (''TPHs'') are able to negotiate and fine-tune the terms of a trade on the trading floor and are permitted to submit complex orders with a ratio less than one-to-three (.333) or greater than three-to-one (3.00) for execution on the trading floor.[18] TPHs are not currently permitted to submit complex orders with such ratios for electronic processing. In addition to this, the trading crowd in open outcry is able to provide markets that are more tailored to the complexity and size of orders typically submitted in SPX. Greater execution and price improvement opportunities for SPX orders may result from the markets given by the trading crowd that better define the nuanced complexity and size of such orders than if the same orders were submitted via AIM or C–AIM –which, instead, may provide greater price improvement opportunities for simpler and smaller orders (as demonstrated in the data sample explained above).[19]

Finally, pursuant to current Rule 5.37.02 and Rule 5.38.02, it is deemed conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 8.1 to engage in a pattern of conduct where the Initiating Member breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating TPH would have otherwise received in accordance with the allocation procedures contained in the AIM and C–AIM Rules, respectively. In light of the proposed rule change, the Exchange also proposes to amend Rules 5.37.02 and 5.38.02 to make it clear that Initiating TPHs also may not break up an Agency Order into separate orders for the purpose of circumventing the maximum quantity requirement pursuant to subparagraph(s) (a)(3). The Exchange notes that its surveillance program will monitor for such violations in the same manner in which it currently monitors for allocation-related break up violations.

III. Summary of Comment Letters Received

To date the Commission has received six comment letters on the proposal.[20] The Exchange also submitted a letter responding to the comments.[21] Two commenters supported imposing a maximum size limitation on SPX agency orders in AIM and C–AIM auctions, agreeing with Cboe's assertions that it would incentivize increased retail customer participation in SPX auctions and provide increased execution and price improvement opportunities for retail customers in SPX.[22] One of these commenters further agreed with Cboe's assertions that allowing Cboe to determine a maximum size for SPX orders in AIM and C–AIM auctions would enhance execution quality for smaller orders while maintaining liquidity on the trading floor for larger complex orders.[23] The other commenter claimed its clients recognized significant price improvement opportunities in AIM auctions of SPX orders from 1–100 contracts, but saw mixed results on orders greater than 100 contracts.[24]

Three commenters opposed Cboe's proposal.[25] One of these commenters opposed activating AIM and C–AIM auctions for orders in SPX generally, regardless of size,[26] while the other two commenters opposed Cboe's proposal to impose any degree of maximum size limitation on these orders, arguing instead that the auctions should be made available in SPX for agency orders of all sizes.[27] One of these commenters argued that if retail order flow in SPX is in fact limited to smaller-sized orders, there is no need to impose a size

[17] The proposed rule change to designate a maximum size of 10 contracts is based on this data, which demonstrates that orders with size up to 10 contracts generally experience the most volume when AIM and C–AIM are activated for SPX and generally receive the most beneficial price improvement (and are considered to be ''retail'' sized orders).

[18] *See* Rule 5.83(b).

[19] Amendment No. 1 adds additional detail and bolsters the explanation regarding the reasons why the trading floor is better suited for the execution of the generally larger, more complicated orders in SPX, including providing additional data regarding SPX order flow to the floor when operable and to AIM/C–AIM when the floor was not operable.

[20] *See* letters to Vanessa Countryman, Secretary, Commission, from Michael Golding, Head of Trading, Optiver US LLC, and Rutger Brinkhuis, Head of Trading, AMS Derivatives B.V., dated July 8, 2020 (''Optiver Letter''); Richard J. McDonald, Susquehanna International Group, LLP, dated July 8, 2020 (''SIG Letter''); Ellen Greene, Managing Director, Equities & Options Market Structure, The Securities Industry and Financial Markets Association, dated July 9, 2020 (''SIFMA Letter''); John S. Markle, Interim General Counsel, TD Ameritrade, Inc., dated July 9, 2020 (''TD Ameritrade Letter''); Stephen John Berger, Managing Director and Global Head of Government & Regulatory Policy, Citadel Securities, dated July 9, 2020 (''Citadel Letter I''); and Stephen John Berger, Managing Director and Global Head of Government & Regulatory Policy, Citadel Securities, dated August 12, 2020 (''Citadel Letter II'').

[21] *See* letter to Vanessa Countryman, Secretary, Commission, from Rebecca Tenuta, Counsel, Cboe Global Markets, dated July 31, 2020 (''Cboe Response Letter'').

[22] *See* SIFMA Letter, *supra* note 20, at 2; TD Ameritrade Letter, *supra* note 20, at 1. The SIFMA Letter and TD Ameritrade Letter commented on Cboe's original proposal, which would have given Cboe the ability to determine a maximum size of up to 100 contracts, prior to Amendment No. 1, which proposed a set maximum size of ten contracts.

[23] *See* SIFMA Letter, *supra* note 20, at 2.

[24] *See* TD Ameritrade Letter, *supra* note 20, at 1.

[25] *See* Optiver Letter, *supra* note 20, at 1–2; SIG Letter, *supra* note 20, at 3–4; Citadel Letter I, *supra* note 20, at 1; Citadel Letter II, *supra* note 20, at 1.

[26] *See* Optiver Letter, *supra* note 20, at 1–2.

[27] *See* SIG Letter, *supra* note 20, at 3–4; Citadel Letter I, *supra* note 20, at 1; Citadel Letter II, *supra* note 20, at 1.

limitation in order to provide increased price improvement opportunities in the AIM and C–AIM mechanisms for these orders.[28] This commenter further argued that, if larger-sized orders are better suited for the trading floor, as Cboe suggests, such orders would naturally gravitate towards the floor and obviate the need for any size limitations in the electronic mechanisms.[29] Two commenters argued that market participants should have the choice of whether to direct their orders to the trading floor or an electronic auction, with one suggesting that brokers would have best execution obligations to monitor price improvement and route their orders in the most favorable manner.[30] Three commenters suggested that Cboe's data analysis may be insufficient to support its proposal.[31] Two of these commenters noted that the data does not measure a time period during which both electronic auctions and floor-based liquidity are available.[32] One of these commenters and a separate commenter noted that Cboe's own data demonstrated that price improvement opportunities were observed for orders of all sizes in the electronic auction mechanisms during the trading floor closure.[33] One commenter argued that allowing SPX market makers to provide electronic price improvement for SPX orders of all sizes would not discourage market makers from also providing price improvement for open outcry orders in SPX.[34]

In its response to comments, Cboe noted that its current rules already allow it to use AIM and C–AIM for all options classes, and therefore it may activate AIM and C–AIM in SPX without a proposed rule change.[35] Cboe further stated that the proposed maximum size for SPX orders in AIM and C–AIM is necessary in order to provide limited electronic auction functionality that some customers found beneficial when available, while mitigating any negative impact on the larger SPX market that Cboe claimed may result from the auctions, including decreased quoting liquidity on the book, wider quotes, and reduced participation by options market makers.[36] In addition, Cboe reiterated its argument that the unique characteristics of SPX options warrant imposing a maximum size to SPX orders submitted through the AIM and C–AIM auctions.[37] Cboe also argued that the proposal would not unfairly discriminate against any market participants, as it imposes no restrictions on any market participant's ability to utilize the AIM and C–AIM auctions for SPX options (*i.e.,* any market participant would retain the ability to submit an SPX agency order of ten contracts or fewer in an AIM or C–AIM auction, respond to an AIM or C–AIM auction, and, to the extent permitted by Exchange Rules, be solicited for the initiating order).[38] Finally, Cboe stated that it has provided sufficient additional data in the amended proposal to support the proposed maximum size of ten contracts, and argued that its data measuring price improvement for AIM and C–AIM SPX orders of various sizes is sufficiently representative because all order sizes reflected in the data sample were subject to the same market conditions.[39] Cboe also stated that it is unable to provide comparable price improvement statistics for orders executed on the trading floor due to the nature of their execution as compared to electronically executed orders.[40]

Three commenters recommended that, to the extent any maximum size is established for SPX orders in AIM and C–AIM auctions, the level of the maximum size should be clearly stated in the proposed rule, with any future modifications subject to a separate proposed rule change.[41] Two of these commenters suggested that, when proposing any modification to the maximum size threshold, Cboe should provide sufficient supporting information, including, for example, data showing price improvement and internalization statistics, and any information necessary to clearly demonstrate how the threshold amount accurately captures retail investor activity in SPX and does not exclude a significant amount of retail activity.[42] In response to these comments, as described above, Cboe amended its initial proposal to establish a set maximum size of ten contracts for AIM and C–AIM agency orders in SPX and provided additional data and analysis to support this proposed threshold.[43] In response to the amended proposal, one commenter argued that the proposed ten contract maximum size is without a rational basis and will result in unfair discrimination that would deny significant price improvement to many retail investors.[44] This commenter claimed that retail investors commonly submit orders of more than ten contracts and provided data showing that more than fifty percent of the AIM-eligible retail simple marketable SPX orders that it routed to Cboe from mid-March 2020 to mid-May 2020 were larger than ten contracts.[45] This commenter also argues that its data demonstrates that retail orders of up to 100 contracts received significant price improvement in the AIM auction and requests that Cboe either eliminate the proposed maximum size threshold or, at a minimum, set the threshold at 100 contracts.[46]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–CBOE–2020–051, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[47] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the

[28] *See* SIG Letter, *supra* note 20, at 3.

[29] *See id.*

[30] *See id.* at 3; Citadel Letter I, *supra* note 20, at 1.

[31] *See* SIG Letter, *supra* note 20, at 3; Optiver Letter, *supra* note 20, at 2; Citadel Letter I, *supra* note 20, at 1.

[32] *See* SIG Letter, *supra* note 20, at 3; Optiver Letter, *supra* note 20, at 2. One of these commenters further questioned the validity of the data given the extreme volatility observed during the time period of the data. *See* Optiver Letter, *supra* note 20, at 2.

[33] *See* SIG Letter, *supra* note 20, at 3 & n.9; Citadel Letter I, *supra* note 20, at 1. As noted above, however, a separate commenter suggested price improvement opportunities were mixed for SPX orders greater than 100 contracts. *See* TD Ameritrade Letter, *supra* note 20, at 1.

[34] *See* SIG Letter, *supra* note 20, at 4.

[35] *See* Cboe Response Letter, *supra* note 21, at 2 n.9.

[36] *See id.* at 2–3. Cboe also argued in its response to comments that the trading floor may be better for crosses in SPX, based on Cboe's observation that the number of larger and more complicated orders that are crossed on the Exchange was significantly lower when the trading floor was closed than when it was open. *See id.* at 3 & n.13 (finding that, from January 2, 2020 through March 13, 2020, complex orders for SPX options with more than six legs represented approximately 5.3% of the total SPX complex order average daily volume, whereas from March 16, 2020 through April 30, 2020 while the floor was closed and C–AIM was activated in SPX, complex orders for SPX options with more than six legs represented only approximately 2.2% of the total SPX complex order average daily volume).

[37] *See id.* at 3–4.

[38] *See id.* at 5.

[39] *See id.* at 6.

[40] *See id.*

[41] *See* TD Ameritrade Letter, *supra* note 20, at 2; Citadel Letter I, *supra* note 20, at 2; Optiver Letter, *supra* note 20, at 2. The TD Ameritrade Letter and Citadel Letter I, commenting on Cboe's initial proposal, both suggested that Cboe commit to allowing orders of up to 100 contracts to participate in the electronic auctions. *See* TD Ameritrade Letter, *supra* note 20, at 2; Citadel Letter I, *supra* note 20, at 2.

[42] *See* Citadel Letter I, *supra* note 20, at 2; Optiver Letter, *supra* note 20, at 2.

[43] *See* Cboe Response Letter, *supra* note 21, at 2.

[44] *See* Citadel Letter II, *supra* note 20, at 1.

[45] *See id.* at 1–2.

[46] *See id.* at 2.

[47] 15 U.S.C. 78s(b)(2)(B).

Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change, as modified by Amendment No. 1, to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[48] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulate acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;[49] and Section 6(b)(8) of the Act, which requires that the rules of the Exchange do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[50]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [51] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[52] and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[53]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5) and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[54] any request for an opportunity to make an oral presentation.[55]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by September 17, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 1, 2020. Commission 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–CBOE–2020–051 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–CBOE–2020–051. 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–CBOE–2020–051, and should be submitted on or before September 17, 2020. Rebuttal comments should be submitted by October 1, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

J. Matthew DeLesDernier,

Assistant Secretary.

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[48] 15 U.S.C. 78s(b)(2)(B).

[49] 15 U.S.C. 78f(b)(5).

[50] 15 U.S.C. 89f(b)(8).

[51] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[52] *See id.*

[53] *See id.*

[54] 17 CFR 240.19b–4.

[55] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[56] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–803, OMB Control No. 3235–0754]

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 30b1–10, Form N–LIQUID, SEC File No. 270–803, OMB Control No. 3235–0754

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

17 CFR 270.30b1–10 (Rule 30b1–10) and 17 CFR 274.223 (Form N–LIQUID) require open-end investment companies, including exchange-traded funds that redeem in kind (''In-Kind ETFs'') but not including money market funds, to file a current report on Form N–LIQUID on a non-public basis when certain events related to their liquidity occur. The information reported on Form N–LIQUID concerns events under which more than 15% of a fund's or In-Kind ETF's net assets are, or become, illiquid investments that are assets as defined in 17 CFR 270.22e–4 (rule 22e–4) and when holdings in illiquid investments are assets that previously exceeded 15% of a fund's net assets have changed to be less than or equal to 15% of the fund's net assets.[1] The information reported on Form N–LIQUID also regards events under which a fund's holdings in assets that are highly liquid investments fall below the fund's highly liquid investment minimum for more than 7 consecutive calendar days. A report on Form N–LIQUID is required to be filed, as applicable, within one business day of the occurrence of one or more of these events.[2]

Based on staff analysis, we estimate that the Commission receives an average of 30 reports per year on Form N–LIQUID.[3] When filing a report on Form N–LIQUID, staff estimates that a fund will spend on average approximately 4 hours of an in-house attorney's time and 1 hour of an in-house accountant's time to prepare, review, and submit Form N–LIQUID, at a total time cost of $1,894.[4] Accordingly, in the aggregate, staff estimates that compliance with rule 30b1–10 and Form N–LIQUID will result in a total annual burden of approximately 150 burden hours and total annual time costs of approximately $56,820.[5]

Compliance with rule 30b1–10 is mandatory for all open-end investment companies, other than money market funds. Responses to the disclosure requirements will be kept confidential. The estimate of average burden hours is made solely for the purposes of the PRA. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to enable the Commission to receive information on fund liquidity events more uniformly and efficiently, and to enhance the Commission's oversight of funds when significant liquidity events occur and its ability to respond to market events. 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: August 21, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–18802 Filed 8–26–20; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Item C.1 and Item C.2 of Part A of Form N–LIQUID.

[2] *See* General Instruction A.2 of Form N–LIQUID.

[3] The estimated number of annual filings is based on the number of filings in 2019, adjusted because certain of these filings would no longer be necessary going forward and a subset of funds were not subject to the filing requirement for all of 2019.

[4] This estimate is based on the following calculations: (4 hours × $419/hour for an attorney = $1,676), plus (1 hour × $218/hour for a senior accountant = $218), for a combined total of 5 hours at total time costs of $1,894. The estimates concerning the wage rates for attorney and senior accountant time are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for in-house attorneys and senior accountants, modified to account for a 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

[5] This estimate is based on the following calculations: 30 reports filed per year × 5 hours per report = approximately 150 total annual burden hours. 30 reports filed per year × $1,894 in costs per report = $56,820 total annual costs.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–777, OMB Control No. 3235–0729]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form N–CEN

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Form N–CEN under the Investment Company Act of 1940.'' Form N CEN is used to collect annual, census-type information for registered funds. Filers must submit this report electronically using the Commission's electronic filing system ''(EDGAR'') in Extensible Markup Language (''XML'') format. The purpose of Form N–CEN is to satisfy the filing and disclosure requirements of Section 30 of the Investment Company Act, and of rule 30a–1 thereunder.

We estimate that the average annual hour burden to complete the generally applicable items on Form N–CEN response will be 12.31 hours per year. We estimate that the aggregate annual hour burden to complete the generally applicable items will be 34,899 hours per year. We therefore estimate that filers would have total average annualized paperwork related expenses related to complete the generally applicable items of $12,249,496.35 for reports on Form N–CEN. Additionally, we estimate that filers will be required to file 12,365 responses related to liquidity risk management items on Form N–CEN. We estimate that the average annual hour burden of the liquidity risk management items on Form N–CEN will be one hour per response per year, for an additional average annual hour burden of 12,365 hours and average aggregate time costs of $4,340,115. Additionally, we estimate that filers will be required to file 9,854 responses regarding swing pricing. We estimate that the average annual hour burden as a result of the swing pricing-related items on Form N–CEN will be an additional 0.5 hour per fund per year for

an average annual hour burden of 4,927 hours and average aggregate time costs of $1,729,377. We estimate that filers will be required to file 2,091 responses regarding rule 6c–11. For these responses related to rule 6c–11, we an average annual hour burden of 0.1 hour per response per year, for an average annual hour burden of 209.1 hours and average aggregate time costs of $73,394.1.

We estimate that the total hour burdens and time costs associated with Form N–CEN, including the burdens associated with the liquidity-related, swing pricing-related, and rule 6c–11-related items, will result in an average annual hour burden of 52,397 hours and average aggregate time costs of $18,392,382.45.

The requirements of this collection of information are mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid 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: August 21, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–18803 Filed 8–26–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89639; File No. SR–ICC–2020–009]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Risk Management Framework, ICC Risk Management Model Description, ICC Risk Parameter Setting and Review Policy, ICC Stress Testing Framework, and ICC Liquidity Risk Management Framework

August 21, 2020.

I. Introduction

On July 1, 2020, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4,[2] a proposed rule change to make changes to ICC's Risk Management Framework (''RMF''), Risk Management Model Description (''RMMD''), Risk Parameter Setting and Review Policy (''RPSRP''), Stress Testing Framework (''STF''), and Liquidity Risk Management Framework (''LRMF''). The proposed rule change was published for comment in the **Federal Register** on July 16, 2020.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Updated Stress Scenario Naming Conventions and Clarifications

The proposed rule change would update certain stress scenario naming conventions to be more generic, *i.e.,* by replacing naming conventions for stress scenarios associated with the Lehman Brothers (''LB'') default with more generic naming conventions associated with extreme price increases and decreases (the ''Extreme Price Change Scenarios'').

1. Risk Management Framework

The proposed rule change would replace references to the LB default in the RMF with more generic references to extreme market events. In particular, to achieve anti-procyclicality (''APC'') of initial margin requirements and to achieve APC of Guaranty Fund sizing, Sections IV.B.1 and IV.E.1, respectively, of the RMF discuss two price-based scenarios, associated with price decreases and increases, and currently states that the considered stress price changes are derived from market behavior during and after the LB default period. The proposed rule change would replace the reference to the LB default in both sections with a reference to extreme market events, stating that the considered stress price changes are derived from extreme market events related to the default of a large market participant, global pandemic problem, or regional or global economic crisis.

2. Risk Management Model Description

The proposed rule change would incorporate the Extreme Price Change Scenarios into the RMMD. Specifically, the proposal would replace references and notations to the scenarios associated with the LB default with references and notations to the Extreme Price Change Scenarios in both the Initial Margin and Guaranty Fund Methodology sections.

The proposed rule change would introduce the Extreme Price Change Scenarios in Section VII.3.3, which discusses APC measures. Currently, this section examines instrument price changes observed during the LB default. The proposal would amend this section by replacing references to the LB Default with references to extreme market events to examine instrument price changes observed during extreme market events rather than the LB Default and would include considerations related to the greatest price decreases and increases over a number of consecutive trading days during the period of extreme market events. This section would also state that the Extreme Price Change Scenarios reflect extreme market events related to the default of a large market participant, global pandemic problem, regional or global economic crisis and would explain how these scenarios are derived. Moreover, this section would introduce a factor that would be associated with one of the Extreme Price Change Scenarios and reference the RPSRP for details on how it is set.

In the context of Index Swaptions, the formulas used would also be updated to reference the Extreme Price Change Scenarios in Section VII.3.3 and minor clarifications would be included for certain descriptions associated with option instruments in respect of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change Relating to the ICC Risk Management Framework, ICC Risk Management Model Description, ICC Risk Parameter Setting and Review Policy, ICC Stress Testing Framework, and ICC Liquidity Risk Management Framework, Exchange Act Release No. 89286 (July 10, 2020); 85 FR 43272 (July 16, 2020) (SR–ICC–2020–009).

remaining time to expiry in Sections VII.3.3 and X.3.1.[4]

3. Risk Parameter Setting and Review Policy

The proposal would also incorporate the Extreme Price Change Scenarios into the RPSRP. Specifically, Table 1 in Section 1.1 contains ICC's core model parameters and would be amended to incorporate the abovementioned factor associated with one of the Extreme Price Change Scenarios. In Section 1.7, the proposed rule change would add a new subsection to include another category of parameters associated with the integrated spread response model component, namely the APC level parameters. The rule proposal would introduce the Extreme Price Change Scenarios in this subsection because extreme stress scenarios associated with historically observed extreme prices changes are inputs in estimating the APC portfolio response.

As discussed above, the Extreme Price Change Scenarios would consider the greatest observed price decreases and increases over a number of consecutive trading days within the period of extreme market events related to the default of a large market participant, global pandemic problem, regional or global economic crisis. Moreover, ICC would set out how the Extreme Price Change Scenarios are derived as well as how the abovementioned factor is estimated. ICC would further summarize the associated review and governance process for these scenarios, including the reviewers and any prerequisites to the implementation of parameter updates.

B. Introduction of New Stress Scenarios and Clarifications

The proposed rule change would also introduce the COVID–19/Oil Crisis Scenarios and amend the LRMF to ensure scenario unification among the STF and LRMF.

1. Stress Testing Framework

The proposal would amend the STF to introduce the COVID–19/Oil Crisis Scenarios. Specifically, the proposal would amend the definition of extreme market events to include the Coronavirus pandemic and the simultaneous occurrence of the oil price war in Section 3.

In Section 5 of the STF, the proposed rule change would rename the category of scenarios deemed as Historically Observed Extreme but Plausible Market Scenarios: Severity of Losses in Response to a Baseline Credit Event to the more general Historically Observed Extreme but Plausible Market Scenarios: Severity of Losses in Response to Baseline Market Events. The associated description of that category would be updated to replace the LB default with a more general description of extreme market events such as those related to the default of a large market participant, global pandemic problem, and regional or global economic crisis. The proposal would also make conforming changes to Section 5.2, including updating the heading and adding a general description of the category followed by the associated scenarios, which would include the COVID–19/Oil Crisis Scenarios, in bulleted form. ICC also proposes to incorporate reference to the COVID–19/Oil Crisis Scenarios into the other categories of scenarios, namely Hypothetically Constructed (Forward Looking) Extreme but Plausible Market Scenarios and Extreme Model Response Test Scenarios in Sections 5.3 and 5.4, respectively, and to replace references to the LB default with more general references to extreme market events and price changes in Section 5.4.

In Section 13 of the STF, ICC proposes to add the COVID–19/Oil Crisis Scenarios to the list of Historically Observed and Hypothetically Constructed Extreme but Plausible Scenarios. Additionally, in Section 13, ICC proposes to remove a footnote to avoid redundancy as such information can be found in the text of Section 14.

2. Liquidity Risk Management Framework

The proposal would amend the LRMF to incorporate the COVID–19/Oil Crisis Scenarios and ensure unification of the LRMF and STF, including with respect to scenario descriptions and governance procedures.

Further, the proposal would amend Section 2 to provide additional clarity on ICC's liquidity risk management practices. ICC would add explanatory language classifying scenarios as ''extreme and not expected to be realized'' and ''extreme but plausible'' based on risk horizons in Section 2.3 and reference such classifications throughout the document. ICC also would clarify actions that it can take only in the event of a CP default, specifically related to pledgeable collateral in Section 2.6, and actions that it can take irrespective of a CP default or non-default scenario, specifically related to accessing committed repurchase (''repo'') and committed foreign exchange (''FX'') facilities in Section 2.7.

ICC also proposes revisions to Section 2.8, which describes ICC's liquidity waterfall (*i.e.,* the order, to the extent practicable, that ICC uses its available liquid resources (''ALR'') to meet its currency-specific cash payment obligations) to amend the determination of ALR. ALR consist of the available deposits currently in cash of the required denomination, and the cash equivalent of the available deposits in collateral types that ICC can convert to cash, in the required currency of denomination, rapidly enough to meet the relevant, currency-specific deadlines by which ICC must meet its liquidity obligations (''ICC Payout Deadlines''). The proposed rule change would revise Section 2.8 to specify that, to enable an assessment of the impact of a service provider becoming unavailable and/or overnight investments not unwinding by the relevant ICC Payout Deadlines, the cash on deposit component of ALR considered across all levels of the liquidity waterfall may be adjusted to be a portion, the Available Percentage, of the actual cash on deposit. The proposed amendments would also discuss the determinations of ALR if the analysis assumes the use of the committed repo facilities.

ICC proposes amendments to Section 3.3 that either provide additional clarity or promote consistency between the STF and LRMF. The proposed changes would add background on ICC's stress testing analysis and reorganize Section 3.3 into four parts. Proposed Section 3.3.1 would describe ICC's stress test methodology that uses a set of stress scenarios and establishes if the ALRs are sufficient to cover hypothetical liquidity obligations. This section would also include language describing the Forward Looking (Hypothetically Constructed) Scenarios that is consistent with the STF, such as details on their construction and on the calculation of Loss-Given-Default (''LGD'') and Expected LGD with respect to these scenarios. Proposed subpart (a) would detail ICC's cover-2 analysis, which demonstrates to what extent the required liquidity resources available to ICC were sufficient to meet single and multi-day cover-2 liquidity obligations under the considered scenarios.

Proposed Section 3.3.2 would set forth the predefined scenarios that ICC maintains for liquidity stress testing and would be divided into the following consistent with the STF: (a) Historically Observed Extreme but Plausible Market Scenarios, (b) Historically Observed Extreme but Plausible Market Scenarios: Severity of Losses in Response to

[4] The proposal would make other minor clarification or clean-up changes to the RMMD. Specifically, ICC proposes to add language to clarify a notation in an equation in Section VII.1.2.1 and update cross-references in Section IX.

Baseline Market Events, (c) Hypothetically Constructed (Forward Looking) Extreme but Plausible Market Scenarios, and (d) Extreme Model Response Tests. ICC would incorporate the COVID–19/Oil Crisis Scenarios in part (b) and amend the terminology describing the LGD scenarios in part (c), including by consistently referring to reference entity groups as Risk Factor Groups (''RFGs''),[5] more specifically defining reference entities and CP RFGs, and specifying the reference entities in a RFG for stress testing. In part (c), ICC would clarify its description of the one-service-provider-down scenarios which consider a reduction in ALR designed to represent ICC's exposure to service providers at which it maintains cash deposits, invested cash deposits or collateral against invested cash deposits, due to ICC's potential inability to access those accounts when required. ICC also proposes to update terminology to incorporate the Available Percentage in part (c) and add details on the ICC Risk Department's analysis of the Available Percentage.

ICC proposes additional amendments to Section 3.3.3 regarding its stress testing analysis approach. ICC proposes to add explanatory language related to portfolios that present specific wrong way risk and related to sequencing defaulting CP AGs for stress scenarios. Table 1, which lists scenarios used in ICC's liquidity stress testing and assigns each scenario to a group for reporting purposes, would be amended to incorporate additional columns detailing the corresponding report and classification/frequency and reorganized to add additional groups and scenarios (*i.e.,* the COVID–19/Oil Crisis Scenarios) for completeness.

In proposed Section 3.3.4, ICC would discuss its interpretation of liquidity stress test results, including governance procedures for enhancing the liquidity risk management methodology and procedures to meet its reporting obligations. Proposed Figure 2 would further illustrate ICC's categorization of hypothetical losses. Specifically, depending on whether there are sufficient liquidity resources across certain levels of the liquidity waterfall, stress test results could be in one of three zones (green, yellow, or red) that have different reporting requirements. Results in the red zone would be considered poor, and reporting to the ICC Risk Committee or the Board would be required.

ICC proposes additional clarification changes to the LRMF. Specifically, ICC proposes language in Section 4.3 regarding its determination of poor stress testing and/or historical analysis, noting the ICC personnel responsible for making such a determination, who would be the same personnel designated in the STF as responsible for determining poor stress testing performance. Proposed Section 6 would be an appendix that sets forth the computation of liquidity resources and remaining liquidity resources across the levels of the liquidity waterfall, including formulas for calculating currency-specific cash ALRs and currency-specific cash remaining ALRs. Such changes are explanatory and do not amend the methodology. ICC also proposes to update Table 2, which illustrates a specific report, to reorganize and include additional groups to be consistent with amended Table 1.

The proposal would make other minor clarification or non-material clean-up changes to the LRMF. Specifically, the proposed revisions would update terminology to clarify an objective of the framework in Section 1.3 and abbreviate a defined term in Section 1.4. The proposed changes would also add quotation marks around a defined term in Section 2.3; clarify ICC's use of ALR in Section 2.8, including by moving two sentences earlier in the section and incorporating reference to required currencies of denomination; and rephrase a sentence for clarity in Section 2.8.4. ICC proposes to include terminology updates with respect to the scenarios described in Sections 3.1 and 3.3 for consistency and clarity and to amend Section 3.3.2 to make certain terms lowercase, renumber subsections, update formatting, and add and update relevant cross-references. Additionally, ICC proposes minor terminology clarifications in describing its stress test analysis in Section 3.3.3 and ICC's governance procedures in Sections 4.1 through 4.3, such as making certain terms lowercase, more clearly describing certain terms, and abbreviating defined terms.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[6] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[7] and Rules 17Ad–22(e)(2)(i) and (v),[8] 17Ad–22 (e)(4)(ii),[9] and 17Ad–22(e)(7)(i)[10] thereunder.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.[11]

As noted above, the proposed rule change would update certain stress scenario naming conventions to be more generic and introduce stress scenarios related to the Coronavirus pandemic and oil price war in March 2020 in the RMF (discussed in Section II.A.1 above), the RMMD (discussed in Section II.A.2 above), and the RPSRP (discussed in Section II.A.3 above). The Commission believes that, by incorporating more generically named stress scenarios that relate to extreme market events, as opposed to the LB default, and introducing the COVID–19/Oil Crisis Scenarios, ICC is updating the RMF, RMMD, and RPSRP in a way that allows ICC to be more flexible and capable of considering a range of events beyond the LB Default, which, in turn, enhances its ability to manage risks and thereby maintain the financial resources necessary to promptly and accurately clear and settle transactions and safeguard securities and funds.

Additionally, the Commission believes that the various minor clarification and clean-up changes to the RMMD and the summary of the associated review and governance process, including the reviewers and any prerequisites to the implementation of parameter updates, in the RPSRP helps to strengthen ICC's risk management documentation with clear guidance, which ultimately supports ICC's ability to promptly and accurately clear and settle securities transactions.

The Commission also believes that the proposed changes to the STF and the LRMF to introduce the COVID–19/Oil Crisis Scenarios and renaming stress scenarios more generally, as described

[5] ICC deems each single name reference entity a Risk Factor. ICC deems a set of single name Risk Factors related by a common parental ownership structure a RFG.

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[9] 17 CFR 240.17Ad–22(e)(4)(ii).

[10] 17 CFR 240.17Ad–22(e)(7)(i).

[11] 15 U.S.C. 78q–1(b)(3)(F).

in Section II.B.1 and II.B.2 above, should also enhance ICC's ability to manage risks in a way that makes it more flexible and capable of considering a range of events. The Commission believes that this, in turn, will help ICC manage financial resources and hence promote its ability to promptly and accurately clear and settle trades and safeguard securities and funds.

Additionally, the Commission believes that the various clarifying amendments to the LRMF noted above in Section II.B.2, including clarifying its ability to use repo or FX facilities in the event of default or non-default scenarios, classifying scenarios based on liquidity risk horizon as plausible or not, describing in the default waterfall the ability to adjust the cash on deposit component of the available liquid resources, and providing background on the stress testing analysis, approach, interpretations and governance, should enhance the policies and procedures used to support ICC's risk management system by increasing transparency and clarity regarding its practices. The Commission believes that this, in turn, should strengthen ICC's ability to maintain adequate financial resources, thereby promoting both the prompt and accurate clearance and settlement of securities transactions and the ability to safeguard securities and funds.

For these reasons, the Commission believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.

B. Consistency With Rule 17Ad–22(e)(2)(i) and (v)

Rules 17Ad–22(e)(2)(i) and (v) require that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.

As noted above in Section II.A.3, the proposed changes to the RPSRP summarize the review and governance process to note the frequency that the ICC Risk Department would review the stress scenarios of price changes and their assumptions and with whom it clears APC level parameter updates. Further, the proposed changes to the LRMF in Section II.B.2 detail the frequency that ICC's Risk Department would perform an analysis of the Available Percentage of the cash on deposit and whether and when updates are performed. As noted above, the proposed changes to the LRMF also discuss the interpretation of liquidity stress test results, including governance procedures for enhancing the liquidity risk management methodology and procedures to meet its reporting obligations. Additionally, the proposed changes to the LRMF clarify the individuals responsible for determining poor stress testing results and the need for enhancements to the methodology.

The Commission believes that these changes clarify these particular governance processes by specifying responsible parties, their duties, and review frequency, thereby helping to ensure that ICC's policies and procedures are clear and transparent with clear and direct lines of governing responsibility. For these reasons, the Commission believes that these aspects of the proposed rule change are consistent with Rules 17Ad–22(e)(2)(i) and (v).[12]

C. Consistency With Rule 17Ad–22(e)(4)(ii)

Rule 17Ad–22(e)(4)(ii) requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions.[13]

The Commission believes that by introducing the COVID–19/Oil Crisis Scenarios, the proposed rule change would complement the current scenarios in the risk management policies and procedures and add additional insight into potential weaknesses in the ICC risk management methodology, thereby enhancing ICC's ability to manage its credit exposures and financial resources. Additionally, as noted above, the proposed rule change would replace naming conventions for stress scenarios associated with the LB default with more generic naming conventions associated with extreme price changes. The Commission believes that this change, particularly when discussing scenarios used to determine initial margin and guarantee fund sizing, would enhance ICC's ability to manage risks and thereby maintain the appropriate financial resources to enable it to cover a wide range of foreseeable stress scenarios.

The Commission also believes that the proposed clarification and clean-up changes enhance the readability and transparency of the policies and procedures, thereby strengthening the documentation and ensuring that it remains up-to-date, clear, and transparent to support the effectiveness of ICC's risk management system.

The Commission believes that the proposed amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(4)(ii).[14]

D. Consistency With Rule 17Ad–22(e)(7)(i)

Rule 17Ad–22(e)(7)(i) requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed, as applicable, to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions.[15]

The Commission believes that the proposed clarification changes to the LRMF noted above in Section II.B.2 provide further clarity and transparency regarding ICC's liquidity stress testing practices to strengthen the documentation surrounding ICC's liquidity stress testing methodology, including by providing additional scenario descriptions and details on the computation of liquidity resources, and ensuring consistency with the STF. Additionally, the proposed rule changes clarify actions that ICC can take only in the event of a CP default, specifically related to pledgeable collateral, and actions that it can take irrespective of a CP default or non-default scenario, related to accessing committed repo and committed FX facilities. The Commission believes that these changes should enhance ICC's ability to monitor

[12] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[13] 17 CFR 240.17Ad–22(e)(4)(ii).

[14] 17 CFR 240.17Ad–22(e)(4)(ii).

[15] 17 CFR 240.17Ad–22(e)(7)(i).

and maintain necessary liquidity by preparing it for different stress scenarios and clarifying when liquidity tools can be used. The Commission also believes that the proposed changes to the LRMF noted above related to categorization of stress test results should strengthen ICC's approach to identifying potential weaknesses in the liquidity risk management system with additional procedures related to the determination and analysis of poor stress testing.

For the reasons stated above, the Commission believes that the proposed rule changes are consistent with Rule 17Ad–22(e)(7)(i).[16]

E. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[17] and Rules 17Ad–22(e)(2)(i) and (v),[18] 17Ad–22 (e)(4)(ii),[19] and 17Ad–22(e)(7)(i)[20] thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act[21] that the proposed rule change (SR–ICC–2020–009), be, and hereby is, approved.[22]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–18826 Filed 8–26–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–297, OMB Control No. 3235–0336]

Proposal for OMB Review; Comment Request; Revision: Form N–14

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form N–14 (17 CFR 239.23) is the form for registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') of securities issued by management investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') and business development companies as defined by Section 2(a)(48) of the Investment Company Act in: (1) A transaction of the type specified in rule 145(a) under the Securities Act (17 CFR 230.145(a)); (2) a merger in which a vote or consent of the security holders of the company being acquired is not required pursuant to applicable state law; (3) an exchange offer for securities of the issuer or another person; (4) a public reoffering or resale of any securities acquired in an offering registered on Form N–14; or (5) two or more of the transactions listed in (1) through (4) registered on one registration statement. The principal purpose of Form N–14 is to make material information regarding securities to be issued in connection with business combination transactions available to investors. The information required to be filed with the Commission permits verification of compliance with securities law requirements and assures the public availability and dissemination of such information. Without the registration statement requirement, material information may not necessarily be available to investors.

TABLE 1—BURDEN ESTIMATES FOR INITIAL REGISTRATION STATEMENTS FILED ON FORM N–14

	Internal burden		Wage rate [1]	Cost of internal burden	Annual cost burden		Annual responses	Internal burden (aggregate)	Cost of internal burden (aggregate)	Annual cost burden (aggregate)
CURRENTLY APPROVED ESTIMATES										
Preparing and filing reports on Form N-14 generally.	497.31 hours ..	×	$348 (blend of compliance attorney and senior programmer).	$173,063.88	$23,091	×	253	125,820 hours	$43,758,162	$5,842,000
Preparation and review of exhibit hyperlinks.	0.25 hours	×	348 (blend of compliance attorney and senior programmer).	87	300	×	253	63 hours	22,011	75,900
Total Annual Burden	.....	.....	.....	.....	.....	.....	.....	125,883 hours	43,780,173	5,917,900
REVISED ESTIMATES										
Preparing and filing reports on Form N–14 generally.	610 hours	×	317.3 (blend of attorney, senior accountant, and paralegal).	193,554	27,500	×	156	96,160 hours	29,181,672	4,290,000
Burden per amendment	290 hours	×	319 ((blend of attorney, senior accountant, and paralegal).	92,530	16,000	×	97	29,100 hours	8,674,710	1,552,000
Total Annual Burden	.....	.....	.....	.....	.....	.....	.....	125,260 hours	37,856,382	5,842,000

Notes:

[1] The Commission's estimates concerning the allocation of burden hours and the relevant wage rates are based on consultations with industry representatives and on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated wage figures are modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

As summarized in Table 1 above, the Commission has previously estimated that about 253 funds will make about 253 filings on Form N–14 each year, incurring 125,883 hours of internal hour burden at a cost of about $43.78 million. The hour burden estimates for preparing and filing reports on Form N–14 are based on the Commission's experience with the contents of the form. The number of burden hours may vary depending on, among other things, the complexity of the filing and whether preparation of the forms is performed by internal staff or outside counsel.

[16] *Id.*

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17Ad–22(e)(2)(i)and (v).

[19] 17 CFR 240.17Ad–22(e)(4)(ii).

[20] 17 CFR 240.17Ad–22(e)(7)(i).

[21] 15 U.S.C. 78s(b)(2).

[22] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

The amendments to Form N–14 to permit BDCs to incorporate certain information by reference into that form to the same extent as registered closed-end fund are expected to decrease the burden and costs for BDCs that prepare and file Forms N–14. As summarized in Table 1 above, we estimate that the total internal burden associated with N–14 will be 125,260 hours, at a cost of approximately $37,856,382.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under Form N–14 is mandatory. The information provided under Form N–14 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 21, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–18808 Filed 8–26–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89640; File No. SR–NYSENAT–2020–27]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates

August 21, 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 August 12, 2020, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates (''Fee Schedule'') to (1) eliminate the fee currently charged for non-tiered orders removing liquidity in securities priced at or above $1.00; (2) modify the Adding Tiers; and (3) modify the Removing Tiers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (1) Eliminate the fee currently charged for non-tiered orders removing liquidity in securities priced at or above $1.00; (2) modify the Adding Tiers; and (3) modify the Removing Tiers.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing and liquidity-removing orders by offering further incentives for ETP Holders to send additional displayed and non-displayed liquidity to the Exchange. The proposed changes also respond to the current volatile market environment that has resulted in unprecedented average daily volumes, which is related to the ongoing spread of the novel coronavirus (''COVID–19'').

The Exchange proposes to implement the rule change on August 12, 2020.[3]

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [5] Indeed, equity trading is currently dispersed across 13 exchanges,[6] 31 alternative trading

[3] The Exchange originally filed to amend the Fee Schedule on August 3, 2020 (SR–NYSENat–2020–25). SR–NYSENat–2020–25 was subsequently withdrawn and replaced by this filing.

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[6] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

systems,[7] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 20% of the market share of executed volume of equity trades (whether excluding or including auction volume).[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 2%.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain products, in response to fee changes. While it is not possible to know a firm's reason for moving order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange trading venues to which a firm routes order flow. These fees vary month to month, and not all are publicly available. With respect to non-marketable order flow that would provide liquidity on an exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange utilizes a ''taker-maker'' or inverted fee model to attract orders that provide liquidity at the most competitive prices. Under the taker-maker model, offering rebates for taking (or removing) liquidity increases the likelihood that market participants will send orders to the Exchange to trade with liquidity providers' orders. This increased taker order flow provides an incentive for market participants to send orders that provide liquidity. The Exchange generally charges fees for order flow that provides liquidity. These fees are reasonable due to the additional marketable interest (in part attracted by the Exchange's rebate to remove liquidity) with which those order flow providers can trade.

Proposed Rule Change

To respond to this competitive environment, the Exchange proposes the following changes to its Fee Schedule designed to provide order flow providers with incentives to route liquidity-providing order flow to the Exchange. As described above, ETP Holders with liquidity-providing order flow have a choice of where to send that order flow.

Elimination of Fee for Non-Tiered Orders Removing Liquidity

The Exchange proposes to eliminate the $0.0005 per share fee currently charged for non-tiered orders removing liquidity in securities priced at or above $1.00.[10]

The Exchange believes that eliminating the per share charge for orders that remove liquidity from the Exchange will incentivize ETP Holders to send liquidity-removing orders to the Exchange, thereby enhancing order execution opportunities to the benefit of all market participants. In addition, by eliminating this charge in its General Rates, the Exchange believes that ETP Holders may be more likely to submit liquidity-removing orders to the Exchange even if they do not qualify for a Removing Tier.

Proposed Changes to Adding Tiers

The Exchange proposes to modify the Adding Tiers by (1) creating a new Adding Tier 1 for adding displayed and non-displayed liquidity in Tape A, Tape B, and Tape C securities; (2) increasing the current Adding Rates for the current Adding Tier 1 and Adding Tier 2; (3) modifying the requirements to qualify for current Adding Tier 2; and (4) and renumbering the Adding Tiers, as follows (proposed additions underlined, deletions bracketed):

Tier requirement	Adding rate
Adding Tier 1:	
At least 0.25% or more Adding ADV as a % of US CADV	*Displayed liquidity: Tapes A, B and C: $0.0020 Non-Displayed liquidity: Tapes A, B and C: $0.0024*
Adding Tier *2*[1]:	
At least 0.15% or more Adding ADV as a % of US CADV	Displayed liquidity: Tapes A, B and C: $0.00*22*[20]
Adding Tier *3*[2]:	
At least *0.075%* [0.10%] or more Adding ADV as a % of US CADV *and at least 0.15% or more Adding ADV and Removing ADV combined as a % of US CADV*.	Displayed liquidity: Tapes A, B and C: $0.00*25*[24]
Adding Tier *4*[3]:	
At least 0.05% or more Adding ADV as a % of US CADV	Displayed liquidity: Tapes A, B and C: $0.0026

The Exchange does not propose any changes to the Adding MPL Rate for the Adding Tiers, and the proposed rate for MPL Orders under the new Adding Tier 1 would also be no charge.

The Exchange believes that the addition of new proposed Adding Tier 1 with a higher ADV requirement than the current Adding Tier 1 will incentivize ETP Holders to submit additional liquidity to the Exchange to qualify for the Exchange's lowest fees for adding displayed liquidity and non-displayed liquidity. This in turn would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the fee to the level of orders sent by an ETP Holder that add liquidity, the Exchange's fee structure would incentivize ETP Holders to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

Similarly, the Exchange believes that increasing the current Adding Rates for current Adding Tier 1 and Adding Tier 2 while lowering the Adding ADV requirement to qualify for current Adding Tier 2 and adding a second requirement of at least 0.15% or more Adding ADV and Removing ADV

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of July 29, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] As noted, the Exchange previously charged a small fee as opposed to offering a rebate for non-tiered orders removing liquidity in securities priced at or above $1.00 but is now proposing not to charge for non-tiered orders that remove liquidity.

combined as a percentage of US CADV, more ETP Holders will choose to route their liquidity-providing order flow to the Exchange in order to qualify for those tiers. The Exchange also believes that adding the proposed second requirement to current Adding Tier 2 of a combination of Adding and Removing ADV will expand the ADV eligible to qualify for the tier, thereby allowing greater number of ETP Holders to potentially qualify for the tier.

For example, in a month where US CADV was 10 billion shares, assume ETP Holder A has an Adding ADV of 12 million shares for an Adding ADV of 0.12% of US CADV. On that basis alone, ETP Holder A would qualify for the proposed Adding Tier 4, which has an Adding ADV requirement of 0.05% of US CADV. Further assume in that same billing month, ETP Holder A has Removing ADV of 5 million shares, for a Removing ADV of 0.05% of US CADV. ETP Holder A would have an Adding and Removing ADV combined of 0.17% (12 million Adding shares plus 5 million Removing shares combined, divided by US CADV of 10 billion shares). ETP Holder A would thereby qualify for proposed Adding Tier 3, which has requirements of 0.075% or more Adding ADV as a percentage of US CADV and 0.15% Adding ADV and Removing ADV combined as a percentage of US CADV.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Since the proposed Adding Tier 1 would be new, no member organization currently qualifies for it. Also, currently five ETP Holders qualify for current Adding Tiers 1 and 2 (revised Adding Tiers 2 and 3). The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. There are approximately five additional ETP Holders that could qualify for the revised Adding Tiers 2 and 3 based on their current trading profile on the Exchange if they so choose. However, without having a view of ETP Holder's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new tier credits.

Proposed Changes to Removing Tiers

The Exchange proposes to modify the Removing Tiers by (1) revising the requirements for the current removing tier fees (for current Removing Tier 1 and Removing Tier 2); (2) creating a new Removing Tier 3; (3) decreasing the removing rate for current Removing Tier 3; and (4) renumbering the Removing Tiers, as follows (proposed additions underlined, deletions in brackets):

Tier requirement	Removing rate
Removing Tier 1:	
At least *0.20%* [0.10%] *Adding ADV and* Removing ADV *combined* as a % of US CADV and 250,000 Adding ADV	($0.0030)
Removing Tier 2:	
At least *0.10%* [0.04%] Removing ADV as a % of US CADV and 100,000 Adding ADV	($0.00275)
Removing Tier 3:	
At least 0.02% Removing ADV as a % of US CADV and 50,000 Adding ADV	*($0.0023)*
Removing Tier *4*[3]:	
At least 50,000 Adding ADV	($0.00*15*[25])

The Exchange does not propose any changes to the Removing Rate for Orders that Execute at a Price Better than Contra-Side NBBO for the Removing Tiers, and the proposed rate for such orders under the new Removing Tier 3 would also be no charge.

The Exchange believes that these changes to the Removing Tiers will incentivize ETP Holders to remove additional liquidity from the Exchange to qualify for the Exchange's lowest fees for removing liquidity. This is turn would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders.

Specifically, the Exchange believes that requiring a higher Adding ADV and Removing ADV combined for Removing Tier 1, increasing the Removing ADV requirement for Removing Tier 2, introducing a new Removing Tier 3, and lowering the corresponding credit for current Removing Tier 3 (now Removing Tier 4) will incentivize more ETP Holders to route liquidity removing order flow to the Exchange to meet the higher requirements. Further, the Exchange also believes that adding the proposed second requirement to current Removing Tier 1 of a combination of Adding and Removing ADV will expand the ADV eligible to qualify for the tier, thereby allowing greater number of ETP Holders to potentially qualify for it by giving them the flexibility of meeting the requirement using Adding ADV, Removing ADV, or both. Finally, the Exchange believes that the proposed new Removing Tier 3 will encourage additional removing order flow to the Exchange by offering an intermediate credit for half the amount of Removing ADV as current Removing Tier 2 and 50,000 Adding ADV requirement. The Exchange believes that the combination of removing and adding requirements for the proposed new tier will allow greater number of ETP Holders to potentially qualify for the tier.

As described above, ETP Holders with liquidity-removing order flow have a choice of where to send that order flow. The Exchange believes that as a result of the proposed changes to the removing tiers, more ETP Holders will choose to route their liquidity-removing order flow to the Exchange in order to interact with the increased liquidity-providing order flow the Exchange anticipates from its proposed changes to the Adding Tiers.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. There are currently 25 ETP Holders that qualify for the current fees for current Removing Tiers 1, 2, and 3 for removing liquidity based on their current trading profile on the Exchange. Since the proposed Removing Tier 3 would be new, no ETP Holder currently qualifies for it. The Exchange believes that many ETP Holders could qualify for proposed modified Removing Tiers if they so choose. However, without having a view of ETP Holder's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holders directing orders to the Exchange in order to qualify for the modified Removing Tiers.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] 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.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) & (5).

The Proposed Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any one of the registered exchanges or non-exchange trading venues that a firm routes order flow to, which vary month to month, and not all of which are publicly known. With respect to non-marketable order flow that would provide liquidity on an Exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

Given the current competitive environment, the Exchange believes that the proposal represents a reasonable attempt to attract additional order flow to the Exchange. Specifically, eliminating the fee currently charged for non-tiered orders removing liquidity in securities priced at or above $1.00, as described above, is reasonable because ETP Holders will have an incentive to route additional liquidity-removing orders to the Exchange without incurring any transaction fees, thereby increasing the opportunity for contra-side order flow to receive price improvement. In addition, the Exchange believes that the proposed changes to the Adding Tiers and Removing Tiers are reasonable because they would promote execution opportunities for ETP Holders routing order flow to the Exchange.

The Exchange believes that the proposal as a whole represents a reasonable effort to promote price improvement and enhanced order execution opportunities for ETP Holders. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution opportunities.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposed change equitably allocates its fees among its market participants. The proposed change would continue to encourage ETP Holders to both submit additional liquidity to the Exchange and execute orders on the Exchange, thereby contributing to robust levels of liquidity, to the benefit of all market participants.

The Exchange believes that eliminating the fee currently charged for non-tiered orders removing liquidity in securities priced at or above $1.00 and modifying the Adding Tiers and Removing Tiers would encourage the submission and removal of additional liquidity from the Exchange, thus enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that would be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed rule change would also improve market quality for all market participants seeking to remove liquidity on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality. The proposal neither targets nor will it have a disparate impact on any particular category of market participant.

Specifically, the Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders and other market participants would be eligible for the same general and tiered rates and would be eligible for the same fees and credits. Moreover, the proposed change is equitable because the revised fees would apply equally to all similarly situated ETP Holders.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders and all ETP Holders would be subject to the same modified Adding Tiers and Removing Tiers. Similarly, all ETP Holders would benefit from the elimination of the fee currently charged for non-tiered orders removing liquidity in securities priced at or above $1.00. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

The Exchange further believes that the proposed changes would not permit unfair discrimination among ETP Holders because the general and tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and the Exchange believes there are additional ETP Holders that could qualify if they chose to direct their order flow to the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity and order flow to a public exchange, thereby enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [14]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. As described above, the Exchange believes that the proposed changes would provide additional incentives for market participants to route liquidity providing and liquidity removing orders to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity. The proposed revised fees would be available to all similarly-situated market participants, and thus, 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

[13] 15 U.S.C. 78f(b)(8).

[14] Regulation NMS, 70 FR at 37498–99.

competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading in Tapes A, B and C securities is less than 2%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [15] of the Act and subparagraph (f)(2) of Rule 19b–4 [16] 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) [17] of the Act to determine whether the proposed rule change should be approved or disapproved.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2020–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2020–27. 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–NYSENAT–2020–27 and should be submitted on or before September 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

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[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89638; File No. SR–CBOE–2020–052]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules 5.37, 5.38, and 5.73 Related to Auction Notification Messages and Index Combo Orders in SPX in the Automated Improvement Mechanism, Complex Automated Improvement Mechanism, and FLEX Automated Improvement Mechanism

August 21, 2020.

I. Introduction

On June 3, 2020, Cboe Exchange, Inc. (''Exchange'' or ''Cboe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 5.37, 5.38, and 5.73 to (1) allow the Exchange to determine to disseminate the stop price in auction notification messages for Automated Improvement Mechanism (''AIM''), Complex Automated Improvement Mechanism (''C–AIM''), and FLEX AIM auctions in S&P 500® Index options (''SPX''); and (2) modify the minimum increment for C–AIM and FLEX AIM auction responses for Index Combo Orders in SPX. The proposed rule change was published for comment in the **Federal Register** on June 18, 2020.[3] On July 22, 2020, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.[4] On July 27, 2020,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89063 (June 12, 2020), 85 FR 36923. Comments received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-052/srcboe2020052.htm.*

[4] In Amendment No. 1, the Exchange amended the proposal to: (1) To add that, when the proposed stop price dissemination in auction notification

Continued

pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] The Commission is publishing this notice and order to solicit comment on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to amend Rule 5.38 and Rule 5.73 regarding the minimum increment for Complex Automated Improvement Mechanism (''C–AIM'') and FLEX AIM Auction responses, respectively, in connection with Index Combo Orders in SPX,[8] as well as Rule 5.37, Rule 5.38, and Rule 5.73 in connection with dissemination of the stop price in auction notification messages for auctions in SPX.

By way of background, the Exchange recently activated the Automated Improvement Mechanism (''AIM'') and C–AIM Auctions in S&P 500 Index (''SPX'') options.[9] When submitting an Agency Order into a C–AIM Auction, the Initiating Member must also submit a contra-side second order for the same size as the Agency Order. This second order guarantees that the Agency Order will receive an execution (*i.e.,* it acts as a stop). Upon commencement of a C–AIM Auction, market participants submit responses to trade against the Agency Order. At the end of an auction, depending on the contra-side interest available, the contra order may be allocated a certain percentage of the Agency Order.[10]

When the Exchange is operating in its normal trading environment, the Exchange has not activated C–AIM (or AIM) in SPX,[11] thus all non-FLEX crossing transactions in SPX were previously only able to occur on the trading floor. Therefore, Trading Permit Holders may cross orders only in open outcry on the trading floor. Pursuant to Rule 5.87(f), a floor broker holding an order for the eligible order size is entitled to cross a certain percentage[12] of the order with facilitated (and solicited orders, if designated by the Exchange for a class) after satisfying public customer orders[13] if the order trades at or between the best bid or offer given by the crowd in response to the floor broker's initial request for a market. Specifically, a floor broker representing an order of the eligible order size or greater that he wishes to cross (and the percentage of which he is entitled to cross) must request bids and offers for such option series and make all persons in the trading crowd, including the PAR Official, aware of his request. In this way, the crossing mechanism on the trading floor allows for the trading crowd to control the price of a crossing order and indicates to responding TPHs and the crossing floor broker a reasonable range at which the market is willing to buy (sell) at that point in time. This provision is subject to the crossing rules in Rule 5.86 (subject to certain exceptions), which require disclosure of all terms and conditions to the crowd (including the price) prior to executing a cross.[14]

Moreover, orders in SPX generally take on greater risk than in other option classes. SPX options tend to have a higher notional value than options in other classes (*e.g.,* they are ten times the notional size of SPY options), trade much larger size than in other options classes (indeed, even smaller sized orders in SPX would be considered fairly large size in other classes), and effect increasingly more complex strategies than executed in other classes (*e.g.,* Index Combo orders are more frequently submitted) or executed electronically (*e.g.,* in open outcry complex orders trade with larger ratios that may be negotiated by the trading crowd). Given these factors, SPX Market-Makers on the floor generally have more confidence in the pricing of their responses as the crosses start with a request for market and the trading crowd then provides a ''ballpark'' of the prices at which they are willing to trade and a Market-Maker may thus more confidently base response on the market of other members of the trading crowd. The Exchange notes, too, that these unique factors and more complex characteristics of SPX have contributed to the Exchange's historical determination to not activate AIM and C–AIM in SPX when the floor is open, whereas the auctions have historically been activated in all other options classes.[15]

Pursuant to Rules 5.4(b) and 5.33(f)(1)(A), the minimum increment for bids and offers on complex orders in options on SPX[16] is $0.05 or greater, or in any increment determined by the Exchange. When seeking to cross SPX complex orders on the trading floor, a floor broker generally identifies the legs of the complex order and their relative sizes to each other with a net package price. The Exchange understands the trading crowd then generally provides a market based on the strategy's theoretical value in an increment of $0.05 rather than the value of the net package (which equals the strategy times the ratio), which is particularly true when the complex order represented is a delta neutral order that includes a combo. The Exchange has observed that Index Combos in SPX comprise a significant portion of crosses in SPX,[17] and when the Exchange

messages is enabled for AIM, C–AIM, or FLEX AIM auctions in SPX, it would apply to all such AIM, C–AIM, or FLEX AIM auctions; (2) specify that the proposed minimum increment modification would apply to Index Combo Orders in SPX, and to correct an internal cross-reference in the proposed rules; (3) provide additional detail to the description and examples of the proposed modification to the minimum increment for Index Combo Orders in SPX; and (4) provide additional justification and support for the proposed rule change. The full text of Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-052/srcboe2020052-7464403-221166.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 89400, 85 FR 46202 (July 31, 2020). The Commission designated September 16, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Amendment No. 1 clarifies throughout the Form 19b–4 and in the Exhibit 5 that the proposed rule change is applicable to Index Combo Orders in SPX.

[9] The Exchange notes FLEX AIM in SPX had been activated prior to March 16, 2020.

[10] *See generally* Rule 5.38(e). The Exchange notes, too, that the same process applies to the FLEX AIM Auction pursuant to the FLEX Rules. *See generally* Rule 5.73(e).

[11] The Exchange had activated C–AIM and AIM in SPX for the first time as a result of the March 16, 2020 trading floor suspension to help prevent the spread of COVID–19 and operated in an all-electronic configuration beginning March 16, 2020 through June 15, 2020, when the trading floor reopened. The Exchange intends to activate AIM and C–AIM in SPX as electronic crossing mechanisms available for Users while the trading floor is open, subject to approval of this proposed rule change and separate proposed rule changes regarding AIM and C–AIM.

[12] Currently, the Exchange has set the percentage as 40% (the same crossing entitlement percentage as on AIM, C–AIM, and FLEX AIM). *See* CBOE Regulatory Circular RG16–179, Participation Entitlement Applicable to Crossing Orders in Open Outcry (November 18, 2016) available at *https://www.cboe.com/publish/RegCir/RG16-179.pdf.*

[13] Similarly, the AIM and C–AIM percentage applies after public customer orders are satisfied. *See* Rules 5.37(e) and 5.38(e).

[14] *See* Rule 5.87, Interpretation and Policy .05.

[15] Amendment No. 1 adds additional clarification regarding the differences between SPX and other classes and the role of such differences in the Exchange's historical determination not to activate AIM and C–AIM for SPX, whereas AIM and C–AIM have historically been activated in all other classes.

[16] Except for box/roll spreads.

[17] In April 2020, Index Combos in SPX comprised 60.5% of crossed volume executed in SPX via AIM while the trading floor was inoperable.

activated C–AIM for SPX options, a significant amount of SPX volume executed through C–AIM. An Index Combo Order in SPX is a complex order that includes one or more SPX legs, hedged by an SPX combo, or synthetic future, defined by the delta. Specifically, an ''Index Combination'' is a purchase (sale) of an index option call and a sale (purchase) of an index option put with the same expiration date and strike price, and ''delta'' is the positive (negative) number of Index Combinations that must be sold (bought) to establish a market neutral hedge with one or more series of the same index option.[18] A combo often used in SPX is an at-the-money series in the quarterly expiration that coincides with the CME E-mini S&P 500 futures contract expiration. In order to hedge fully, the number of combos required is equal to the number of units of the non-combo portion times the delta divided by 100. For example, 800 units of a 12.5-delta option would require 100 combos to be fully hedged (800 *12.5)/100 = 100 combos.

In open outcry, the trading crowd generally prices the combo hedge portion separately. The price of the combo and the rest of the order are ultimately packaged and sent out as a net package price for the entire order on the customer fill report. If the crowd improves the price on the non-combo leg by a minimum increment, or greater, that price is given on each contract. For example, if the trading crowd improves $0.10 on 800 contracts, the $0.10 improvement is on each of the 800 contracts.[19]

Currently, Rule 5.38(c)(5)(A) and Rule 5.38(a)(4) provide that the minimum price increment for C–AIM responses and Agency and Initiating Orders, respectively, must be in an increment the Exchange determines on a class basis—which, as described above, is $0.05 in SPX options.[20] The Exchange notes that the corresponding FLEX AIM Rules 5.73(c)(5)(A) and 5.73(a)(4) provide the same for FLEX AIM Auctions. However, unlike on the trading floor, market participant responses using this increment have generally improved the net package price (based on then-current leg markets) by the minimum increment of $0.05. More specifically, in an electronic auction the improvement increment is given on each strategy unit. That is, if the order (per the example above) is for 800:100:100 total quantity, the system treats this as 100 units of an 8:1:1 ratio strategy. If $0.05 of improvement is given, the $0.05 applies to each of the 100 strategy units.[21] While members of the trading crowd on the trading floor are permitted to improve the net package price (based on then-current leg markets) by the minimum increment of $0.05 under the Rules, that is not the common practice, as noted above. The Exchange believes this is because the parties to an electronic complex order trade may compete only with respect to the net price and are not able to negotiate the leg prices.

Using the example above, consider, specifically, an Index Combo in SPX to buy 800 SPX NOV 3650 calls, ''tied'' (meaning hedged by combos), with a 12.5 delta. Systematized, the order has an 8:1:1 ratio, 100 times, and is as follows:

- Leg 1 = Buy 800 SPX NOV 3650 Calls.
- Leg 2 = Sell 100 SPX SEP 3210 Calls.
- Leg 3 = Buy 100 SPX SEP 3210 Puts.

Consider, too, that the current quotes are as follows:

- SPX NOV 3650 Call = $20.40 – $21.00
- SPX SEP 3210 Call $120.00 – $120.70.
- SPX SEP 3210 Put $127.30 – $128.00.

If the entire order were to trade at the implied/BBO prices, the premium and total cash outlay would be as follows:

Option	Premium	Ratio	Total cash
NOV 3650 Call	$21.00	$168.00	$1,680,000.00 debit ($21*800*100).
SEP 3210 Call	120.00	120.00	1,200,000.00 credit (120*100*100).
SEP 3210 Put	128.00	128.00	1,280,000.00 debit (128*100*100).
Net package	N/A	176.00	1,760,000.00 debit (176*100*100).

As described above, the trading crowd would generally price the non-combo portion separately and, per the example above, if the crowd improves the non-combo portion (Leg 1) by the minimum increment of $0.10, prices would be as follows:

Option	Premium	Ratio	Total cash
NOV 3650 Call	$20.90	$167.20	$1,672,000.00 debit ($20.90*800*100).
SEP 3210 Call	120.00	120.00	1,200,000.00 credit (120*100*100).
SEP 3210 Put	128.00	128.00	1,280,000.00 debit (128*100*100).
Net package	N/A	175.20	1,752,000.00 debit (175.20*100*100).

As stated, if submitted for execution in an electronic auction, the minimum improvement increment is $0.05 for complex orders in SPX. If the electronic auction results in the minimum improvement increment of $0.05, $0.05 of improvement would be given to each strategy unit (*i.e.,* each of the 100 units would receive $0.05 of improvement). The prices would be as follows:[22]

[18] *See* Rule 5.33(b).

[19] Amendment No. 1 adds clarity around the use of Index Combo Orders in SPX as well as the price improvement process on such orders when submitted for open outcry trading.

[20] The System rejects a C–AIM response or Agency or Initiating Order that is not in the applicable minimum increment.

[21] Amendment No. 1 adds clarity regarding the price improvement process for Index Combo Orders in SPX when submitted for execution in an electronic auction.

[22] The Exchange notes that the System uses an algorithm to determine how price improvement is distributed on a multi-leg strategy. This example shows one possibility. The $0.05 improvement cannot not be applied to Leg 1 because the ratio on that leg is '8', therefore, there are not enough pennies to distribute given there are only five pennies ($0.05) worth of improvement. This, then, leaves the other two legs, both of which have a ratio of '1', in which the System may distribute the five pennies of improvement per strategy unit. In sum, the price improvement given is always distributed in a manner that improves the leg market.

Option	Premium	Ratio	Total cash
NOV 3650 Call	$21.00	$168.00	$1,680,000.00 debit ($21*800*100).
SEP 3210 Call	120.03	120.03	1,200,300.00 credit (120.03*100*100).
SEP 3210 Put	127.98	127.98	1,279,800.00 debit (127.98*100*100).
Net package	N/A	175.95	1,759,500.00 debit (175.95*100*100).

Therefore, as demonstrated in the example, the difference between pricing the combo and non-combo portions of the order separately when trading in open outcry (where the example order would have received a total price improvement of $0.80) and as a net package when trading in an electronic auction (where the example order would have received a total price improvement of only $0.05), may result in a significant difference between the price improvement received.[23]

In addition to this, current Rules 5.37(c)(2), 5.38(c)(2), and 5.73(c)(2) provide that the System initiates the AIM, C–AIM, and FLEX AIM Auction processes, respectively, by sending an auction notification message detailing the side, size, Auction ID, options series (additionally, in the case of C–AIM Auctions, complex strategy, and in the case of FLEX AIM Auctions, length of the auction period and complex strategy, as applicable) of the Agency Order to all Users that elect to receive AIM, C–AIM, or FLEX AIM Auction notification messages. AIM, C–AIM, and FLEX AIM Auction notification messages are not included in the disseminated BBO (in connection with AIM Auctions) or OPRA. As such, the stop price of an Agency Order is not currently included in auction notification messages. The Exchange believes that lack of an indication of where an auction is set to begin, like the ballpark figure provided by the trading crowd when crossing on the trading floor, may cause apprehension in pricing competitive responses during the electronic auctions in SPX, which may reduce liquidity and price improvement during such auctions.

The Exchange is considering activating AIM and C–AIM in SPX when it reopens the trading floor. To better align the C–AIM process for SPX complex strategies with the open outcry crossing process for those strategies, the Exchange proposes to amend Rule 5.38(c)(5)(A) to provide that the minimum price increment for a C–AIM response in which the Agency Order complex strategy is comprised of an Index Combo Order in SPX (as defined in Rule 5.33(b))[24] will be the ratio of the non-combo portion of the strategy to the number of combos, multiplied by the minimum price increment the Exchange determines for options on SPX Agency Orders pursuant to Rule 5.38(a)(4). Also, to better align the AIM and C–AIM pricing process generally for responses with the open outcry process, the Exchange proposes to amend Rules 5.37(c)(2) and 5.38(c)(2) to provide that the Exchange may also determine to include the stop price in AIM and C–AIM Auction notification messages, respectively, in SPX.[25] If the stop price is enabled for SPX in AIM or C–AIM, respectively, it will apply to all AIM auctions in SPX.[26] Like all other information disseminated in an AIM and C–AIM Auction notification message, the stop price will be available to all Users that elect to receive auction notification messages. The Exchange notes that the FLEX AIM Rules in connection with the auction process for FLEX complex orders are substantially similar to the AIM and C–AIM Rules. Therefore, to maintain consistency within the Rules between the FLEX and non-FLEX auctions, the Exchange also proposes to amend the FLEX AIM process for SPX complex strategies (*i.e.* for FLEX C–AIM) and for FLEX AIM Auction notification messages in the same manner.[27]

The Exchange believes that the proposed rule changes will create similar price competition for these orders in electronic and open outcry trading. Particularly, the Exchange believes that the current manner in which de minimis price improvement may occur via C–AIM, as well as FLEX C–AIM, Auctions in connection with Index Combo Orders in SPX (*i.e.,* potentially only improved in sub-penny increments) may discourage market participants from providing contra-side interest at the best prices and liquidity providers from joining or improving at meaningful increments. As such, the proposed rule change is intended to provide for substantially the same price improvement opportunities at meaningful increments on SPX complex strategies submitted to C–AIM and FLEX C–AIM that occur for the same strategies on the trading floor. To illustrate by using the same complex strategy example above, if a User buys 800 of the November 3650 SPX Calls tied to 100 September 3210 Combos, using a delta of 12.5, pursuant to the proposed rules, the System would calculate the minimum increment by the ratio of the non-combo leg (800) to the number of combos (100) by the minimum increment of $0.05. Therefore, $(800/100) \times 0.05 = \$0.40$ as the starting point for price improvement during the C–AIM or FLEX C–AIM Auction. In this way, by tying the minimum increment to the legs of the order, as opposed to the package price inclusive of the combos, the Exchange believes the proposed rule would require market participants to respond to the C–AIM or FLEX C–AIM Auctions for SPX complex strategies at prices more aligned with the prices at which responses generally occur in open outcry, *i.e.* prices in response to a broker's corresponding bids (offers) based off of the market per leg at which the trading crowd indicates it is willing to buy (sell). If market participants may participate in C–AIM or FLEX C–AIM executions in connection with SPX complex strategies by providing de minimis price improvement compared to price improvement that may occur on the floor, the Exchange believes there may be less interest by market participants to take on the risk of participating as a contra and may negatively impact liquidity available on the trading floor. As a result, the Exchange believes this potentially reduces price improvement opportunities for customers. Particularly, if the Exchange determines to activate C–AIM in SPX when the trading floor re-opens, the Exchange believes the proposed rule change may provide customers with additional opportunities for more meaningful price improvement and may encourage

[23] Amendment No. 1 replaces the example and explanation of the differences between the price improvement process in open outcry trading and in the electronic auctions, simplifying and clarifying the example explanation as well as providing for additional detail.

[24] Amendment No. 1 corrects this cross reference in the Exhibit 5 to reflect the appropriate Rule that contains the definition of Index Combo Orders.

[25] Amendment No. 1 add this footnote to clarify that the Exchange will notify its TPHs of a determination to include the stop price in auction notification messages, pursuant to Rule 1.5, via a specification, Notice, or Regulatory Circular with appropriate advanced notice, which are posted on the Exchange's website, electronic message, or other communication method as provided in the Rules.

[26] Amendment No. 1 adds this language to Rule 5.37(c)(2) and Rule 5.38(c)(2) in the Exhibit 5.

[27] *See* proposed Rules 5.73(c)(2) and 5.73(c)(5)(A).

market participants to provide more liquidity for C–AIM transactions in SPX while also mitigating any potential disincentive to provide liquidity on the trading floor in SPX by better aligning electronic and open outcry crossing of SPX complex orders that include a combo.

The Exchange notes that the proposed rule change does not alter the minimum increment as determined by the Exchange for SPX complex strategies and is consistent with the ability of the Exchange to determine the minimum increment for SPX (the proposed minimum increment will be in multiples of $0.05). Additionally, it would not alter the manner in which the System caps responses pursuant to Rule 5.38(c)(5)(B), wherein, if the BBO of any component of the complex strategy or the resting complex order, respectively, is a Priority Customer order, a response is capped at one minimum increment lower (higher) than the better of the SBO (SBB) or the offer (bid) of a resting complex order at the top of the Complex Order Book (''COB''). The System would simply use the minimum increment determined pursuant to the proposed calculation for any response submitted in connection with an Index Combo Order in SPX.[28] Instead, the proposed rule change provides that price improvement opportunities for such orders submitted into C–AIM, as well FLEX AIM, occur at the same meaningful increments that market participants reasonably would expect to occur on such orders pursuant to the current Rules and practice on the trading floor. The Exchange believes this may encourage a potential increase in participation in the C–AIM and FLEX AIM Auctions in SPX without a corresponding negative impact on participation or liquidity in open outcry auctions once the trading floor reopens. The Exchange believes that without the proposed rule change, market participants may improve the displayed auction price by only a trivial amount, thereby, potentially enabling liquidity providers to ''step ahead'' of those that are willing to trade with customer orders at the auction price. Such activity, in turn, may discourage market participants from providing liquidity at meaningful prices to commence an auction. As such, the Exchange believes that the proposed rule change to provide price improvement at more significant increments that are better aligned with those received on the trading floor would encourage market participants to provide meaningful responses to customer orders in electronic auctions.[29]

In the same way, the Exchange believes that the proposed rule change to allow the System to disseminate the initial price of an SPX AIM and C–AIM Auction, as well as FLEX AIM Auction, would more generally align the trading of SPX options submitted for execution into the electronic auctions with those crossed on the trading floor. The Exchange believes that the proposed rule change would allow the Exchange to address any uncertainties market participants may have when pricing SPX responses, given the more complicated market models, greater risk, higher notional value, larger sizes, and increasingly more complex strategies in SPX, by including the Agency Order stop price in the auction notification messages. This, in turn, may facilitate market participants' confidence in pricing meaningful, competitive responses during electronic auctions in SPX in a manner substantially similar to which the trading crowd's market allows for market participants to more confidently price their responses accordingly. As a result, this proposed rule change is intended to incentivize continued, competitive responses to SPX electronic auctions in substantially the same manner in which responses may be priced on the trading floor, thus, providing for potentially improved liquidity and price improvement opportunities for orders being executed through those auctions. The Exchange also notes that its affiliated options exchange, Cboe EDGX Exchange, Inc. (''EDGX Options'') corresponding rules[30] governing the AIM and C–AIM auction notification messages on EDGX Options provide that its system initiates the AIM or C–AIM auction processes by sending an auction notification message detailing the price, along with the same fields currently detailed pursuant to Cboe Options Rules 5.37(c)(2) and 5.38(c)(2) as well as 5.73(c)(2). Also, pursuant to Exchange Rule 5.33(d)(1), C2 Rule 6.13(d)(1), and EDGX Options Rule 21.20(d)(1), the Exchange and its affiliated options exchanges may currently determine to include in similar notification messages the limit price of an order that initiates a Complex Order Auction (''COA''), much like that of the stop price of an AIM, C–AIM, or FLEX AIM Agency order that initiates these auctions. The Exchange further notes that similar electronic auctions on other options exchanges disseminate the price in their initial auction messages.[31]

The Exchange believes that providing similar response and execution opportunities across these trading facilities will serve to maintain meaningful levels of liquidity, price competition, and price improvement opportunities in SPX during both electronic and open outcry auctions upon the reopening of the trading floor if the Exchange determines to activate AIM and C–AIM for SPX at that time. As a result, the proposed rule change is designed to ensure that C–AIM for complex SPX strategies remains a viable additional means of execution for SPX complex orders, and that market participants maintain the same confidence in pricing their responses to AIM and C–AIM Auctions in SPX as they have during open outcry auctions, and thus, will continue to provide more execution and price improvement opportunities for customers. Likewise, the proposed rule change would align the FLEX AIM and C–AIM Auction process with the non-FLEX AIM and C–AIM Auction process, potentially providing the similar opportunities for execution and price improvement in connection with the same complex strategies and similar meaningfully price responses submitted into FLEX AIM and providing investors with continued consistency in the Exchange's auction rules, thus, mitigating any confusion for those participating in both non-FLEX and FLEX SPX trading.

III. Summary of Comment Letter Received

To date the Commission has received one comment letter on the proposal.[32] The commenter supported the proposal and agreed with Cboe's assertion that ''providing appointed Market-Makers with an additional way to participate in electronic auctions will expand available liquidity for these auctions, which may increase execution and price improvement opportunities for

[28] Amendment No. 1 adds language to clarify how the System would cap responses that were submitted in connection with an Index Combo Order in SPX and received the minimum price improvement pursuant to proposed Rule 5.38(c)(5)(A).

[29] Amendment No. 1 adds additional detail regarding the purpose of adopting the proposed minimum increments for responses in connection with Index Combo Orders in SPX.

[30] *See* EDGX Options Rules 21.19(c)(2) and 21.22(c)(2).

[31] *See* MIAX Options Rule 5.18(d)(2), which governs the commencement of a Complex Auction on MIAX Options, and Rules 515A(a)(2)(i)(B) and 515A.12, which govern the request for response message disseminated during MIAX Options' electronic crossing auctions, PRIME and complex PRIME; substantially similar to AIM and C–AIM; *see also* NYSE American Options Rule 903G(a)(2), which governs the information required in FLEX Request for quotes.

[32] *See* letter to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Equities & Options Market Structure, The Securities Industry and Financial Markets Association, dated July 9, 2020.

customers' orders.'' [33] The commenter also believed that the proposed rule change ''would further align open outcry and electronic crossing auctions and the execution and price improvement opportunities in both auctions by permitting the same participants to be solicited as contras in both types of auctions across all classes at all times.'' [34] The commenter agreed with Cboe that ''there is no reason to restrict Market-Makers ability to provide liquidity into electronic auctions when they are able to similarly provide that liquidity in open outcry trading.'' [35]

IV. Proceedings To Determine Whether to Approve or Disapprove SR–CBOE–2020–052, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [36] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change, as modified by Amendment No. 1, to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[37] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulate acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [38] and Section 6(b)(8) of the Act, which requires that the rules of the Exchange do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[39]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [40] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[41] and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[42]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5) and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[43] any request for an opportunity to make an oral presentation.[44]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by September 17, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 1, 2020. Commission 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–CBOE–2020–052 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–CBOE–2020–052. 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

[33] *See id.* at 3.

[34] *See id.*

[35] *See id.*

[36] 15 U.S.C. 78s(b)(2)(B).

[37] 15 U.S.C. 78s(b)(2)(B).

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 89f(b)(8).

[40] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[41] *See id.*

[42] *See id.*

[43] 17 CFR 240.19b–4.

[44] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

to make available publicly. All submissions should refer to File Number SR–CBOE–2020–052, and should be submitted on or before September 17, 2020. Rebuttal comments should be submitted by October 1, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–18830 Filed 8–26–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89635; File No. SR–CBOE–2020–050]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment Nos. 1 and 2 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Amend Rules 5.37 and 5.73 Related to the Solicitation of Market Makers for SPX Initiating Orders in the Automated Improvement Mechanism and FLEX Automated Improvement Mechanism

August 21, 2020.

I. Introduction

On June 3, 2020, Cboe Exchange, Inc. (''Exchange'' or ''Cboe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit orders for the accounts of market makers with an appointment in S&P 500® Index Options (''SPX'') to be solicited for the initiating order submitted for execution against an agency order into an Automated Improvement Mechanism (''AIM'') auction or a FLEX AIM auction. The proposed rule change was published for comment in the **Federal Register** on June 18, 2020.[3] On July 2, 2020, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.[4] On July 22, 2020, the Exchange submitted Amendment No. 2 to the proposed rule change.[5] On July 27, 2020, pursuant to Section 19(b)(2) of the Act,[6] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[7] The Commission is publishing this notice and order to solicit comment on the proposed rule change, as modified by Amendment Nos. 1 and 2, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2.

II. Exchange's Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Exchange proposes to permit orders for the accounts of Market-Makers with an appointment in SPX to be solicited for the Initiating Order[9] submitted for execution against an Agency Order in SPX options into a simple AIM Auction pursuant to Rule 5.37 or a simple FLEX AIM Auction pursuant to Rule 5.73. The Exchange does not generally activate AIM for SPX options, and AIM for SPX options is currently not activated.[10] The introductory paragraphs of Rules 5.37 and 5.73 prohibit orders for the accounts of Market-Makers with an appointment in the applicable class to be solicited to execute against the Agency Order in a simple AIM or FLEX AIM Auction, respectively. No similar restriction applies to crossing transactions in open outcry trading, where a significant portion of SPX options trade.[11] As further discussed below, brokers seeking liquidity to execute against customer orders on the trading floor regularly solicit appointed SPX Market-Makers for this liquidity, as they are generally the primary source of pricing and liquidity for those options.

As of March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of the novel coronavirus and began operating in an all-electronic configuration.[12] As a result, the Exchange activated AIM for SPX options for the first time to provide market participants with a mechanism to cross SPX options while the floor was inoperable, which would otherwise not be possible without open outcry trading The Exchange adopted a temporary rule change to permit Market-Makers to be solicited for electronic crossing transactions in its exclusively listed index options (including SPX options) when the Exchange's trading floor was inoperable. The Exchange believed this would make the same sources of liquidity for customer orders that are generally available in open outcry available for those orders in an electronic-only environment.[13] This was particularly true for SPX options, for which the Exchange enabled AIM for the first time. The Exchange believed not permitting Market-Makers to participate as contras could have made it difficult for brokers to find sufficient liquidity to fill their customer orders, which liquidity they generally solicited from SPX Market-Makers on the trading floor. For example, when the Exchange operates in its a hybrid manner as it currently is (with electronic and open outcry trading), if a customer order is not fully executable against electronic bids and offers, a floor broker can attempt to execute the order, or remainder thereof, on the trading floor, where the liquidity to trade with this remainder is generally provided by Market-Makers in the open outcry trading crowd. Additionally, brokers may solicit liquidity from upstairs Market-Maker firms.

Upon the reopening of the trading floor, the Exchange deactivated AIM for SPX options. While AIM was activated

[45] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89062 (June 12, 2020), 85 FR 36907. Comments received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-050/srcboe2020050.htm.*

[4] In Amendment No. 1, the Exchange: (1) Limited the scope of its original proposal, which would have permitted orders for the accounts of market makers with an appointment in any class to be solicited for the initiating order in an AIM or FLEX AIM auction in that class, to only allow market makers with an appointment in SPX to be solicited for the initiating order in an AIM or FLEX AIM auction in SPX; and (2) provided additional data, justification, and support for its modified proposal. The full text of Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-050/srcboe2020050-7382058-218888.pdf.*

[5] In Amendment No. 2, the Exchange: (1) Provided additional data, justification, and support for its proposal; and (2) made technical corrections and clarifications to the description of the proposal. The full text of Amendment No. 2 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-050/srcboe2020050-7464399-221161.pdf.*

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 89398, 85 FR 46197 (July 31, 2020). The Commission designated September 16, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] The ''Initiating Order'' is the order comprised of principal interest or a solicited order(s) submitted to trade against the order the submitting Trading Permit Holder (the ''Initiating TPH'' or ''Initiating FLEX Trader,'' as applicable) represents as agent (the ''Agency Order'').

[10] FLEX AIM is generally activated, and currently is activated, for FLEX SPX options.

[11] *See* Rules 5.86 and 5.87.

[12] The Exchange continues to operate in an all-electronic environment, but currently plans to reopen its trading floor on June 8, 2020.

[13] *See* Rule 5.24(e)(1)(A); *see also* Securities Exchange Act Release No. 88886 (May 15, 2020), 85 FR 31008 (May 21, 2020) (SR–CBOE–2020–047).

for SPX options, the Exchange observed price improvement benefits AIM auctions provided to smaller, retail-sized SPX options.[14] As a result, the Exchange intends to reactivate AIM for SPX options while the trading floor is operable for orders up to a maximum size to continue to provide these price improvement opportunities for retail-sized SPX orders.[15] Regardless of whether the trading floor is open, the Exchange believes brokers will have difficulty finding sufficient liquidity to initiate AIM auctions from only market participants that are not SPX Market-Makers. If the Exchange determines to reactivate AIM for SPX options, the Exchange believes it is appropriate to permit orders for the account of an appointed SPX Market-Maker to be submitted as the contra order, as the Exchange believes the liquidity provided by SPX Market-Makers will need to be available for brokers to initiate AIM Auctions and create potential price improvement opportunities for those retail-sized orders. Currently, there are 28 TPHs with SPX appointments, which represent a significant pool of SPX liquidity that would be available to participate in AIM Auctions through both contra orders and auction responses. To demonstrate the importance of the liquidity provided by SPX Market-Makers, in January and February 2020, the percentage of smaller simple Customer orders (20 or fewer) that executed in open outcry against an SPX Market-Maker as contra was approximately 85%, and the percentage of smaller simple Customer orders (20 or fewer) that executed electronically against an SPX Market-Maker as contra was approximately 87%. If SPX Market-Makers cannot be solicited for SPX AIM Auctions, the Exchange believes brokers may not be able to initiate as many AIM Auctions for their retail orders as they were able to do while the trading floor was closed, which may reduce the price improvement opportunities available for those orders. While the trading floor was closed, orders for the accounts of SPX Market-Makers created opportunities for customer orders to be submitted in AIM Auctions and receive price improvement. The Exchange believes those SPX Market-Maker orders should be permitted to be solicited at all times for SPX AIM Auctions in order to create similar price improvement opportunities for those customer orders.

In multi-list classes, many market-makers serve as both appointed Market-Makers on the Exchange and as market-makers on other options exchanges. These firms, as a result, can use their accounts for their away market-maker activities for being solicited with respect to AIM Auctions. In general, solicited orders submitted as the Initiating Order for AIM Auctions are almost always comprised of orders for the accounts of away market-makers. For example, in April of 2020, approximately 99.6% of the orders submitted into all AIM Auctions had Initiating Orders comprised of orders for accounts of away market-makers, making up approximately 86.2% of the volume executed through AIM auctions. However, SPX is an exclusively listed class on the Exchange, so a firm cannot serve as an SPX market-maker at another options exchange. During April and May 2020, when Initiating Orders could be comprised of orders for accounts of SPX Market-Makers pursuant to a temporary rule, approximately 22% of Initiating Orders executed in SPX AIM Auctions were comprised of orders for SPX Market-Makers, representing approximately 45% of SPX volume executed in AIM Auctions. While approximately 76% of Initiating Orders executed in SPX AIM Auctions were comprised of orders for accounts of away market-makers, those orders represented only approximately 5% of the SPX volume executed through AIM Auctions. The Exchange notes SPX Market-Makers also executed approximately 31% of SPX volume executed through AIM Auctions with auction responses. This demonstrates the difficulty brokers may have to find sufficient interest to fill customer orders in SPX if the Exchange activates AIM for SPX without permitting appointed Market-Makers to be solicited. If brokers may solicit primary liquidity providers in SPX for electronic auctions, regardless of whether the trading floor is operational, the Exchange believes brokers will be able to more efficiently locate liquidity to initiate AIM Auctions to fill their customer orders, particularly during times of volatility, which may create additional execution and price improvement opportunities for customers at all times. The Exchange believes the proposed rule change will, therefore, provide retail-sized orders with similar price improvement opportunities when AIM is activated while the trading floor is open that those orders realized while the trading floor was closed.

Permitting SPX Market-Makers to serve as contra parties to crossing transactions submitted into an AIM Auction will also further align AIM Auctions with SPX crossing executions that occur on the trading floor. SPX Market-Makers frequently serve as contra parties to crossing transactions on the trading floor. For example, during February 2020 (when the trading floor was open), approximately 76% of SPX orders crossed on the trading floor (consisting of 2,944,161 contracts) included an order of an SPX Market-Maker one side of the transaction.

This further demonstrates the importance of appointed SPX Market-Makers to the provision of liquidity in the SPX market with respect to crossing transactions, which liquidity would not be available to initiate electronic crossing transactions under the current AIM rule. Therefore, the Exchange believes the proposed rule change will permit it to activate AIM in SPX in a manner that aligns open outcry and electronic crossing auctions, and thus aligns the execution and price improvement opportunities available in both auctions, by permitting the same participants to be solicited as contras in both types of auctions in SPX at all times.

While FLEX AIM is currently available for SPX orders of all sizes, the Exchange believes brokers currently have similar difficulties locating liquidity to initiate FLEX AIM Auctions for SPX orders. Unlike in simple non-FLEX markets, FLEX Market-Makers have no obligations to provide liquidity to FLEX classes (and there is book into which FLEX Market-Makers may submit quotes to rest). Therefore, in FLEX markets, appointed Market-Makers are on equal footing with all other market participants with respect to FLEX AIM Auctions. Permitting FLEX Market-Makers to be solicited provides all market participants with the opportunity to provide liquidity to execute against Agency Orders in FLEX AIM Auctions in the same manner (both through solicitation and responses). The Exchange believes the proposed rule change may result in additional FLEX AIM auctions occurring in SPX, which may create additional price improvement opportunities for FLEX SPX orders.[16] The Exchange also believes permitting FLEX SPX Market-Makers to be solicited for FLEX AIM Auctions will provide consistency among electronic crossing auctions for SPX.

[14] *See* Securities Exchange Act Release No. 89058 (June 12, 2020), 85 FR 36918 (June 18, 2020) (SR–CBOE–2020–051).

[15] *Id.*

[16] The Exchange notes Market-Makers are currently able to be solicited for complex AIM and complex FLEX AIM for similar reasons. *See* Rules 5.38 and 5.73.

The proposed rule change also amends Rules 5.37(c)(5) and 5.73(c)(5) to codify that any User or FLEX Trader, respectively, other than the Initiating TPH or FLEX Trader, respectively, may submit responses to AIM and FLEX AIM Auctions. As set forth in Rules 5.37(e) and 5.73(e), the Initiating Order may receive an entitlement of 40% or 50% of the Agency Order. The Exchange believes it is appropriate to not permit the Initiating TPH or Initiating FLEX Trader, as applicable, to also submit responses in order to try to trade against a larger percentage of the Agency Order. This is consistent with allocation rules, pursuant to which the Initiating Order may only receive more than 40% or 50%, as applicable, of the Agency Order if there are remaining contracts after all other interest has executed.

The Rule change also notes that the System will reject a response with the same EFID [17] as the Initiating Order. The Exchange notes that orders for the same User may have different EFIDs. However, the rule prohibits all responses from the same User, even with different EFIDs. The System is currently only able to reject responses with the same EFID as the Initiating Order, which is why that is specified in the proposed rule. If the same User submits a response to an auction in which that same User had an order comprising the Initiating Order (even with a different EFID), the Exchange may take regulatory action against that User for a violation of the proposed rule. The Exchange currently applies this restriction to simple AIM and FLEX AIM Auctions, but it was inadvertently omitted from the Rules, so the proposed rule change adds transparency to the Rules. This restriction is also currently in the Rules related to AIM for complex orders, so the proposed rule change adds consistency to the rules of Exchange auctions.[18]

III. Summary of the Comment Letters Received

To date the Commission has received two comment letters on the proposal.[19] The commenters agreed with Cboe's assertions that the proposal would increase liquidity for AIM auctions, which could increase execution and price improvement opportunities.[20] One commenter argued that removing the market maker solicitation prohibition would eliminate an inequity against market makers that unduly curtails liquidity to customer orders.[21] This commenter argued that, because Cboe's rules no longer restrict AIM and FLEX AIM responses to appointed market makers and trading permit holders representing customer orders at the top of the book, the market maker solicitation prohibition is no longer necessary.[22] The commenters also supported the proposal because it would better align the execution and price improvement opportunities in electronic crossing auctions with those available in open outcry trading, where no similar solicitation prohibition exists.[23]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–CBOE–2020–050, as Modified by Amendment Nos. 1 and 2, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [24] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change, as modified by Amendment Nos. 1 and 2, to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[25] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulate acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [26] and Section 6(b)(8) of the Act, which requires that the rules of the Exchange do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[27]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [28] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[29] and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[30]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5) and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of

[17] *See* Rule 1.1, which defines EFID as an Executing Firm ID.

[18] *See* Rule 5.38(c)(5).

[19] *See* letters to Vanessa Countryman, Secretary, Commission, from Richard J. McDonald, Susquehanna International Group, LLP, dated July 8, 2020 (''SIG Letter'') and Ellen Greene, Managing Director, Equities & Options Market Structure, The Securities Industry and Financial Markets Association, dated July 9, 2020 (''SIFMA Letter'').

[20] *See* SIG Letter, *supra* note 19, at 2 and SIFMA Letter, *supra* note 19, at 3.

[21] *See* SIG Letter, *supra* note 19, at 1.

[22] *See id.* at 2.

[23] *See id.;* SIFMA Letter, *supra* note 19, at 3.

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 89f(b)(8).

[28] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[29] *See id.*

[30] *See id.*

views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[31] any request for an opportunity to make an oral presentation.[32]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by September 17, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 1, 2020. Commission 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–CBOE–2020–050 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–CBOE–2020–050. 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–CBOE–2020–050, and should be submitted on or before September 17, 2020. Rebuttal comments should be submitted by October 1, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–18827 Filed 8–26–20; 8:45 am]

BILLING CODE 8011–01–P

[31] 17 CFR 240.19b–4.

[32] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[33] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89631; File No. SR–FICC–2020–011]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the Government Securities Division Schedule of Timeframes and Schedule of GCF Repo® Timeframes and Make Other Changes

August 21, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2020, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the FICC Government Securities Division (''GSD'') Rulebook (''Rules'')[5] in order to (i) clarify that all times set forth in the Schedule of Timeframes and the Schedule of GCF Repo Timeframes may be extended as needed by FICC to (a) address operational or other delays that would reasonably prevent members or FICC from meeting the deadline or timeframe, as applicable or (b) allow FICC time to operationally exercise its existing rights under the Rules, (ii) revise specific references to times in Section 6 of Rule 13 to reference the Schedule of Timeframes, and (iii) make certain technical and conforming changes, as further described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to (i) clarify that all times set forth in the Schedule of Timeframes and the Schedule of GCF Repo Timeframes may be extended as needed by FICC to (a) address operational or other delays that would reasonably prevent members or FICC from meeting the deadline or timeframe, as applicable or (b) allow FICC time to operationally exercise its existing rights under the Rules, (ii) revise specific references to times in Section 6 of Rule 13 to reference the Schedule of Timeframes, and (iii) make certain technical and conforming changes, as further described below.

(i) *Clarify that all times set forth in the Schedule of Timeframes and the Schedule of GCF Repo Timeframes may be extended as needed by FICC to (a) address operational or other delays that would reasonably prevent members or FICC from meeting the deadline or timeframe, as applicable or (b) allow FICC time to operationally exercise its existing rights under the Rules*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.*

Currently, there are footnotes (one denoted by an asterisk and another denoted by two asterisks) in the Schedule of Timeframes that state that a particular deadline may be extended by FICC on days on which there are operational or systems difficulties that would reasonably prevent members from satisfying this deadline. Currently, in the Schedule of Timeframes, the footnote denoted by one asterisk applies to the 9:30 a.m. and 2:45 p.m. timeframes, and the footnote denoted by two asterisks applies to the 12:00 p.m., 12:30 p.m., and 1:00 p.m. timeframes. The 9:30 a.m. and 2:45 p.m. timeframes are the deadlines for satisfaction of a Clearing Fund deficiency call. The 12:00 p.m., 12:30 p.m. and 1:00 p.m. timeframes are the deadlines for the submission of information regarding New Securities Collateral.

The 4:30 p.m. timeframe in the Schedule of GCF Repo Timeframes applies to Netting Member allocation of collateral, and it has a footnote (which is denoted by an asterisk) providing that the stated deadline of 4:30 p.m. may be one hour after the close of the Fedwire Securities Service reversals, if later than 4:30 p.m.

FICC proposes to clarify that all times set forth in the Schedule of Timeframes and the Schedule of GCF Repo Timeframes may be extended as needed by FICC to (a) address operational or other delays that would reasonably prevent members or FICC from meeting the deadline or timeframe, as applicable or (b) allow FICC time to operationally exercise its existing rights under the Rules.[6] FICC would also clarify that the times applicable to FICC are standards and not deadlines and that actual processing times may vary slightly, as necessary.[7] FICC believes these proposed changes would enhance members' understanding that these timeframes may be extended in certain circumstances and that the times applicable to FICC may also vary slightly.

FICC proposes to effectuate these proposed changes by adding a new footnote denoted by an asterisk to the headings ''Schedule of Timeframes'' and ''Schedule of GCF Repo Timeframes.'' In addition, in the Schedule of Timeframes, FICC proposes to delete the current asterisks with respect to the 9:30 a.m., 2:45 p.m., 12:00 p.m., 12:30 p.m. and 1:00 p.m. timeframes because, with the addition of the new proposed footnote to the heading of the ''Schedule of Timeframes,'' these current footnotes would be redundant. FICC proposes a similar change in the Schedule of GCF Repo Timeframes to delete the current asterisk with respect to the 4:30 p.m. deadline for the same reason.

(ii) *Revise specific references to times in Section 6 of Rule 13 to reference the Schedule of Timeframes*

Currently, Sections 6(b) and 6(c) of Rule 13 set forth specific times for the payment of a Funds-Only Settlement Amount. Specifically, Section 6(b) of Rule 13 states that a Netting Member that has an obligation to pay the Funds-Only Settlement Amount to FICC shall make such payment by no later than 10:00 a.m. New York Time. Section 6(c) of Rule 13 states that when a Netting Member is entitled to collect a Funds-Only Settlement Amount from FICC, FICC shall cause the payment to be made by 11:00 a.m. New York Time.

FICC proposes to replace the specific references to times in Section 6(b) and Section 6(c) of Rule 13 with references to the Schedule of Timeframes. Because the Schedule of Timeframes addresses these two payments and their specific timeframes, FICC believes the references to specific times in these subsections of Rule 13 are unnecessary and that it would enhance clarity to reference the Schedule of Timeframes instead of specific times.

(iii) *Make certain technical and conforming changes*

FICC would also make certain technical and conforming changes.

FICC proposes to make a conforming change to Section 6(b) of Rule 13 by deleting the phrase ''Except as otherwise provided in Section 2 with respect to intraday collections.'' Because FICC proposes to reference the Schedule of Timeframes instead of specific times (as described in Item II(A)1(ii) above), FICC believes this exception is no longer necessary and, therefore, proposes to delete it. The Schedule of Timeframes covers the intraday collection of Funds-Only Settlement Amounts.

FICC proposes to make a technical change to capitalize ''a'' before ''Netting Member'' in Section 6(b) of Rule 13. Because the exception clause would be deleted (as described above), this would be the beginning of the sentence. In addition, in Section 6(b) of Rule 13, FICC proposes to make another technical change to revise the semi-colon to a period in order to be consistent with the other subsections in Section 6 of Rule 13.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[8] The proposed changes to (i) clarify that all times set forth in the Schedule of Timeframes and the Schedule of GCF Repo Timeframes may be extended as needed by FICC to (a) address operational or other delays that would reasonably prevent members or FICC from meeting the deadline or timeframe, as applicable or (b) allow FICC time to operationally exercise its existing rights under the Rules, (ii) revise specific references to times in Section 6 of Rule 13 to reference the Schedule of Timeframes, and (iii) make certain technical and conforming changes to the Rules would help to ensure that the Rules are accurate and clear to participants. When members better understand their rights and obligations regarding the Rules, such members are more likely to act in accordance with the Rules, which FICC believes would promote the prompt and accurate clearance and settlement of securities transactions. As such, FICC believes that the proposed changes would be consistent with Section 17A(b)(3)(F) of the Act.[9]

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe the proposed rule changes to (i) clarify that all times set forth in the Schedule of Timeframes and the Schedule of GCF Repo Timeframes may be extended as needed by FICC to (a) address operational or other delays that would reasonably prevent members or FICC from meeting the deadline or timeframe, as applicable or (b) allow FICC time to operationally exercise its existing rights under the Rules, (ii) revise specific references to times in Section 6 of Rule 13 to reference the Schedule of Timeframes, and (iii) make certain technical and conforming changes to the Rules would impact competition. The proposed rule

[6] For example, pursuant to Section 6 of Rule 13, on any Business Day on which a Netting Member is notified by FICC that it must increase the amount of its Required Fund Deposit and the Netting Member has a Funds-Only Settlement Amount due to it from FICC, in lieu of paying the Funds-Only Settlement Amount to the Netting Member, FICC may retain the lesser of the requested increase in the Required Fund Deposit or such Funds-Only Settlement Amount and apply such amount against the Netting Member's obligation to increase its Required Fund Deposit. If FICC determines to exercise this provision, it is possible that the applicable time set forth in the Schedule of Timeframes for the processing of funds-only settlement debits and credits (10:00 a.m. or 3:15 p.m.) could be delayed due to the operational process necessary to recalculate the funds-only settlement amounts.

[7] For example, the Schedule of GCF Repo Timeframes currently states that the system opens at 7:00 a.m. Typically, however, the system opens two minutes earlier than 7:00 a.m.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] *Id.*

changes would help to ensure that the Rules remain clear and accurate. In addition, the changes would facilitate members' understanding of the Rules and their obligations thereunder. As such, FICC believes the proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [10] of the Act and paragraph (f) [11] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2020–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2020–011. 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 FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2020–011 and should be submitted on or before September 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–18832 Filed 8–26–20; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

First New England Capital III, L.P.; License No. 01/01–0415; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 01/01–0415 issued to First New England Capital III, L.P. said license is hereby declared null and void.

U.S. Small Business Administration.

Christopher Weaver,

Acting Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2020–18848 Filed 8–26–20; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0674]

Garrison Capital SBIC, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/02–0674 issued to Garrison Capital SBIC, L.P. said license is hereby declared null and void.

U.S. Small Business Administration.

Christopher L. Weaver,

Acting Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2020–18846 Filed 8–26–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0234]

Patriot Capital, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 03/03–0234 issued to Patriot Capital, L.P. said license is hereby declared null and void.

U.S. Small Business Administration.

Christopher L. Weaver,

Acting Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2020–18844 Filed 8–26–20; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16601 and #16602; Iowa Disaster Number IA–00092]

Presidential Declaration of a Major Disaster for the State of Iowa

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–4557–DR), dated 08/20/2020.

Incident: Severe Storms.

Incident Period: 08/10/2020.

DATES: Issued on 08/20/2020.

Physical Loan Application Deadline Date: 10/19/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 05/20/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/20/2020, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Linn.

Contiguous Counties (Economic Injury Loans Only):

Iowa: Benton, Buchanan, Cedar, Delaware, Iowa, Johnson, Jones.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	2.375
Homeowners Without Credit Available Elsewhere	1.188
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16601B and for economic injury is 166020.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–18847 Filed 8–26–20; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2020–0038]

Notice Announcing Addresses for Service of Process

AGENCY: Social Security Administration.

ACTION: Notice announcing addresses for summons and complaints.

SUMMARY: Our Office of the General Counsel (OGC) is responsible for processing and handling summonses and complaints in lawsuits involving judicial review of our final decisions on individual claims for benefits under titles II, VIII, and XVI of the Social Security Act (Act), and individual claims for a Medicare Part D subsidy under title XVIII of the Act. This notice sets out the names and current addresses of those offices and the jurisdictions for which each office has responsibility.

FOR FURTHER INFORMATION CONTACT: Michael Haar, Office of the General Counsel, Office of Program Law, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6404, (410) 965–2521. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: You should mail summonses and complaints in cases involving judicial review of our final decisions on individual claims for benefits under titles II, VIII, and XVI of the Act and individual claims for a Medicare Part D subsidy under title XVIII of the Act directly to the OGC location responsible for the jurisdiction in which the complaint has been filed. This notice replaces the notice we published on February 11, 2020 (85 FR 12370), and reflects the jurisdictional assignments for our Regional Chief Counsels' Offices and our Office of Program Law for cases filed on or after January 1, 2020. The changes in this notice from our February 2020 notice reflect that the Office of the Regional Chief Counsel, Region V will change its address effective September 1, 2020. The jurisdictional responsibilities, names, and addresses of our OGC offices are as follows:

Alabama

U.S. District Court—Middle District of Alabama: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Northern District of Alabama: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Southern District of Alabama: Office of the Regional Chief Counsel, Atlanta (Region IV).

Alaska

U.S. District Court—Alaska: Office of the Regional Chief Counsel, Seattle (Region X).

Arizona

U.S. District Court—Arizona: Office of the Regional Chief Counsel, San Francisco (Region IX).

Arkansas

U.S. District Court—Eastern District of Arkansas: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Western District of Arkansas: Office of the Regional Chief Counsel, Dallas (Region VI).

California

U.S. District Court—Central District of California: Office of the Regional Chief Counsel, San Francisco (Region IX).

U.S. District Court—Eastern District of California: Office of the Regional Chief Counsel, San Francisco (Region IX).

U.S. District Court—Northern District of California: Office of the Regional Chief Counsel, San Francisco (Region IX).

U.S. District Court—Southern District of California: Office of the Regional Chief Counsel, San Francisco (Region IX).

Colorado

U.S. District Court—Colorado: Office of the Regional Chief Counsel, Denver (Region VIII).

Connecticut

U.S. District Court—Connecticut: Office of the Regional Chief Counsel, Kansas City (Region VII).

Delaware

U.S. District Court—Delaware: Office of the Regional Chief Counsel, Philadelphia (Region III).

District of Columbia

U.S. District Court—District of Columbia: Office of the Regional Chief Counsel, Philadelphia (Region III).

Florida

U.S. District Court—Middle District of Florida: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Northern District of Florida: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Southern District of Florida: Office of the Regional Chief Counsel, Atlanta (Region IV).

Georgia

U.S. District Court—Middle District of Georgia: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Northern District of Georgia: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Southern District of Georgia: Office of the Regional Chief Counsel, Atlanta (Region IV).

Guam

U.S. District Court—Guam: Office of the Regional Chief Counsel, San Francisco (Region IX).

Hawaii

U.S. District Court—Hawaii: Office of the Regional Chief Counsel, San Francisco (Region IX).

Idaho

U.S. District Court—Idaho: Office of the Regional Chief Counsel, Seattle (Region X).

Illinois

U.S. District Court—Central District of Illinois: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Northern District of Illinois: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Southern District of Illinois: Office of the Regional Chief Counsel, Chicago (Region V).

Indiana

U.S. District Court—Northern District of Indiana: Office of Program Law, Baltimore.

U.S. District Court—Southern District of Indiana: Office of the Regional Chief Counsel, Chicago (Region V).

Iowa

U.S. District Court—Northern District of Iowa: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Southern District of Iowa: Office of the Regional Chief Counsel, Dallas (Region VI).

Kansas

U.S. District Court—Kansas: Office of the Regional Chief Counsel, Denver (Region VIII).

Kentucky

U.S. District Court—Eastern District of Kentucky: Office of the Regional Chief Counsel, Denver (Region VIII).

U.S. District Court—Western District of Kentucky: Office of the Regional Chief Counsel, Chicago (Region V).

Louisiana

U.S. District Court—Eastern District of Louisiana: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Middle District of Louisiana: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Western District of Louisiana: Office of the Regional Chief Counsel, Dallas (Region VI).

Maine

U.S. District Court—Maine: Office of the Regional Chief Counsel, Boston (Region I).

Maryland

U.S. District Court—Maryland: Office of Program Law, Baltimore.

Massachusetts

U.S. District Court—Massachusetts: Office of the Regional Chief Counsel, Boston (Region I).

Michigan

U.S. District Court—Eastern District of Michigan: Office of the Regional Chief Counsel, Boston (Region I).

U.S. District Court—Western District of Michigan: Office of the Regional Chief Counsel, Kansas City (Region VII).

Minnesota

U.S. District Court—Minnesota: Office of the Regional Chief Counsel, Dallas (Region VI).

Mississippi

U.S. District Court—Northern District of Mississippi: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Southern District of Mississippi: Office of the Regional Chief Counsel, Dallas (Region VI).

Missouri

U.S. District Court—Eastern District of Missouri: Office of the Regional Chief Counsel, Kansas City (Region VII).

U.S. District Court Western District of Missouri: Office of the Regional Chief Counsel, Kansas City (Region VII).

Montana

U.S. District Court—Montana: Office of the Regional Chief Counsel, Seattle (Region X).

Nebraska

U.S. District Court—Nebraska: Office of the Regional Chief Counsel, Dallas (Region VI).

Nevada

U.S. District Court—Nevada: Office of the Regional Chief Counsel, San Francisco (Region IX).

New Hampshire

U.S. District Court—New Hampshire: Office of the Regional Chief Counsel, Boston (Region I).

New Jersey

U.S. District Court—New Jersey: Office of the Regional Chief Counsel, Philadelphia (Region III).

New Mexico

U.S. District Court—New Mexico: Office of the Regional Chief Counsel, Denver (Region VIII).

New York

U.S. District Court—Eastern District of New York: Office of the Regional Chief Counsel, Kansas City (Region VII).

U.S. District Court—Northern District of New York: Office of the Regional Chief Counsel, Boston (Region I).

U.S. District Court—Southern District of New York: Office of the Regional Chief Counsel, New York (Region II).

U.S. District Court—Western District of New York: Office of the Regional Chief Counsel, New York (Region II).

North Carolina

U.S. District Court—Eastern District of North Carolina: Office of Program Law, Baltimore.

U.S. District Court—Middle District of North Carolina: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Western District of North Carolina: Office of Program Law, Baltimore.

North Dakota

U.S. District Court—North Dakota: Office of the Regional Chief Counsel, Dallas (Region VI).

Northern Mariana Islands

U.S. District Court—Northern Mariana Islands: Office of the Regional Chief Counsel, San Francisco (Region IX).

Ohio

U.S. District Court—Northern District of Ohio: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Southern District of Ohio: Office of the Regional Chief Counsel, Chicago (Region V).

Oklahoma

U.S. District Court—Eastern District of Oklahoma: Office of the Regional Chief Counsel, Denver (Region VIII).

U.S. District Court—Northern District of Oklahoma: Office of the Regional Chief Counsel, Denver (Region VIII).

U.S. District Court—Western District of Oklahoma: Office of the Regional Chief Counsel, Denver (Region VIII).

Oregon

U.S. District Court—Oregon: Office of the Regional Chief Counsel, Seattle (Region X).

Pennsylvania

U.S. District Court—Eastern District of Pennsylvania: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Middle District of Pennsylvania: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Western District of Pennsylvania: Office of the Regional Chief Counsel, Philadelphia (Region III).

Puerto Rico

U.S. District Court—Puerto Rico: Office of the Regional Chief Counsel, New York (Region II).

Rhode Island

U.S. District Court—Rhode Island: Office of the Regional Chief Counsel, Boston (Region I).

South Carolina

U.S. District Court—South Carolina: Office of the Regional Chief Counsel, Philadelphia (Region III).

South Dakota

U.S. District Court—South Dakota: Office of the Regional Chief Counsel, Dallas (Region VI).

Tennessee

U.S. District Court—Eastern District of Tennessee: Office of the Regional Chief Counsel, Kansas City (Region VII).

U.S. District Court—Middle District of Tennessee: Office of the Regional Chief Counsel, Kansas City (Region VII).

U.S. District Court—Western District of Tennessee: Office of the Regional Chief Counsel, Kansas City (Region VII).

Texas

U.S District Court—Eastern District of Texas: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Northern District of Texas: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Southern District of Texas: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Western District of Texas: Office of the Regional Chief Counsel, Dallas (Region VI).

Utah

U.S. District Court—Utah: Office of the Regional Chief Counsel, Denver (Region VIII).

Vermont

U.S. District Court—Vermont: Office of the Regional Chief Counsel, Boston (Region I).

Virgin Islands

U.S. District Court—Virgin Islands: Office of the Regional Chief Counsel, New York (Region II).

Virginia

U.S. District Court—Eastern District of Virginia: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Western District of Virginia: Office of the Regional Chief Counsel, Philadelphia (Region III).

Washington

U.S. District Court—Eastern District of Washington: Office of the Regional Chief Counsel, Seattle (Region X).

U.S. District Court—Western District of Washington: Office of the Regional Chief Counsel, Seattle (Region X).

West Virginia

U.S. District Court—Northern District of West Virginia: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Southern District of West Virginia: Office of the Regional Chief Counsel, Philadelphia (Region III).

Wisconsin

U.S. District Court—Eastern District of Wisconsin: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Western District of Wisconsin: Office of the Regional Chief Counsel, Chicago (Region V).

Wyoming

U.S. District Court—Wyoming: Office of the Regional Chief Counsel, Denver (Region VIII).

Addresses of OGC Offices

Office of the Regional Chief Counsel, Region I, Social Security Administration, JFK Federal Building, Room 625, 15 New Sudbury Street, Boston, MA 02203–0002.

Office of the Regional Chief Counsel, Region II, Social Security Administration, 26 Federal Plaza, Room 3904, New York, NY 10278–0004.

Office of the Regional Chief Counsel, Region III, Social Security Administration, 300 Spring Garden Street, 6th Floor, Philadelphia, PA 19123–2932.

Office of the Regional Chief Counsel, Region IV, Social Security Administration, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Suite 20T45, Atlanta, GA 30303–8910.

Office of the Regional Chief Counsel, Region V, Social Security Administration, Harold Washington Social Security Center, 600 West Madison Street, 6th Floor, Chicago, IL 60661–2474.

Office of the Regional Chief Counsel, Region VI, Social Security Administration, 1301 Young Street, Ste. 340, Mailroom 104, Dallas, TX 75202–5433.

Office of the Regional Chief Counsel, Region VII, Social Security Administration, Richard Bolling Federal Building, 601 E. 12th Street, Room 965, Kansas City, MO 64106–2898.

Office of the Regional Chief Counsel, Region VIII, Social Security Administration, 1961 Stout Street, Suite 4169, Denver, CO 80294–4003.

Office of the Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear Street, Suite 800, San Francisco, CA 94105–1545.

Office of the Regional Chief Counsel, Region X, Social Security Administration, 701 Fifth Avenue, Suite 2900 M/S 221A, Seattle, WA 98104–7075.

Office of Program Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Altmeyer Building, Room 617, Baltimore, MD 21235–6401.

The Commissioner of Social Security, Andrew Saul, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

[FR Doc. 2020–18898 Filed 8–26–20; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice:11182]

Industry Advisory Group: Notice of Open Meeting

The Industry Advisory Group (IAG) of the Bureau of Overseas Buildings

Operations (OBO) will meet on Tuesday, September 22 from 10:00 a.m. until 1:00 p.m. Eastern Daylight Time. The meeting is open to the public and will be held via WebEx Event.

This committee serves the U.S. government in a solely advisory capacity concerning industry and academia's latest concepts, methods, best practices, innovations, and ideas related to the OBO mission of providing safe, secure, resilient and functional facilities that represent the U.S. government to the host nation and support the Department's achievement of U.S. foreign policy objectives abroad.

The majority of the meeting will be devoted to discussions between the Department's senior management and IAG representatives with respect to industry and academia's latest concepts, methods, best practices, innovations, and ideas related to supporting OBO's vital mission. Additionally, time will be provided for members of the public to provide comment.

In order to register, please complete the event registration form via WebEx. Please forward any requests for reasonable accommodation by September 7. You can also visit the OBO website at *http://overseas buildings.state.gov/* for additional information. Requests for reasonable accommodation made after that date will be considered but may not be able to be fulfilled.

Please contact Christine Foushee at *IAGR@state.gov,* (202) 431–6890 with any questions.

Addison D. Davis, IV,

Director, Bureau of Overseas Buildings Operations, Department of State.

[FR Doc. 2020–18890 Filed 8–26–20; 8:45 am]

BILLING CODE 4710–51–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36419]

New Orleans Public Belt Railroad Commission for the Port of New Orleans—Acquisition and Operation Exemption—New Orleans Public Belt Railroad Corporation

New Orleans Public Belt Railroad Commission for the Port of New Orleans (Railroad Commission), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the New Orleans Public Belt Railroad Corporation (NOPB) [1] and operate approximately 29.3 miles of rail line and approximately 3.95 miles of assigned trackage rights. Railroad Commission states that it is a newly formed political subdivision of the State of Louisiana and is directed pursuant to state legislation to acquire all of the railroad operating assets of NOPB.

Railroad Commission describes the lines and trackage rights it seeks to acquire as follows: [2]

1. The NOPB main line from the connection with BNSF Railway Company (BNSF) and Union Pacific Railroad Company (UP) at milepost J8.3 at West Bridge Junction in Avondale, La., to milepost J1.1 at Southport Junction in Jefferson, La., and from milepost J0.3 at Lampert Junction in Jefferson to milepost J0.0 at the Jefferson/Orleans Parish border, a total distance of approximately 7.5 miles in two sections connected by the overhead trackage rights described in #7 below. The West Bridge Junction-Southport Junction section includes the Huey P. Long Bridge.

2. The NOPB main line from a milepost equation at the Jefferson/Orleans Parish border where milepost J0.0 = milepost 0.26 to the connection with CSX Transportation, Inc. (CSXT) at milepost 14.2 at Almonaster in New Orleans, a distance of approximately 13.94 miles.

3. The Burma West Lead in New Orleans from milepost 14.2 at Almonaster to the end of track at milepost 15.3, a distance of approximately 1.1 miles.

4. The Burma East Lead in New Orleans from the connection with CSXT at milepost 14.4 east of the Industrial Canal to the end of track at milepost 16.3, a distance of approximately 1.9 miles.

5. The Bulk Terminal Lead in New Orleans from the connection with CSXT at milepost G0.0 east of the Industrial Canal to milepost G1.5, a distance of approximately 1.5 miles.

6. Parallel line segments owned by Illinois Central Railroad Company (IC) and leased to NOPB extending (1) between approximately IC milepost 906.1 at Central Avenue near East Bridge Junction in Shrewsbury, La., and the end of the track at approximately IC milepost 908.8 in Jefferson Parish, La.; and (2) between approximately IC milepost 921.8 at Iris Avenue (approximately IC milepost 908.5 on the first segment) and approximately IC milepost 921.14 at Dakin Street near Lampert Junction in Jefferson Parish, a total distance of approximately 3.36 miles. (Between East Bridge Junction and Iris Avenue the leased lines consist of parallel tracks known as the Main Track and the A1 and A2 Track).

7. Overhead trackage rights on IC from IC milepost 449.9 at East Bridge Junction in Shrewsbury, La., through Southport Junction (NOPB milepost J1.1) to IC milepost 921.14 at Dakin Street near Lampert Junction (NOPB milepost J0.3), a distance of approximately 2.6 miles.[3] There is a milepost equation at Southport Junction, where IC milepost 451.7 = IC milepost 921.9.[4]

8. Overhead trackage rights on IC from IC Station 120+0.00 (NOPB milepost 3.4) at Nashville Avenue to IC Station 175+68.09 (NOPB milepost 4.4) at Valence Street in New Orleans, including the connection to the NOPB locomotive maintenance facility lead track at IC Station 163+80.0 (NOPB milepost 4.2) near Upperline Street, a distance of approximately 1.05 miles.[5]

9. Overhead trackage rights on CSXT from the connection with the NOPB main line described in #2 at CSXT milepost 801.5 at Almonaster in New Orleans across the Port-owned Industrial Canal Bridge to the connections with the Burma East Lead and Bulk Terminal Lead described in #4 and #5, respectively, at CSXT milepost 801.2 in New Orleans, a distance of approximately 0.3 miles.

[1] Railroad Commission states that NOPB is a corporate subsidiary of the Board of Commissioners of the Port of New Orleans (Port).

[2] NOPB was authorized to acquire and operate the segments described in #1 through #5 and #7 through #9 in *New Orleans Public Belt Railroad—Acquisition and Operation Exemption—Public Belt Railroad Commission of the City of New Orleans,* FD 36149 (STB served Dec. 27, 2017). NOPB was authorized to lease and operate the segments described in #6 in *New Orleans Public Belt Railroad—Lease and Operation Exemption—Line of Illinois Central Railroad,* FD 36362 (STB served Dec. 13, 2019).

[3] *See New Orleans Pub. Belt R.R.—Trackage Rights Exemption—Ill. Cent. R.R.,* FD 33182 (STB served Oct. 30, 1996). According to Railroad Commission, the eastern segment of these trackage rights, from Southport Junction to Lampert Junction, connects the two sections of NOPB's main line described in #1 above. Railroad Commission states that the western segment of the trackage rights, from East Bridge Junction to Southport Junction, is adjacent to and north of NOPB's main line between those points.

[4] Railroad Commission states that the overhead trackage rights described in #7 overlap with some of the line segments that NOPB currently leases, as described in #6, particularly with respect to the IC lines extending between East Bridge Junction and Dakin Street near Lampert Junction. According to Railroad Commission, despite this overlap, it will retain the overhead trackage rights described in #7, which it would exercise if it and IC were to agree to terminate the lease for the segments described in #6.

[5] *See Ill. Cent. R.R.—Joint Relocation Project Exemption—in New Orleans, La.,* FD 33533 (STB served Jan. 16, 1998); *Ill. Cent. R.R.—Joint Relocation Project Exemption—in New Orleans, La.,* FD 32598 (ICC served Nov. 16, 1994). Railroad Commission states that these trackage rights are parallel to NOPB's main line described in #2 above and serve as a bypass around Cotton Warehouse Yard.

Railroad Commission states that it will also acquire NOPB's ownership or operating interests in all yard, industry, wharf, and lead tracks associated with the above line segments, including the Southern Recycling Lead, East Bridge Yard, Pacific Fruit Express Yard, Cotton Warehouse Yard, Race Yard, French Market Station, Pauline Yard, Claiborne Yard, France Yard, North Bulk Terminal Yard, South Bulk Terminal Yard, and Kingfish Yard. According to Railroad Commission, upon completion of the transaction, it will be a Class III switching and terminal railroad, providing neutral local and intermediate switching service to shippers and six connecting Class I railroads in the New Orleans area in place of NOPB.

Railroad Commission certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.[6] Because Railroad Commission's projected annual revenues will exceed $5 million, on July 2, 2020, Railroad Commission certified to the Board that it had complied with the requirements of 49 CFR 1150.32(e) by posting notice on July 2, 2020 at workplaces of NOPB employees and by serving notice on the national offices of the labor unions representing NOPB employees on the same date. Railroad Commission further certifies that neither the legislation governing this transaction nor any of the agreements to which Railroad Commission would succeed in place of NOPB includes any provision limiting Railroad Commission's future interchange of traffic with any connecting carrier.

The transaction may be consummated on or after September 10, 2020, the effective date of the exemption (30 days after the verified notice of exemption was filed). If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than September 3, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36419, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Railroad Commission's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to Railroad Commission, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: August 24, 2020.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2020–18878 Filed 8–26–20; 8:45 am]

BILLING CODE 4915–01–P

[6] Railroad Commission notes that, because it will operate as a switching and terminal railroad, it would be classified as a Class III carrier in any event under 49 CFR pt. 1201, General Instructions § 1–1(d).

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0153]

Request for Comments on the Approval of a Previously Approved Information Collection: Cruise Vessel Security and Safety Act (CVSSA) Training Provider Certification

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected will be used to assess CVSSA Training Provider Certification applicants against the CVSSA Model Course Standard. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before October 26, 2020.

ADDRESSES: You may submit comments [identified by Docket No. MARAD–2020–0153] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 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.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Cameron Naron, 202–366–1883, Office of Maritime Security, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Cruise Vessel Security and Safety Training Provider Certification.

OMB Control Number: 2133–0547.

Type of Request: Renewal of a previously approved collection.

Abstract: Section 3508 of the Cruise Vessel Security and Safety Act (CVSSA) of 2010, Public Law 111–207 (as codified at 46 U.S.C. 3507–3508) provides the Maritime Administrator with discretionary authority to certify CVSSA training providers that comply with training standards developed by the USCG, FBI and the Maritime Administration (MARAD). The certification process necessarily requires applicants to provide supporting information to evidence their compliance with the CVSSA Model Course training standards.

Respondents: Cruise line companies and maritime industry training providers.

Affected Public: Passengers and crew onboard cruise lines.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Estimated Hours per Response: 40.

Annual Estimated Total Annual Burden Hours: 400.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

Dated: August 24, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–18843 Filed 8–26–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0119]

Request for Comments on the Approval of a Previously Approved Information Collection: Automated Mutual Assistance Vessel Rescue System

AGENCY: Maritime Administration, Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection of information is necessary for maintaining a current plot of U.S.-flag and U.S.-owned vessels. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before October 26, 2020.

ADDRESSES: You may submit comments [identified by Docket No. MARAD–2020–0119] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 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.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Mark O'Malley, 202–366–9347, Division of Sealift Operations and Emergency Response, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Automated Mutual Assistance Vessel Rescue System (AMVER).

OMB Control Number: 2133–0025.

Type of Request: Renewal of a previously approved collection.

Abstract: This collection of information will be used to gather information regarding the location of U.S.-flag vessels and certain other U.S. citizen-owned vessels for the purpose of search and rescue in the saving of lives at sea and for the marshalling of ships for national defense and safety purposes. The collection of information is necessary for maintaining a current plot of U.S.-flag and U.S.-owned vessels.

Respondents: U.S.-flag and U.S. citizen-owned vessels.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 171.

Estimated Total Number of Responses: 31,293 (183 per Respondents).

Estimated Hours per Response: .07.

Annual Estimated Total Annual Burden Hours: 2,191.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * *

Dated: August 24, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–18842 Filed 8–26–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of a new matching program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of the Internal Revenue Service (IRS) Disclosure of Information to Federal, State and Local Agencies (DIFSLA) Computer Matching Program.

DATES: Comments on this matching notice must be received no later than 30 days after date of publication in the **Federal Register**. If no public comments are received during the period allowed for comment, the re-established agreement will be effective January 1, 2021, provided it is a minimum of 30 days after the publication date.

Beginning and completion dates: The matches are conducted on an ongoing basis in accordance with the terms of the computer matching agreement in effect with each participant as approved by the applicable Data Integrity Board(s). The term of these agreements is expected to cover the 18-month period, January 1, 2021 through June 30, 2022. Ninety days prior to expiration of the agreement, the parties to the agreement may request a 12-month extension in accordance with 5 U.S.C. 552a(o).

ADDRESSES: Inquiries may be sent by email to *glds.cmppa@irs.gov* or by mail to the Internal Revenue Service; Privacy, Governmental Liaison and Disclosure; Data Services; ATTN: Patricia Grasela, Program Manager, 2970 Market Street, BLN: 2–Q08.124, Philadelphia, PA 19104.

FOR FURTHER INFORMATION CONTACT: Internal Revenue Service; Privacy, Governmental Liaison and Disclosure; Data Services; ATTN: Patricia Grasela, Program Manager, 2970 Market Street, BLN: 2–Q08.124, Philadelphia, PA 19104. Telephone: 267–466–5564 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The notice of the matching program was last published at 83 FR 27082–083 (June 11, 2018). The Nevada Department of Health and Human Services is no longer participating in the DIFSLA Computer Matching Program. Members of the public desiring specific information concerning an ongoing matching activity may request a copy of the applicable computer matching agreement at the address provided above.

PARTICIPATING AGENCIES:

Name of Recipient Agency: IRS.

Categories of records covered in the match: Information returns (*e.g.,* Forms 1099–DIV, 1099–INT, and W–2G) filed by payers of unearned income in the IRS Information Returns Master File (IRMF) (Treasury/IRS 22.061).

Name of source agencies and categories of records covered in the match:

A. Federal agencies expected to participate and their Privacy Act systems of records are:

1. Department of Veterans Affairs: Veterans Benefits Administration—Compensation, Pension and Education and Rehabilitation Records-VA, 58 VA 21/22; and Veterans Health Administration—Healthcare Eligibility Records, 89 VA 19; and

2. Social Security Administration, Office of Systems Requirements—Supplemental Security Income Record and Special Veterans Benefits, (60–0103).

B. State agencies expected to participate using non-federal systems of records are:

1. Alabama Department of Human Resources
2. Alabama Medicaid Agency
3. Alaska Department of Health & Social Services, Division of Public Assistance
4. Arizona Department of Economic Security
5. Arkansas Department of Human Services
6. California Department of Social Services
7. Connecticut Department of Social Services
8. Delaware Department of Health & Social Services
9. District of Columbia Department of Human Services
10. Florida Department of Children & Families
11. Georgia Department of Human Services, Division of Family and Children Services
12. Hawaii Department of Human Services
13. Idaho Department of Health & Welfare
14. Illinois Department of Human Services
15. Indiana Family & Social Services Administration
16. Iowa Department of Human Services
17. Kansas Department for Children and Families
18. Kentucky Cabinet for Health and Family Services
19. Louisiana Department of Health
20. Louisiana Department of Children and Family Services
21. Maine Department of Health & Human Services
22. Maryland Department of Human Services
23. Massachusetts Department of Transitional Assistance
24. Michigan Department of Health & Human Services
25. Minnesota Department of Human Services
26. Mississippi Department of Human Services
27. Mississippi Division of Medicaid
28. Missouri Department of Social Services
29. Montana Department of Public Health & Human Services
30. Nebraska Department of Health & Human Services
31. New Hampshire Department of Health & Human Services, Division of Economic & Housing Stability, Bureau of Family Assistance
32. New Jersey Department of Human Services
33. New Mexico Human Services Department
34. New York State Office of Temporary & Disability Assistance
35. North Carolina Department of Health & Human Services
36. North Dakota Department of Human Services
37. Ohio Department of Job and Family Services
38. Ohio Department of Medicaid
39. Oklahoma Department of Human Services, Adult & Family Services
40. Oregon Health Authority, Department of Human Resources
41. Pennsylvania Department of Human Services
42. Rhode Island Department of Human Services
43. South Carolina Department of Social Services
44. South Dakota Department of Social Services
45. Tennessee Department of Human Services
46. Texas Health and Human Services Commission
47. Utah Department of Workforce Services
48. Vermont Department of Children and Families, Economic Services Division
49. Virginia Department of Social Services
50. Washington Department of Social & Health Services
51. Wisconsin Department of Children & Families
52. Wyoming Department of Family Services

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

In accordance with section 6103(l)(7) of the Internal Revenue Code (IRC), the Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the IRS files to any federal, state, or local agency administering a program listed below:

(i) A state program funded under part A of title IV of the Social Security Act;

(ii) Medical assistance provided under a state plan approved under title XIX of the Social Security Act, or subsidies provided under section 1860D–14 of such Act;

(iii) Supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(iv) Any benefits provided under a state plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) Unemployment compensation provided under a state law described in section 3304 of the IRC;

(vi) Assistance provided under the Food and Nutrition Act of 2008;

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(viii)(I) Any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(viii)(II) parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

(viii)(III) Health-care services furnished under sections 1710(a)(2)(G), 1710(a)(3), and 1710(b) of such title.

PURPOSE:

The purpose of this program is to prevent or reduce fraud and abuse in certain federally assisted benefit programs while protecting the privacy interests of the subjects of the match. Information is disclosed by the IRS only for the purpose of, and to the extent necessary in, determining eligibility for, and/or the correct amount of, benefits for individuals applying for or receiving certain benefit payments.

CATEGORIES OF INDIVIDUALS:

Individuals applying for or receiving benefits under federal and state administered programs.

CATEGORIES OF RECORDS:

The source Agency will furnish the IRS with records in accordance with the current IRS Publication 3373, DIFSLA Handbook. The Agency may request return information on a monthly basis for new applicants. The Agency may request information with respect to all beneficiaries once per year. The requests from the Agency will include: The Social Security Number (SSN) and name control (first four characters of the surname) for each individual for whom unearned income information is requested. IRS will provide a response record for each individual identified by the Agency. The total number of records will be equal to or greater than the number of records submitted by the Agency. In some instances, an individual may have more than one record on file. When there is a match of

individual SSN and name control, IRS will disclose the following to the Agency: Payee account number; Payee name and mailing address; payee taxpayer identification number (TIN); payer name and address; payer TIN; and income type and amount.

SYSTEM(S) OF RECORDS:

Public Law 98–369, Deficit Reduction Act of 1984, requires the Agency administering certain federally assisted benefit programs to conduct income verification to ensure proper distribution of benefit payments. The records in this match are to be disclosed only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of benefits under, these programs.

IRS will extract return information with respect to unearned income from the Information Returns Master File (IRMF), Treas/IRS 22.061, as published at 80 FR 54081–082 (September 8, 2015), through the DIFSLA Computer Matching Program.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2020–18863 Filed 8–26–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Disruption of Mail Service

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of exception to date of receipt rule.

SUMMARY: In response to the declaration of a national emergency, announced on March 13, 2020, due to the coronavirus disease of 2019 (COVID–19) pandemic in the United States, the Veterans Benefits Administration (VBA) instituted temporary provisions for determining the acceptable dates for the receipt of correspondence through the United States Postal Service mail and other mail delivery systems. This is an updated notice to VA's April 20, 2020, **Federal Register** publication.

FOR FURTHER INFORMATION CONTACT: Cleveland Karren, Director, Policy and Procedures, Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On March 13, 2020, the President of the United States signed a declaration of national emergency due to the COVID–19 pandemic in the United States, beginning March 1, 2020. The COVID–19 pandemic required VBA to dramatically alter its operations in concert with the Federal Government's efforts to combat the spread of the virus.

VBA, as part of its efforts to protect veterans and employees, has in many locations maximized the use of telework from home. In addition, VBA has temporarily closed public contact units within VBA regional offices. Although the United States Postal Service operations have continued, limited physical staffing at VBA regional offices could lead to delays in the ability of these regional offices to receive mail and process it in a timely manner. At several VBA regional office locations the processing of correspondence (containing claims, pertinent beneficiary information or related evidence) mailed to VA during this period could be interrupted due to VA's involvement in the Federal Government's effort to combat the spread of COVID–19. VA aims to protect the interest of claimants who send such correspondence to VBA through the normal channels of communication during this period and could possibly be deprived of benefits solely because these channels of communication are disrupted during this time of national emergency. Therefore, VA has instituted temporary provisions for determining the acceptable dates for the receipt of correspondence through the United States Postal Service mail and other mail delivery systems (such as courier mail), as updated in this notice.

VA regulation 38 CFR 3.1(r) allows the Under Secretary for Benefits to establish exceptions to VA's rule on the date of receipt of claims, information or evidence by a notice published in the **Federal Register**. Ordinarily, ''date of receipt'' means the date on which a claim, information or evidence was received in a VA office. This regulation states that exceptions may be established when a natural or man-made interference with the normal channels through which VBA ordinarily receives correspondence has resulted in one or more VBA regional offices experiencing extended delays in the receipt of claims, information or evidence to an extent that, if not addressed, the delay would adversely affect such claimants, through no fault of their own.

The COVID–19 pandemic has interrupted operations at all VBA regional offices since the beginning of March 2020. Correspondence containing claims, information or evidence sent to VA during this period was likely delayed due to interrupted operations of VBA regional offices. Because VBA regional office mail systems were impacted, VA has established the following updated exceptions to the standard date of receipt rule.

Exceptions to Date of Receipt Rule for Claimants Affected by the COVID–19 Outbreak

VA previously gave notice that for purposes of determining entitlement to benefits, any correspondence received by VA from any claimant, during the period March 1, 2020, through 60 calendar days past the date the President ends the national state of emergency, that contains claims, information or evidence, is considered received on the date of postmark. That guidance remains in effect unless existing regulations permit an earlier date of receipt, such as in 38 CFR 3.108, 3.153 or 3.201, or in the case of Veterans Pension, if its application would, in rare instances, unduly disadvantage the claimant.

VA also previously gave notice that, in the event there is no mail postmark or date stamp by the through the United States Postal Service mail and other mail delivery systems, VA would consider the correspondence as received no later than February 29, 2020. This updated notice provides that, effective immediately, VA will consider any correspondence with no postmark or date stamp as received 10 calendar days prior to the document's scanning date at the centralized claims intake center, counting the date of receipt at the intake center as the 10th calendar day; except in such cases where the mailing clearly shows that the receipt date would be erroneous. This change is necessary to account for the length of the COVID–19 pandemic and the realities of current mail processing.

Due to length of the COVID–19 pandemic, it is no longer reasonable to assume that mail lacking a postmark was received prior to March 1, 2020. Most mail sent to regional offices is forwarded directly to VBA's claims intake center for scanning and processing; however, some sites are excluded from direct forwarding. At those sites, there are personnel onsite to review the mail and send it for scanning. Also, VA is aware of some minor delays in either forwarding, receiving and scanning the mail. In either case, treating mail as received by VA 10 calendar days prior to the date of the scanning at the claims intake center, is sufficient to cover the current delays in mail processing.

VA, in applying this guidance, is attempting to give claimants the earliest and most accurate date of claim. As such, VA will treat mail that lacks a

postmark as if it was received by VA 10 calendar days prior to the date of the scanning by the claims intake center, except in such cases where the mailing clearly shows that it would be clearly erroneous. In situations where applying this liberal guidance would be clearly erroneous, VA will provide the best estimate for the date of receipt. This approach allows VA to utilize a date of mail receipt that is more aligned with the actual date of receipt. This guidance applies to correspondence received during the designated period from all domestic and foreign postal codes.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on August 20, 2020 for publication.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2020–18839 Filed 8–26–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App.2, that a meeting of the Special Medical Advisory Group (the Committee) will be held on Wednesday, September 9, 2020 from 9:30a.m. EDT to 2:30pm. EDT. The meeting is open to the public, the public will only be able to attend virtually, members may join in-person or virtually.

Join by phone: 404.397.1596 Access Code: 1999272338#

Join via Webex (please contact POC below for assistance connecting): https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=md4560dd7a25a43364da73e96187980cf.

The purpose of the Committee is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of Veterans, and other matters pertinent to the Veterans Health Administration (VHA).

The agenda for the meeting will include discussions regarding the pandemic response, challenges and future health care considerations, precision oncology expansion strategy and geriatrics health care future strategy.

Although no time will be allocated for receiving oral presentations from the public, members of the public may submit written statements for review by the Committee to: Ms. Brenda R. Faas, Designated Federal Officer, Veterans Health Administration (10B), 810 Vermont Avenue NW, Washington, DC 20420 or by email at *VASMAGDFO@va.gov.* Comments will be accepted until close of business on Friday, September 4, 2020. In the communication, the writers must identify themselves and state the organization, association of person(s) they represent.

Any member of the public wishing to attend the meeting or seeking additional information should email *VASMAGDFO@va.gov* or call 202–461–7005, no later than close of business on Friday, September 4, 2020.

Dated: August 21, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–18814 Filed 8–26–20; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 85 Thursday,

No. 167 August 27, 2020

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Limitation on Deduction for Dividends Received From Certain Foreign Corporations and Amounts Eligible for Section 954 Look-Through Exception; Coordination of Extraordinary Disposition and Disqualified Basis Rules; Coordination of Extraordinary Disposition and Disqualified Basis Rules; Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

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Limitation on Deduction for Dividends Received From Certain Foreign Corporations and Amounts Eligible for Section 954 Look-Through Exception

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under sections 245A and 954 of the Internal Revenue Code (the ''Code'') that limit the deduction for certain dividends received by United States persons from foreign corporations under section 245A and the exception to subpart F income under section 954(c)(6) for certain dividends received by controlled foreign corporations. This document also contains final regulations under section 6038 of the Code regarding information reporting to facilitate administration of the final regulations. The guidance relates to changes made to the applicable law by the Tax Cuts and Jobs Act, which was enacted on December 22, 2017. This document finalizes proposed regulations published on June 18, 2019, and removes temporary regulations published on the same date.

DATES:

Effective date: These regulations are effective on August 27, 2020.

Applicability dates: For dates of applicability, see §§ 1.245A–5(k), 1.954(c)(6)–1(b), and 1.6038–2(m)(2).

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SUPPLEMENTARY INFORMATION:

Background

Added to the Code by the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054, 2189 (2017) (the ''Act''), section 245A provides a 100-percent deduction to domestic corporations for certain dividends received from foreign corporations after December 31, 2017 (the ''section 245A deduction''). Section 954(c)(6) provides that a dividend received by a controlled foreign corporation, as defined in section 957 (a ''CFC''), from a related CFC is not included in the recipient CFC's income subject to current tax under sections 951(a) and 954(c) if certain requirements are satisfied (the ''section 954(c)(6) exception''). On June 18, 2019, the Department of the Treasury (the ''Treasury Department'') and the IRS published temporary regulations (TD 9865) under sections 245A, 954(c)(6), and 6038 in the **Federal Register** (84 FR 28398, as corrected at 84 FR 38866) (the ''temporary regulations''). These temporary regulations limit the section 245A deduction and the section 954(c)(6) exception with respect to distributions supported by certain earnings and profits (''E&P'') not subject to the integrated international tax regime created by the Act. Also on June 18, 2019, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–106282–18) in the **Federal Register** (84 FR 28426, as corrected at 84 FR 38892) by cross-reference to the temporary regulations (the ''proposed regulations,'' and together with the temporary regulations, the ''2019 regulations''). A public hearing was held on November 22, 2019.

This Treasury decision finalizes the proposed regulations, and removes the temporary regulations, after taking into account and addressing comments received by the Treasury Department and the IRS with respect to the 2019 regulations. Some of the comments received are outside the scope of the topics addressed in the 2019 regulations and are thus generally not further addressed in this preamble. However, those comments may be considered in connection with any future guidance projects regarding the issues discussed therein. For example, the Treasury Department and the IRS anticipate taking into account comments received regarding the availability of the section 245A deduction for dividends received by a CFC when issuing relevant future guidance. Comments that relate solely to the temporary regulations, such as comments relating to the temporary regulations' compliance with the procedural requirements in 5 U.S.C. 553(b) and (d) of the Administrative Procedure Act, will not be further addressed, as these issues were discussed in the preamble to the 2019 regulations and are not relevant to this document finalizing proposed regulations for which a 90-day comment period was provided. *See* 84 FR 28398. All written comments received in response to the 2019 regulations are available at *www.regulations.gov* or upon request.

The preamble to the 2019 regulations solicits comments on whether and how to coordinate the rules in proposed § 1.245A–5(c) and (d) (regarding extraordinary dispositions) with the rules in § 1.951A–2(c)(5) (regarding the allocation of deduction or loss attributable to disqualified basis under the global intangible low-taxed income rules in section 951A (such income, global intangible lowed-taxed income or ''GILTI,'' and the rules, the ''GILTI regime'')).[1] In response to the comments received pursuant to this solicitation, the Treasury Department and the IRS have issued proposed regulations (REG–103470–19), the text of which is set forth in a notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register** (the ''proposed coordination rules'').

Terms used but not defined in this preamble have the meaning provided in the final regulations.

Summary of Comments and Explanation of Revisions

I. Overview

The final regulations retain the general approach and structure of the proposed regulations, with certain revisions. This Summary of Comments and Explanation of Revisions section discusses the revisions as well as relevant comments received.

II. Comments Relating to Authority To Issue the 2019 Regulations

Several comments recommended that the Treasury Department and the IRS withdraw the temporary regulations, and not finalize the proposed regulations, due to a claimed lack of statutory authority to issue the rules therein. These comments asserted that the extraordinary disposition and extraordinary reduction rules in the 2019 regulations are contrary to the statutory text of section 245A and are therefore not authorized by section 245A(g). Some comments also asserted that the extraordinary disposition rules are contrary to section 245A because they attempt to alter the effective dates of section 965, which imposed a transition tax on certain untaxed foreign earnings measured as of no later than December 31, 2017, and section 951A, which created GILTI, a new category of income that is subject to current U.S. taxation starting in the first taxable year of a CFC beginning on or after January 1, 2018. Other comments asserted that the 2019 regulations are not reasonable

[1] Section 1.951A–2(c)(5) was published in the **Federal Register** on June 21, 2019, as part of final and temporary regulations regarding the GILTI regime. *See* TD 9866, 84 FR 29288. This provision prevents any deduction or loss attributable to basis generated without U.S. tax cost during the disqualified period from being allocated to reduce tested income, subpart F income, or income effectively connected with a U.S. trade or business. *See* § 1.951A–2(c)(5)(i).

because the application of the rules may result in excess U.S. taxation in certain situations.

A. Authority

The 2019 regulations were issued and are now being finalized under several statutory grants of authority. First, section 245A(g) grants the Secretary the authority to ''prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of [section 245A].'' Second, section 954(c)(6)(A) provides the Secretary the authority to ''prescribe such regulations as may be necessary or appropriate to carry out [section 954(c)(6)], including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of [section 954(c)(6)].'' Third, section 7805(a) of the Code generally provides the Secretary the authority to ''prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.''

As stated in the preamble to the 2019 regulations, the Treasury Department and the IRS determined that sections 245A(g), 954(c)(6), and 7805(a) provide authority for the 2019 regulations. After considering comments to the contrary, the Treasury Department and the IRS have determined that these provisions also provide authority to finalize the proposed regulations so that the section 245A deduction and section 954(c)(6) exception are appropriately limited as contemplated by sections 245A(g) and 954(c)(6)(A). The phrase ''necessary or appropriate'' is broad, and its use in sections 245A(g) and 954(c)(6)(A) reflects Congress's intent to confer extensive rulemaking authority upon the Treasury Department and the IRS with respect to those provisions. *See Michigan* v. *Environmental Protection Agency,* 135 S. Ct. 2705, 2707 (2015) (concluding that the words ''appropriate and necessary'' in a statutory grant of regulatory authority are ''capacious[ ]'' and noting that the term appropriate ''is the classic broad and all-encompassing term that naturally and traditionally includes consideration of all relevant factors,'' before going on to analyze the rulemaking at issue under the standard that the Court must ''accept an agency's reasonable resolution of an ambiguity in a statute that the agency administers''). This includes the authority to limit the availability of the section 245A deduction and the section 954(c)(6) exception when doing so is necessary or appropriate to the proper functioning of those provisions. Moreover, section 7805(a) provides additional rulemaking authority that may not be conferred in a specific statutory grant, including in cases where rules may be necessary due to alterations in law, such as those made by the Act. Under the authority of these provisions, the 2019 regulations and the final regulations are necessary and appropriate to the proper application of sections 245A and 954(c)(6) as components of the integrated international tax regime created by the Act.

As explained in the preamble to the 2019 regulations, the Act established a new system for the taxation of foreign income through the section 245A deduction, which is available to domestic corporations with respect to certain dividends received from specified 10-percent owned foreign corporations (''SFCs'') after December 31, 2017. E&P generated before the applicability of the section 245A deduction and not previously subject to U.S. tax were generally subject to the transition tax under section 965. For taxable years starting in 2018, the Act generally retained the rules under section 951 that subject certain income of CFCs to current U.S. tax (the ''subpart F regime''). The Act also introduced the GILTI regime, an expanded anti-base erosion measure that subjects certain income of CFCs to current U.S. tax in order to address heightened base erosion concerns arising from the enactment of section 245A and other provisions of the Act.

In a typical case, these provisions require E&P (or the income that gave rise to the E&P) to be tested for taxation under section 965 or the GILTI and subpart F regimes before the E&P can be distributed as dividends potentially eligible for the section 245A deduction. E&P that have been previously taxed by reason of section 965 or the subpart F or GILTI regimes are treated as being distributed before non-previously taxed E&P, and a distribution of previously taxed E&P is not treated as a distribution of a dividend for U.S. tax purposes and therefore would not be eligible for the section 245A deduction. *See* Sections 959(c) and (d). By contrast, section 245A applies to certain E&P when they are distributed as dividends (or deemed distributed under certain Code provisions). Understood together, this framework confirms that the section 245A deduction is intended to apply to residual E&P that is not subject to section 965 and properly determined to be exempt from current taxation under the GILTI and subpart F regimes.

The legislative history to the Act provides further relevant context to understanding how the section 245A deduction interacts with section 965 and the GILTI and subpart F regimes. Congress enacted section 245A to increase the competitiveness of U.S. companies and reduce incentives to keep funds offshore to avoid the U.S. residual tax on those earnings. *See* Senate Committee on the Budget, 115th Cong., Reconciliation Recommendations Pursuant to H. Con. Res. 71, at 353 (Comm. Print 2017). Congress recognized, however, that the enactment of section 245A presented a potential windfall, allowing taxpayers who had held E&P offshore to distribute all of those E&P to a United States shareholder without incurring tax. *See id.* Congress did not intend for section 245A to apply to such pre-Act E&P, and thus enacted section 965 ''to ensure that all distributions from foreign subsidiaries are treated in the same manner under the participation exemption system.'' *Id.* at 358.

Congress was also aware that the section 245A deduction was susceptible to manipulation in other ways. In this regard, Congress recognized that section 245A could provide incentives to allocate income susceptible to base erosion to certain foreign corporations, including those located in low-taxed foreign jurisdictions or tax havens, ''where the income could potentially be distributed back to the [domestic] corporation with no U.S. tax imposed.'' *See id.* at 365. To prevent these misuses, the Act implemented the GILTI regime and retained the subpart F regime.

The Treasury Department and the IRS interpreted the scope of the section 245A deduction based on this structure and context. The 2019 regulations and the final regulations ensure that the section 245A deduction appropriately operates within the statutory framework to complement, not contradict, the application of section 965 and the GILTI and subpart F regimes. The 2019 regulations limit the section 245A deduction in connection with extraordinary dispositions because E&P generated in those transactions are not subject to tax under section 965 or the GILTI and subpart F regimes and, as a result, are not of the residual type for which the section 245A deduction is intended to potentially be available. The 2019 regulations limit the section 245A deduction in connection with extraordinary reductions because the section 245A deduction can result in complete avoidance of U.S. tax with respect to subpart F income or tested income that, absent the extraordinary reduction, would have been included in income by the selling United States shareholder under the subpart F or GILTI regimes, respectively. Limitations on the section 245A deduction in the

2019 regulations and the final regulations are narrowly tailored to apply only in circumstances where allowing a section 245A deduction would conflict with Congress's intent to have the subpart F and GILTI regimes prevent base erosion. The 2019 regulations and the final regulations are therefore necessary and appropriate to ensure the proper application of the provisions of section 245A.

Similarly, the 2019 regulations and the final regulations limit the section 954(c)(6) exception where its application would otherwise allow E&P that had accrued after December 31, 2017 (the last measurement date for determining the amount of E&P subject to section 965), and that was generated by income that had never been tested under the subpart F and GILTI regimes, to inappropriately qualify for an exception to the subpart F regime. While section 954(c)(6) was added to the Code to allow certain CFCs to reinvest E&P attributable to active foreign activities without incurring current U.S. tax, the section 954(c)(6) exception was not intended to apply where the effect would be to permanently eliminate income from the U.S. tax base, which would constitute an abuse of section 954(c)(6). *See* Notice 2007–9, 2007–1 C.B. 401, at section 7(b). The 2019 regulations and the final regulations under section 954(c)(6) are designed to ensure that the section 954(c)(6) exception does not apply to permanently eliminate income from the U.S. tax base through certain transactions preventing the taxation of income that would otherwise be taxed under the subpart F regime when distributed to a CFC. Thus, these regulations are necessary and appropriate to prevent the abuse of the section 954(c)(6) exception.

B. Effective Dates

Comments asserted that the 2019 regulations are an attempt by the Treasury Department and the IRS to apply section 965 or the GILTI regime during the period beginning on January 1, 2018, and ending on the last day of the last taxable year of a CFC before the GILTI regime applies (the ''disqualified period''). In support of their position, some of these comments cite § 1.245A–5T(b) (and proposed § 1.245A–5(b)), which provides that 50 percent of extraordinary disposition E&P are ineligible for the section 245A deduction thereby subjecting extraordinary disposition amounts to tax at a 10.5 percent effective tax rate, rather than the general 21 percent corporate tax rate. The comments further alleged that the 2019 regulations contradict section 245A because Congress intentionally created the disqualified period and, therefore, intended section 245A to apply during this period to encourage repatriations. In support of this position, the comments cite a change to the effective date of section 245A in the final bill to align with the final E&P measurement date under section 965, rather than the applicability date of section 951A.

The Treasury Department and the IRS disagree with this characterization of the 2019 regulations. The 2019 regulations and the final regulations are not an attempt to change the effective dates of section 965 or the GILTI regime; rather, the regulations limit the availability of the section 245A deduction and the section 954(c)(6) exception in certain limited circumstances where the effect would be contrary to the appropriate application of those provisions in the context of the Act's integrated approach to the taxation of income, or E&P generated by income, of a CFC. Furthermore, the extraordinary disposition rules apply to a limited category of transactions—that is, transactions that take place outside the ordinary course of business, between related parties, and exceed the lesser of $50 million or 5 percent of the CFC's total income for the taxable year. These exceptions demonstrate that the extraordinary disposition rules do not change the effective dates of section 965 or the GILTI regime; rather, they ensure the proper coordination of multiple statutory provisions in circumstances in which there is a heightened risk of base erosion.

As explained in Part II.A of this Summary of Comments and Explanation of Revisions, section 245A must be read in context and in light of its role in the integrated international tax system created by the Act. Nothing in the statute or legislative history suggests that the change in effective date of section 245A during the drafting of the bill means that Congress intended for E&P generated through extraordinary dispositions during the disqualified period to qualify for the section 245A deduction. Moreover, such an interpretation would suggest, without support, that Congress purposefully amended the section 245A effective date to provide a tax benefit only to CFCs with a fiscal taxable year, giving them a significant advantage over CFCs with a calendar taxable year.

C. Excess Taxation

Several comments asserted that the 2019 regulations are unreasonable because they could result in excess U.S. taxation. For example, comments cited the potential for the extraordinary disposition rules and the disqualified basis rules in § 1.951A–2(c)(5) to apply to the same transaction. Comments also asserted that, due to the unavailability of foreign tax credits and other tax attributes (such as net deemed tangible income return as defined in section 951A(b)(2)), the extraordinary disposition rules impose a different tax cost on extraordinary disposition E&P than would have been imposed had the income or gain to which such E&P is attributable been subject to tax under the GILTI regime when it was generated. Another comment asserted that the extraordinary reduction rules are contrary to sections 1248(j) and 964(e)(4) because those provisions govern extraordinary reductions and the 2019 regulations in effect override those provisions. Finally, one comment stated that the extraordinary reduction rules result in excess U.S. taxation in the context of dividends that partially fail to qualify for the section 954(c)(6) exception because they are partly attributable to subpart F income. Each of these comments is addressed in turn.

First, and as noted in the Background section, the proposed coordination rules consider the application of the rules of §§ 1.245A–5(c) and (d) and 1.951A–2(c)(5) to the same transaction and, accordingly, address excess taxation concerns.

Second, the U.S. tax cost of an extraordinary disposition is not, and is not intended to be, equivalent to the cost of applying section 965 or the GILTI regime to the same transaction. Instead, the Treasury Department and the IRS determined that the extraordinary disposition E&P is not of the type that Congress intended to qualify for the section 245A deduction and the section 954(c)(6) exception. As an act of administrative grace, the 2019 regulations deny only 50 percent of the section 245A deduction and the section 954(c)(6) exception to approximate the tax rate that taxpayers may have expected to pay on similar E&P under section 965 or the GILTI regime. However, this is not intended to place taxpayers in an equivalent position as if they had been subject to those provisions. Instead, it is intended to prevent extraordinary disposition E&P from inappropriately qualifying for the section 245A deduction or the section 954(c)(6) exception.

Third, the 2019 regulations do not override the application of section 1248(j) or 964(e)(4). Both provisions impose taxation on built-in stock gain (to the extent of certain E&P of the CFC) as if it were a dividend, but neither one

expressly permits the section 245A deduction. To the contrary, both provisions envision that there will be contexts in which the deemed dividend under section 1248(j) or 964(e)(4) could fail to qualify for the section 245A deduction. The fact that the statutory text of these provisions ties their eligibility for tax-exemption to their ability to qualify for the section 245A deduction demonstrates that the same policies underlying the application of section 245A to actual dividends is also intended to apply to deemed dividends under section 1248(j) or 964(e)(4). Accordingly, the 2019 regulations further the policies underlying sections 1248(j) and 964(e)(4) by limiting the availability of the section 245A deduction for both actual and deemed dividends in the same manner.

Finally, one comment asserted that the interaction of the extraordinary reduction rules with the rules under § 1.245A–5T(f) (and proposed § 1.245A–5(f)) that limit the section 954(c)(6) exception, could result in subpart F income being subject to U.S. tax more than once in certain cases where a portion of the amount distributed would not otherwise qualify for the section 954(c)(6) exception. While not discussed in the comment, the same issue could arise in the context of tiered extraordinary disposition amounts. In response to this comment, the Treasury Department and the IRS have modified the rules in § 1.245A–5(d)(1) and (f)(1) and related provisions of § 1.245A–5 that limit application of the section 954(c)(6) exception.

III. Comments and Revisions Related to Extraordinary Dispositions

A. Exceptions to Extraordinary Dispositions

Under the 2019 regulations, an SFC is generally considered to have undertaken an extraordinary disposition with respect to an asset if the SFC (1) disposes of that asset outside of its ordinary course of activities to a related party during its disqualified period and (2) the sum of all extraordinary dispositions undertaken by the SFC exceeds the lesser of $50 million or 5 percent of the gross value of the SFC's assets. *See* proposed § 1.245A–5(c)(3)(ii). Determining whether the disposition of an asset is outside the ordinary course of the SFC's business is a facts and circumstances determination. *See* proposed § 1.245A–5(c)(3)(ii)(B). In addition, dispositions occurring with a principal purpose of generating E&P during the disqualified period and dispositions of intangible property (as defined in section 367(d)(4)) are per se outside the ordinary course of an SFC's activities. *See* proposed § 1.245A–5(c)(3)(ii)(C). This Part III.A of the Summary of Comments and Explanation of Revisions discusses comments requesting exceptions from the definition of an extraordinary disposition.

1. Post-Acquisition Integration Safe Harbor

Comments recommended that transactions occurring pursuant to a plan of integration after an acquisition of an unrelated group be excluded from the definition of extraordinary disposition. One comment suggested that any integration of an acquired group that was acquired within 12 months of January 1, 2018, should be excluded. The comments noted that post-acquisition integration, including through mergers and asset sales, may occur for a variety of non-tax business reasons, including consolidating ownership of certain assets, aligning business segments, creating synergies, and combining legal entities. Further, the comments noted that certain acquisitions and the related post-integration transactions were planned before the Act was enacted and would likely have occurred regardless of whether the Act was in effect at the time of the acquisition and post-acquisition integration. One comment acknowledged, however, that courts have typically found mergers to not be within the ordinary course of a business's activities.

The Treasury Department and the IRS have determined that recently acquired assets are indistinguishable from non-recently acquired assets for the purposes of determining whether an extraordinary disposition has occurred. First, an extraordinary disposition that occurs during the disqualified period implicates the policy concerns of the extraordinary disposition rule regardless of whether the taxpayer intended to avoid tax. That is, regardless of the taxpayer's subjective intent, such transactions, absent rules to address them, could give rise to inappropriate results, such as E&P that are not of the type for which the section 245A deduction was intended to be available giving rise to a section 245A deduction. Second, the regulations apply only to post-acquisition integrations occurring during the disqualified period. The Treasury Department and the IRS are aware that some taxpayers undertook extraordinary dispositions for the purpose of increasing the basis of an asset or generating E&P eligible for the section 245A deduction, without being subject to U.S. tax on the recognition of the built-in gain in the asset. There are a number of ways that an asset could be transferred within an organizational structure that, even in the absence of special rules, would not give rise to inappropriate tax results. The fact that an asset was recently acquired does not change this fact; the length of time that an asset was held does not impact the potential ways in which the asset can be transferred within a group of related entities. Therefore, the final regulations do not adopt this recommendation.

2. Intangible Property

a. Extraordinary Disposition Exception for Intangible Property

The comment requesting a general exception for transfers of intangible property asserted that (1) the rules as drafted would penalize the repatriation of intangible property to the United States, contrary to one of the Act's goals; and (2) other transfers of intangible property (that is, those between related CFCs) are addressed under § 1.951A–2(c)(5). The extraordinary disposition rules were issued in response to a concern regarding highly-structured transactions that took place during the disqualified period to create stepped-up basis for the transferee and generate E&P for the transferor. Such transactions are especially concerning when they occur outside the ordinary course of business, between related parties, and involve large amounts of gain. A transfer of intangible property often will fall within these criteria, and thus would raise the same concerns as other highly-structured asset dispositions during the disqualified period. Contrary to the argument in the comment, the concerns addressed by the extraordinary disposition rules are heightened when the property in question is highly mobile and highly valuable, as is generally true of intangible property (and less frequently true of tangible property). Accordingly, the final regulations do not adopt this comment and continue to treat transfers of intangible property as extraordinary dispositions subject to the per se rule (but see the exception discussed in Part III.A.2.b of the Summary of Comments and Explanation of Revisions).

b. Exception to the Per Se Rule for Inventory Property

A comment recommended that the final regulations adopt an exception to the per se rule for transfers of intangible property described in section 1221(a)(1). The comment noted that the disqualified basis rules, which similarly address transfers of property occurring during the disqualified period, provide

for an exception with respect to property described in section 1221(a)(1). *See* § 1.951A–2(h)(2)(ii). The comment further indicated that the facts and circumstances test in § 1.245A–5T(c)(3)(ii)(B) (and proposed § 1.245A–5(c)(3)(ii)(B)) would be sufficient to address any concerns of abuse.

The Treasury Department and the IRS agree that it is appropriate to except certain ordinary course transfers of intangible property ultimately sold to unrelated customers from the per se rule. However, the Treasury Department and the IRS have determined that the exception from the per se rule should not be based on whether such property is described in section 1221(a)(1). Accordingly, the final regulations provide that a disposition of certain types of intangible property defined in section 367(d)(4) is not per se treated as an extraordinary disposition if the intangible property is transferred to a related party during the disqualified period with a reasonable expectation that such property would be sold to an unrelated customer within one year of the transfer. *See* § 1.245A–5(c)(3)(ii)(C)(*2*)(*i*). This rule is intended to apply primarily to routine transfers of limited intangible property rights in furtherance of transactions with unrelated customers. Accordingly, transfers of intangible property described in section 367(d)(4)(C) or (F), such as trademarks and goodwill, are not eligible for this exception because, in general, these types of intangible property are not routinely transferred to unrelated customers. Additionally, transfers of copyright rights within the meaning of § 1.861–18 or intangible property described in section 367(d)(4)(A) that qualify for the exception to the per se rule are still subject to a presumption that they occur outside the ordinary course of the transferor SFC's activities. *See* § 1.245A–5(c)(3)(ii)(C)(*2*)(*ii*). This presumption can be rebutted only if the taxpayer shows that the facts and circumstances clearly establish that the disposition took place in the ordinary course of the SFC's activities. *See id.*

c. Platform Contribution Payments

A comment recommended that transfers of intangible property from a CFC to a related CFC that occur as a result of a platform contribution transaction under § 1.482–7 (a ''PCT'') be excluded from the per se rule. The comment noted that, when PCT payments represent payments from a United States shareholder to a CFC as consideration for a deemed transfer of intangible property, the result is that intangible property is effectively transferred into the United States from abroad. The comment described such transfers as broadly consistent with the policies of the Act and noted that PCT payments may not arise directly as a result of U.S. tax planning.

The final regulations do not adopt this recommendation. The ultimate destination of the intangible property transferred in an extraordinary disposition, and the motivations of the taxpayers involved in the transfer, are generally irrelevant in determining whether a transfer should be treated as an extraordinary disposition. Whether or not the intangible property is transferred to the United States or for non-tax business reasons, a transfer during the disqualified period generates E&P that have not been subject to U.S. tax, and an associated increase in the basis of the transferred property, to the benefit of a related person. Accordingly, the final regulations continue to treat transfers of intangible property as subject to the per se rule (subject to the exception discussed in Part III.A.2.b of this Summary of Comments and Explanation of Revisions) without regard to whether such transfers occur in connection with a PCT.

B. Extraordinary Disposition Accounts

1. In General

The 2019 regulations generally limit the section 245A deduction to the extent the dividend is paid out of the extraordinary disposition account of the section 245A shareholder. For this purpose, the 2019 regulations provide an ordering rule pursuant to which a dividend is considered paid out of non-extraordinary disposition E&P before it is considered paid out of the extraordinary disposition E&P account. *See* proposed § 1.245A–5(c)(2)(i). Similar rules apply with respect to the limitation on amounts eligible for the section 954(c)(6) exception. *See* proposed § 1.245A–5(d)(2)(i). The 2019 regulations generally define non-extraordinary disposition E&P based on the section 245A shareholder's share of the E&P of the SFC described in section 959(c)(3) in excess of the balance in the section 245A shareholder's extraordinary disposition account determined immediately before the distribution. *See* proposed § 1.245A–5(c)(2)(ii).

The 2019 regulations measure a section 245A shareholder's share of the E&P of an SFC described in section 959(c)(3) based on the percentage of stock (by value) of the SFC owned, directly or indirectly, by the section 245A shareholder after the distribution and all related transactions. *See* proposed § 1.245A–5(c)(2)(ii)(A)(*2*). Thus, in cases in which the section 245A shareholder sells all of its stock of the SFC, the section 245A shareholder's share of E&P described in section 959(c)(3) is considered to be zero with respect to any dividend that is related to the sale under the measurement rule. As a result, the measurement rule treats no portion of the dividend as being distributed from non-extraordinary disposition E&P even though, assuming that a dividend is first sourced from E&P other than E&P generated in an extraordinary disposition, none of the dividend may be sourced from E&P generated in an extraordinary disposition. The final regulations revise this rule to measure the section 245A shareholder's share of E&P described in section 959(c)(3) based on the percentage of stock of the SFC that the section 245A shareholder owns immediately before the distribution. *See* § 1.245A–5(c)(2)(ii)(A)(*2*).

2. Effect of Losses Incurred After Extraordinary Dispositions

One comment noted that a dividend will avoid being sourced from an extraordinary disposition account only to the extent the non-extraordinary disposition E&P equals or exceeds the amount of the dividend. The comment requested that regulations clarify the determination of non-extraordinary disposition E&P and the sourcing of dividends from an extraordinary disposition account to address cases involving losses generated after the extraordinary disposition and distributions giving rise to ''nimble'' dividends subject to section 316(a)(2).

This comment implicates two issues, the first of which is whether losses incurred after the disqualified period should reduce an extraordinary disposition account to the extent that such losses reduce E&P generated in an extraordinary disposition. The Treasury Department and the IRS have determined that losses incurred after the disqualified period should not reduce the extraordinary disposition account because extraordinary disposition E&P that are offset by losses provide a tax benefit to a section 245A shareholder. Specifically, extraordinary disposition E&P prevent offsetting losses from decreasing other E&P or creating a deficit that must be offset by future E&P that could give rise to future dividends. For every dollar of decreased E&P, an additional dollar distributed would be unable to qualify for the section 245A deduction and would instead reduce the distributee's basis in stock in the distributing corporation under section 301(c)(2) or constitute taxable gain to

the distributee under section 301(c)(3). In this way, extraordinary disposition E&P prevents post-extraordinary disposition losses from reducing the SFC's ability to pay dividends eligible for the section 245A deduction. Thus, the extraordinary disposition E&P provide the same benefit when offset by a loss as they do absent a loss: That E&P increases the SFC's ability to pay dividends otherwise eligible for the section 245A deduction. Accordingly, like the 2019 regulations, the final regulations do not reduce an extraordinary disposition account by reason of losses incurred after the disqualified period. *See* § 1.245A–5(c)(3)(i)(A).

The comment implicates a second issue, which is whether a nimble dividend should be considered paid out of extraordinary disposition E&P when the distributing SFC has an overall deficit in E&P, even factoring in the E&P supporting the nimble dividend. The Treasury Department and the IRS are studying the extent to which nimble dividends should qualify for the section 245A deduction generally and may address this issue in future guidance under section 245A.

3. Prior Extraordinary Disposition Amounts

A section 245A shareholder reduces the balance of its extraordinary disposition account with respect to an SFC by the prior extraordinary disposition amount. *See* proposed § 1.245A–5(c)(3)(i)(A). In general, the prior extraordinary disposition amount is intended to measure the extent to which the section 245A shareholder's extraordinary disposition account has disallowed the section 245A deduction or caused a subpart F inclusion due to prior dividends of an SFC. However, this amount also includes certain other prior dividends of an SFC to generally ensure that the extraordinary disposition account is reduced to the extent a dividend out of extraordinary disposition E&P does not give rise to a section 245A deduction under other provisions (such as under section 245A(e) for hybrid dividends). *See* § 1.245A–5(c)(3)(i)(D)(*1*).

A comment stated that the definition of a prior extraordinary disposition amount did not appropriately take into account section 956 and as a result, § 1.956–1(a)(2) can in effect deny the section 245A deduction with respect to the same extraordinary disposition E&P more than once. Section 1.956–1(a)(2) reduces a United States shareholder's section 956 amount to the extent that the United States shareholder's tentative amount determined under section 956(a) with respect to a CFC for a taxable year would be eligible for a section 245A deduction if the United States shareholder received that tentative amount as a distribution from the CFC. The comment recommended reducing the extraordinary disposition account by 200 percent of the amount included in the income of a section 245A shareholder under section 951(a)(1)(B) by reason of the application of § 1.245A–5T(b) (and proposed § 1.245A–5(b)) to the hypothetical distribution under § 1.956–1(a)(2).

The Treasury Department and the IRS generally agree with this comment. As a result, the final regulations modify the definition of a prior extraordinary disposition amount to take into account certain income inclusions under section 956. *See* § 1.245A–5(c)(3)(i)(D)(*1*)(*iv*). In addition, the final regulations add a new type of prior extraordinary disposition amount for prior dividends that would have been subject to § 1.245A–5(c) but failed to qualify for the section 245A deduction because they did not satisfy the requirement that the recipient domestic corporation be a United States shareholder with respect to the distributing SFC. *See* § 1.245A–5(c)(3)(i)(C). Finally, the final regulations clarify that an extraordinary disposition account is maintained in the same currency as the extraordinary disposition E&P. *See* § 1.245A–5(c)(3).

C. Successor Rules for Extraordinary Disposition Accounts

1. In General

Under the 2019 regulations, § 1.245A–5T(c)(4) (and proposed § 1.245A–5(c)(4)) provides rules for the transfer of an extraordinary disposition account. Generally, when certain transactions occur (for example, a transfer of stock of an SFC for which a section 245A shareholder has an extraordinary disposition account), the 2019 regulations provide that the balance of the extraordinary disposition account is preserved by either transferring the account balance to another section 245A shareholder or requiring the section 245A shareholder to maintain the account with respect to a different SFC (''successor rules''). In general, the purpose of the successor rules is to ensure that a section 245A shareholder succeeds to (or is attributed) an extraordinary disposition account upon certain transactions to the extent, after the transaction, the section 245A shareholder would likely be able to access the E&P as to which the extraordinary disposition account relates. Absent these rules, an extraordinary disposition account could be separated from the E&P to which it relates, which could give rise to inappropriate results.

A comment recommended that extraordinary disposition accounts should terminate after a certain period. The Treasury Department and the IRS have concluded that it would be inappropriate to terminate the accounts when a dividend out of extraordinary disposition E&P can still give rise to a section 245A deduction (or the application of the section 954(c)(6) exception). Accordingly, this comment is not adopted. However, the proposed coordination rules, which are published in the Proposed Rules section of this issue of the **Federal Register**, alleviate the concerns raised by this comment by generally eliminating a section 245A shareholder's extraordinary disposition account in certain cases as the property that gave rise to the account is amortized or depreciated and those deductions reduce E&P otherwise potentially eligible for the section 245A deduction. Moreover, as discussed in Part III.C.5 of this Summary of Comments and Explanation of Revisions, the final regulations also alleviate these concerns by generally eliminating the extraordinary disposition account if no person is a section 245A shareholder of the SFC after certain transfers of stock of the SFC.

2. Nonrecognition Transactions

The successor rules under the 2019 regulations address certain nonrecognition transactions in order to carry out the purposes of the rules. Specifically, the 2019 regulations provide that upon certain distributions of stock under section 355 made pursuant to a reorganization described in section 368(a)(1)(D) a section 245A shareholder's extraordinary disposition account with respect to the distributing SFC is allocated between the distributing SFC and the controlled SFC. *See* proposed § 1.245A–5(c)(4)(iii). Other than this rule, the 2019 regulations do not provide any other special rules for transfers of extraordinary disposition accounts in nonrecognition transactions where a section 245A shareholder transfers stock of an SFC. In addition, proposed § 1.245A–5(c)(4)(i) provides that a transaction described in § 1.1248–8(a)(1) in which a section 245A shareholder transfers a share of stock of an SFC does not result in any transfer of the section 245A shareholder's extraordinary disposition account. This result arises because after the transfer the section 245A shareholder could access the E&P as to which the extraordinary

disposition account relates, by reason of section 1248 and § 1.1248–8.

A comment recommended that the rule addressing extraordinary disposition account transfers in reorganizations pursuant to sections 368(a)(1)(D) and 355 be extended to stand-alone section 355 distributions in which E&P of the distributing SFC are allocated to the controlled SFC. The Treasury Department and the IRS agree with this comment; as the comment noted, certain stand-alone section 355 distributions could otherwise potentially separate extraordinary disposition accounts from related extraordinary disposition E&P, which could give rise to inappropriate results. Thus, the final regulations provide that a section 245A shareholder's extraordinary disposition account with respect to a distributing SFC is allocated between the distributing SFC and the controlled SFC in any section 355 distribution in which E&P of the distributing SFC are decreased and the E&P of the controlled SFC are increased by reason of § 1.312–10. *See* § 1.245A–5(c)(4)(iii).

To address similar issues, the final regulations provide additional rules regarding the transfer of extraordinary disposition accounts in nonrecognition transactions. The final regulations provide that in a transaction described in § 1.1248–8(a)(1) where stock of an SFC is transferred to a foreign acquiring corporation in exchange for stock of a foreign corporation, any extraordinary disposition account with respect to the SFC remains with the pre-transaction section 245A shareholder. *See* § 1.245A–5(c)(4)(vi)(A). An exception to this rule applies in the case of a transaction described in § 1.1248(f)–1(b)(2) or (3); in this type of transaction, the extraordinary disposition account is transferred in the manner provided in § 1.245A–5(c)(4)(i), with certain adjustments, in order generally to ensure that a section 245A shareholder succeeds to an extraordinary disposition account to the extent that, after the transaction, the section 245A shareholder would likely be able to access the E&P as to which the extraordinary disposition account relates. *See* § 1.245A–5(c)(4)(vi)(B). Under the final regulations, other transactions described in § 1.1248–8(a)(1) cause the extraordinary disposition account to be transferred to the extent and in the manner provided under the general rule of § 1.245A–5(c)(4)(i).

Similarly, the final regulations also provide a rule addressing transactions in which an SFC acquires the assets of another SFC in a triangular asset reorganization and the section 245A shareholder of the target SFC receives stock of a domestic corporation that controls the acquiring SFC. In these triangular reorganizations, the domestic corporation whose stock was issued in the triangular reorganization succeeds to the extraordinary disposition account of the section 245A shareholder with respect to the target SFC. *See* § 1.245A–5(c)(4)(ii)(B).

3. Related Domestic Corporations

Although the 2019 regulations provide anti-abuse rules, the 2019 regulations do not provide explicit rules addressing issuances of stock of an SFC. For example, if a section 245A shareholder owns all the stock of an SFC and the SFC issues new stock to another section 245A shareholder, the second section 245A shareholder does not inherit any portion of the first section 245A shareholder's extraordinary disposition account with respect to the SFC under the successor rules of the 2019 regulations. However, in certain cases issuances raise the same policy concerns as those addressed by the successor rules and, absent rules to address, could facilitate the avoidance of the extraordinary disposition rules by separating an extraordinary disposition account from the E&P to which it relates.

Consider, for instance, a case in which FP, a foreign corporation, owns all the stock of US1 and US2, each of which is a domestic corporation, and US1 owns all the stock of CFC1, an SFC whose E&P is maintained in U.S. dollars and as to which US1 has an extraordinary disposition account of $100 ×. In such a case, if US2 contributes property to CFC1 in exchange for stock representing 99 percent of the stock of CFC1 and thereafter CFC1 pays $100 × of dividends pro rata to US1 and US2, only the $1 × dividend received by US1 would be an extraordinary disposition amount (US2's $99 × dividend would not, as US2 did not inherit any of US1's extraordinary disposition account), even though, as a factual matter, the entire $100 × of dividends may represent E&P generated by CFC1 in an extraordinary disposition. Moreover, for example, if US1 were to subsequently transfer all of its stock of CFC1 to a U.S. individual, the remaining balance of US1's extraordinary disposition account with respect to CFC1 may never give rise to an extraordinary disposition amount.

Rather than addressing such transactions solely through the anti-abuse rules in § 1.245A–5, the final regulations provide a rule that treats related domestic corporations as a single domestic corporation for purposes of determining the extent to which a dividend is an extraordinary disposition amount or a tiered extraordinary disposition amount. *See* § 1.245A–5(g)(7); *see also* § 1.245A–5(i)(19) (defining related based on a relationship described in section 267(b) or 707(b)). Thus, in the example above, the $100 × of dividends paid by CFC1 are extraordinary disposition amounts with respect to both US1 and US2 as a result of US1's extraordinary disposition account. The final regulations also treat related domestic corporations as a single domestic corporation for purposes of reducing a section 245A shareholder's extraordinary disposition account by prior extraordinary disposition amounts. *See id.*

4. Effect of Section 338(g) Election

The 2019 regulations do not address whether a section 245A shareholder of the new target succeeds to an extraordinary disposition account with respect to the old target when a section 338(g) election is made with respect to an SFC target. Because, in general, the new target does not inherit any of the E&P of the old target—and, as a result, no distributions by the new target could represent a distribution of E&P of the old target generated in an extraordinary disposition—the final regulations clarify that, in connection with an election under section 338(g), a section 245A shareholder of the new target generally does not succeed to an extraordinary disposition account with respect to the old target. *See* § 1.245A–5(c)(4)(v)(A). Special rules are provided for transactions in which a section 338(g) election is made and not all of the stock of the SFC target is subject to the qualified stock purchase. *See* § 1.245A–5(c)(4)(v)(B).

5. Elimination of Remaining Account Balance After Certain Stock Transfers

In general, the 2019 regulations do not provide rules addressing the treatment of the remaining balance of a section 245A shareholder's extraordinary disposition account with respect to an SFC when the section 245A shareholder directly or indirectly transfers all of its stock of the SFC and, following the transfer, no person is a section 245A shareholder of the SFC. However, under the 2019 regulations, if a section 245A shareholder ceases to be a section 245A shareholder with respect to a lower-tier CFC as a result of a direct or indirect transfer of stock of the lower-tier CFC by an upper-tier CFC, a special rule preserves the section 245A shareholder's remaining balance of its extraordinary disposition account with

respect to the lower-tier CFC. *See* proposed § 1.245A–5(c)(4)(iv). Under this rule, the section 245A shareholder's extraordinary disposition account is preserved by increasing the account with respect to the upper-tier CFC by the remaining balance. *See* proposed § 1.245A–5(c)(4)(iv).

The Treasury Department and the IRS have determined that proposed § 1.245A–5(c)(5)(iv) should be revised to address the treatment of the remaining balance of a section 245A shareholder's extraordinary disposition account with respect to an SFC when the section 245A shareholder directly or indirectly transfers all of its stock of an SFC (such section 245A shareholder, the ''transferor''). *See* § 1.245A–5(c)(4)(iv). In cases in which no related party with respect to the transferor is a section 245A shareholder of the SFC following the transfer, the transferor's remaining extraordinary disposition account balance is eliminated, to the extent not allocated or attributed to another extraordinary disposition account. *See* § 1.245A–5(c)(4)(iv)(A). In these cases, the remaining balance generally represents an individual's or a foreign (non-CFC) person's share of E&P of the SFC, such that, after the transfer, distributions of the E&P are unlikely to give rise to a dividend eligible for the section 245A deduction. Therefore, there is generally not a policy need to continue tracking such E&P.

The elimination rule does not apply, however, if a section 245A shareholder that is a related party with respect the transferor continues to own stock of the SFC after the transfer; instead the related section 245A shareholder succeeds to the remaining account balance. *See* § 1.245A–5(c)(4)(iv)(B). Moreover, transactions with a principal purpose of avoiding this limitation on the application of the elimination rule are disregarded. For example, if a U.S. individual acquires all of the stock of an SFC from a section 245A shareholder and subsequently, pursuant to a plan that included the acquisition, transfers all of the stock of the SFC to a domestic corporation that is a section 245A shareholder of the SFC, the transfer to the U.S. individual would be disregarded. *See* § 1.245A–5(c)(4)(vii). The final regulations add a rule that a transfer of stock of an SFC otherwise subject to § 1.245A–5(c)(4)(iv)(A) is deemed to have been undertaken with a principal purpose of avoiding the purposes described in this anti-abuse rule if stock of the SFC is transferred to a section 245A shareholder within one year after the transaction that would be subject to § 1.245A–5(c)(4)(vii). *See id.*

D. Tiered Extraordinary Disposition Amounts

The 2019 regulations limit the application of the section 954(c)(6) exception with respect to certain dividends attributable to extraordinary disposition E&P from a lower-tier CFC to an upper-tier CFC. *See* proposed § 1.245A–5(d). A comment noted that this limitation on the section 954(c)(6) exception gives rise to an incentive to avoid making a distribution (or otherwise generating a dividend to shareholders) to avoid subpart F income. Furthermore, the comment noted that, in certain cases, a dividend subject to this limitation on the section 954(c)(6) exception may nonetheless qualify for an exception under section 954(c)(3), permitting deferral with respect to distributed E&P. Accordingly, the comment recommended that the final regulations instead adopt a tracking approach, under which dividends from a lower-tier CFC attributable to extraordinary disposition E&P would be eligible for the section 954(c)(6) exception, and the extraordinary disposition account of an upper-tier CFC receiving a dividend attributable to extraordinary disposition E&P would be increased by the amount of the dividend attributable to extraordinary disposition E&P (while making corresponding downward adjustments to the extraordinary disposition account of the lower-tier CFC). In the alternative, the comment recommended that this approach apply solely with respect to lower-tier dividends paid before June 18, 2019 (the date on which the 2019 regulations were published), to provide relief with respect to dividends from lower-tier CFCs that were expected to qualify for the section 954(c)(6) exception.

Consistent with a statement in the preamble to the 2019 regulations, the Treasury Department and the IRS have concluded that limiting the application of the section 954(c)(6) exception in this context is necessary to prevent the inappropriate deferral of tax and minimizes the administrative and compliance burdens associated with a rule that would adjust upper-tier and lower-tier CFCs' extraordinary disposition accounts. The limitation on the section 954(c)(6) exception achieves the appropriate balance between preventing deferral of U.S. tax with respect to extraordinary disposition E&P and avoiding incentives to defer distributions. Similar to the rules limiting the application of the section 245A deduction to distributions attributable to extraordinary disposition E&P under § 1.245A–5(b), the incentive to defer distributions is mitigated by the fact that the limitation on the section 954(c)(6) exception generally applies only after other E&P (including E&P accumulated after the disqualified period and previously taxed E&P) are distributed.

Furthermore, failing to limit the application of the section 954(c)(6) exception would allow taxpayers to use extraordinary disposition E&P to defer U.S. tax on subsequent taxable transactions. For example, assume that USP owns 100 percent of the stock of CFC1, CFC1 owns 100 percent of the stock of CFC2, and CFC2's E&P is maintained in the U.S. dollar. USP has a $100 × extraordinary disposition account with respect to CFC2, which has no E&P other than $100 × of extraordinary disposition E&P. Finally, assume that CFC1 has $100 × of built-in gain with respect to its stock in CFC2. In the absence of the extraordinary disposition E&P, a sale of the stock of CFC2 by CFC1 generally would result in $100 × of capital gain that is subpart F income taken into account by USP in the year of sale pursuant to sections 954(c) and 951(a). With the extraordinary disposition E&P, however, CFC2 could (in the absence of any rule denying the section 954(c)(6) exception) distribute a $100 × dividend to CFC1 before the sale, and the dividend could be eligible for the section 954(c)(6) exception while eliminating the built-in gain in the stock of CFC2. If the rules only transferred the extraordinary disposition account from CFC2 to CFC1, the section 245A shareholder could effectively indefinitely defer recognizing the built-in gain in the stock of CFC2 until it causes CFC1 to pay a $100 × dividend. While similar benefits may be obtained in the case of same-country dividends under section 954(c)(3), the Treasury Department and the IRS have determined that such transactions are relatively infrequent.

For these reasons, the final regulations do not adopt this recommendation and, accordingly, continue to limit the application of the section 954(c)(6) exception with respect to certain dividends attributable to extraordinary disposition E&P from a lower-tier CFC to an upper-tier CFC. The final regulations also clarify that transactions structured to use section 954(c)(3) to avoid the purposes of the final regulations are subject to adjustments under the anti-abuse rule in § 1.245A–5(h). See § 1.245A–5(j)(10) for an example of the application of the anti-abuse rule to a transaction utilizing section 954(c)(3) to avoid the purposes of § 1.245A–5.

IV. Comments and Revisions Related to Extraordinary Reductions

A. Bilateral Election To Close Taxable Year

If an extraordinary reduction occurs with respect to a CFC and there is an extraordinary reduction amount or tiered extraordinary reduction amount greater than zero, the controlling section 245A shareholder (or shareholders) of a CFC can elect to close the CFC's taxable year for all purposes of the Code and, as a result, be considered to not have undertaken an extraordinary reduction. *See* § 1.245A–5(e)(3)(i). As a condition for making the election, however, the controlling section 245A shareholders must enter into a written, binding agreement concerning the election with certain U.S. tax resident shareholders of the CFC. *See* proposed § 1.245A–5(e)(3)(i)(C). Because the election can only be made if there is an extraordinary reduction amount or tiered extraordinary reduction amount greater than zero, the election cannot be made if the CFC only has a tested loss for the taxable year.

A comment stated that it was unclear who is required to enter into this agreement and that only the controlling section 245A shareholders at the time of the extraordinary reduction should be required to make such an election. The final regulations clarify that each controlling section 245A shareholder participating in the extraordinary reduction with an extraordinary reduction amount greater than zero, and each U.S. tax resident that is a United States shareholder of the CFC at the end of the day of the extraordinary reduction (thus including a person that becomes a United States shareholder of the CFC by reason of the extraordinary reduction), must enter into a binding agreement to close the taxable year of the CFC. This rule is reflected in the analysis in an example in proposed § 1.245A–5(j)(4)(iii), which is retained in the final regulations. This approach is not modified as requested by the comment because closing the taxable year of a CFC affects the tax consequences of both the transferors and transferees in an extraordinary reduction, and inconsistent treatment could give rise to inappropriate results (for example, both a transferor and transferee could claim to have income inclusions under section 951(a) or 951A(a) and claim deemed-paid foreign credits under section 960(a) or (d), with respect to the same income of the CFC).

The final regulations also allow a U.S. tax resident that owns its interest in the CFC through a partnership to delegate the authority to enter into the binding agreement on its behalf provided that the delegation is pursuant to a written partnership agreement (within the meaning of § 1.704–1(b)(2)(ii)(*h*)). *See* § 1.245A–5(e)(3)(i)(C)(*2*).

Finally, changes are made to clarify the scope of the reference to § 1.964–1(c) with respect to the election to close the taxable year for extraordinary reductions and to the consistency requirement of § 1.245A–5(e)(3)(i)(E).

B. Timing of Election To Close Taxable Year

Comments stated that it may not be clear in certain instances whether an election to close the taxable year is beneficial. Accordingly, the comments recommended that the final regulations provide additional flexibility as to when this election is required to be made. The final regulations do not adopt this recommendation. The election is timely made when filed with the controlling section 245A shareholder's timely filed (including extensions) original tax return for the taxable year in which the extraordinary reduction occurred; thus, taxpayers have considerable time to decide whether to make the election. Furthermore, permitting later elections would potentially result in amended tax returns and considerable administrative complexity.

C. Allocation of Subpart F Income and Tested Income Between Taxable Periods

If an election is made under § 1.245A–5(e)(3)(i) to close a CFC's taxable year for all purposes of the Code, then all United States shareholders that own (within the meaning of section 958(a)) stock of the CFC on such date compute and take into account their pro rata share of subpart F income or tested income earned by the CFC as of that date.

A comment recommended modifying the ''closing-of-the-books'' approach under § 1.245A–5T(e)(3)(i) (and proposed § 1.245A–5(e)(3)(i)) because of administrative complexity for the CFC, and because the closing-of-the-books method may provide inconsistent results. The comment also suggested that this approach would provide tax planning opportunities and traps for the unwary because an extraordinary item of income (for example, gain from the disposition of a capital asset) might arise pre- or post-sale, but the item would only be allocated to the period in which it arises when an election under § 1.245A–5(e)(3)(i) is in place. The comment instead recommended adopting principles similar to those in § 1.1248–3 to allocate subpart F income and tested income of a CFC between the pre- and post-sale portions of the year based on a daily proration. The comment acknowledged, however, that this approach could delay restructuring or commercial decisions and suggested allowing a taxpayer to elect to allocate extraordinary items to the period in which they arise, similar to an approach under § 1.1502–76(b).

The final regulations do not adopt this comment for several reasons. First, the election under § 1.245A–5(e)(3)(i) is provided to allow controlling section 245A shareholders and U.S. tax residents to agree to close the CFC's taxable year and take into account their pro rata share of subpart F or tested income earned by that date in lieu of being subject to the extraordinary reduction rules. The Treasury Department and the IRS have determined that closing the taxable year provides a more precise method for determining the amount of subpart F income and tested income attributable to each owner. Second, the rule provides taxpayers with flexibility, given that controlling section 245A shareholders may choose not to make the election (or U.S. tax residents may choose not to agree to make the election) when it would not provide the preferred outcome. Finally, the comment's recommended approaches present administrative complexities and may delay commercial transactions.

D. Reporting on U.S. tax Residents' pro Rata Shares

The 2019 regulations provide that, for purposes of determining a controlling section 245A shareholder's extraordinary reduction amount, the shareholder's pre-reduction pro rata share of subpart F income or tested income is reduced by certain amounts taken into account by transferee shareholders. *See* § 1.245A–5(e)(2)(ii)(B). A comment indicated that it may be difficult for a controlling section 245A shareholder to determine a transferee's pro rata share of subpart F income or tested income and recommended that the final regulations provide that a controlling section 245A shareholder may make this determination by relying on information provided by a transferee pursuant to IRS forms and instructions.

While the Treasury Department and the IRS may consider whether information reporting would be appropriate in this context in future guidance, the final regulations do not adopt this recommendation. Parties to an extraordinary reduction transaction can negotiate to share the needed information, however. Furthermore, in some instances, parties to an extraordinary reduction transaction are

related, and therefore readily have access to such information.

E. Nonrecognition Transactions

The 2019 regulations and the final regulations do not contain special rules for extraordinary reductions occurring as a result of nonrecognition transactions such as reorganizations or transfers subject to section 351(a) or 721(a). The Treasury Department and the IRS continue to study these transactions and the potential to use them to avoid the purposes of the extraordinary reduction rules. For example, the Treasury Department and the IRS are concerned that taxpayers may avail themselves of partnerships to attempt to shift the tax liability, in whole or in part, with respect to E&P of a CFC attributable to subpart F income or tested income to a related foreign partner that is not owned by a United States shareholder. The Treasury Department and the IRS request comments on this matter and other cases in which nonrecognition transactions could be used to avoid the purposes of the extraordinary reduction rules.

V. Anti-Abuse Rule

The 2019 regulations include a general anti-abuse rule that provides that the Commissioner may make appropriate adjustments to any amounts determined under proposed § 1.245A–5 if a transaction is entered into with a principal purpose of avoiding the purposes of such section. *See* proposed § 1.245A–5(h).

One comment appreciated the desire to use a principles-based backstop to mechanical rules, and recognized the legitimate concerns of the government, but nevertheless asserted that the anti-abuse rule is vague and overly broad. The comment stated that although the policies underlying the extraordinary disposition rules and the extraordinary reduction rules are related, the origins of the transactions giving rise to the concerns and the focus of the two rules differ. Accordingly, the comment recommended that the final regulations clarify the purposes of § 1.245A–5 and include examples regarding the applicability of the anti-abuse rule and the scope of the adjustments that may be made pursuant to the rule.

In response to this comment, the final regulations include examples illustrating the application of the anti-abuse rule. *See* § 1.245A–5(h) and (j)(8)–(10). In addition, the Treasury Department and the IRS have determined that the anti-abuse rule should be self-executing, rather than applicable under the discretion of the Commissioner. Accordingly, the anti-abuse rule is modified to this effect.

VI. Applicability Date

The proposed regulations incorporated the applicability date of the temporary regulations by cross-reference. The temporary regulations apply to distributions made after December 31, 2017, consistent with the applicability date of section 245A. The temporary regulations were issued under sections 7805(b)(2), which permits the Treasury Department and the IRS to issue retroactive regulations within 18 months of the enactment of the statutory provision to which the regulations relate.

The final regulations apply to tax periods ending on or after June 14, 2019, the date the proposed regulations were filed with the **Federal Register**. *See* section 7805(b)(1)(B). This formulation of the applicability date is consistent with numerous other regulations. *See, e.g.,* §§ 1.59A–10; 1.960–7. It differs from the one incorporated in the proposed regulations because the final regulations are not being issued within 18 months of the enactment of the provisions to which the regulations relate.

In a case where both the temporary regulations and the final regulations could apply, only the final regulations apply. *See* § 1.245A–5(k)(1). For example, if a CFC has a tax period ending on November 30, 2019, and it made a distribution during that period on December 1, 2018, a portion of which would be an ineligible amount, the final regulations apply to the distribution. Distributions made after December 31, 2017, and before the final regulations apply, continue to be subject to the rules set forth in the temporary regulations. *See* T.D. 9865. However, a taxpayer may choose to apply the final regulations to distributions made during this period, provided that the taxpayer and all related parties consistently apply the final regulations in their entirety. *See* § 1.245A–5(k)(2).

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. The Executive Order 13771 designation for this regulation is regulatory.

The Office of Information and Regulatory Affairs (OIRA) has designated these final regulations as subject to review under the Memorandum of Agreement between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations (April 11, 2018). OIRA has determined that the final rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the final regulations have been reviewed by OMB.

A. Background

The Tax Cuts and Jobs Act (the ''Act'') transitioned the United States from a primarily deferral-based international tax system (subject to the immediate taxation of generally mobile or passive income under the subpart F regime) to a participation exemption system coupled with immediate taxation of certain offshore earnings (in some cases, at a reduced rate of tax).[2] This transition was effected through several interlocking provisions of the Code—sections 245A, 951A, and 965. The three provisions have different effective dates, and thus it was possible, absent these regulations, for certain transactions to gain the benefits of section 245A without the potential imposition of U.S. tax as a result of the application of sections 951A and 965. The new system operates alongside the pre-Act subpart F regime that taxes certain offshore earnings using a longstanding rule for attributing pro rata shares of a foreign corporation's earnings to its U.S. shareholders.

1. Background: Dividends Received Deduction (Section 245A)

The Act included section 245A, which provides a deduction for U.S. taxpayers for dividends received out of certain offshore earnings (the ''section 245A deduction''). Prior to the Act, dividends paid by foreign corporations to their U.S. shareholders were

[2] A deferral-based system is a system in which taxable foreign-source income generally is taxed only when it is repatriated to the United States. A participation exemption system is one in which foreign-source income is generally not taxed by the resident country of the shareholder (in this case, the United States). As explained further below, in the United States the participation exemption system is coupled with immediate taxation of certain types of earnings to reduce incentives for erosion of the U.S. tax base. These taxed foreign earnings can then be repatriated to the United States without further tax.

generally taxable. Section 245A(a) reverses this treatment for most shareholders that are U.S. corporations (''corporate U.S. shareholders'') by providing, subject to certain conditions and exceptions, a deduction for any dividend received by a corporate U.S. shareholder from a specified 10-percent owned foreign corporation (''SFC'').[3] A 100-percent deduction for dividends essentially means that the dividend income is not taxed in the United States at the corporate level.

Income subject to taxation under the subpart F and global intangible low-taxed income (''GILTI'') regimes generally gives rise to previously taxed earnings and profits (''PTEP''). Distributions of those PTEP are not treated as dividends and thus do not qualify for the section 245A deduction, which only applies to dividends made by SFCs after December 31, 2017, provided certain other requirements are met.

2. Background: Section 965—Transition Tax

Section 965 imposed a new tax (the ''transition tax'') on the post-1986 earnings and profits of certain foreign corporations that had gone untaxed under the pre-Act international tax regime (primarily, the subpart F regime). Earning subject to tax under section 965 gave rise to PTEP, such that future distributions of these earnings are not treated as dividends and thus would not be eligible for a section 245A deduction. By subjecting post-1986 earnings and profits to a transition tax, section 965 generally ensured that post-1986 earnings must be tested under the new international tax regime introduced by the Act in order to qualify for the section 245A deduction (that is, the earnings must not be taxed under subpart F or GILTI). Absent section 965, such untaxed earnings and profits would have been eligible for tax-free distribution under section 245A after December 31, 2017.

The transition tax generally ensures that only post-1986 earnings and profits subject to the new international tax system can qualify for the section 245A deduction.[4] This is clearly the case for calendar year CFCs, because earnings and profits that are earned after December 31, 2017, are subject to the subpart F and GILTI regimes. This is not necessarily the case, however, for fiscal year CFCs (*i.e.,* CFCs with a taxable year that starts after January 1). For these fiscal year CFCs, earnings and profits that are earned between January 1, 2018, and the start of the CFC's first fiscal year beginning on or after January 1, 2018, are not subject to taxation under the GILTI regime. But for these regulations, those earnings could potentially be distributed tax-free at any time after December 31, 2017 under section 245A. Thus, certain earnings may escape U.S. taxation absent these regulations.

3. Background: Section 951A—GILTI Regime

While the Act preserved the existing subpart F regime, legislative history shows congressional concern that the participation exemption system could heighten the incentive to shift profits to low-taxed foreign jurisdictions or tax havens after the Act. *See* Senate Committee on the Budget, 115th Cong., Reconciliation Recommendations Pursuant to H. Con. Res. 71, at 365 (the ''Senate Explanation''). For example, Congress expressed concern that a domestic corporation might allocate income susceptible to base erosion to certain foreign affiliates ''where the income could potentially be distributed back to the [domestic] corporation with no U.S. tax imposed.'' *See id.* As a result of these concerns, the Act added another, complementary regime to address the additional base erosion incentives resulting from the participation exemption. This regime taxes a U.S. shareholder on its global intangible low-taxed income, or GILTI, with respect to its CFCs at a reduced rate (by reason of a section 250 deduction) under new section 951A.

Section 951A(a) generally subjects a U.S. shareholder to current taxation each year on its GILTI with respect to its CFCs. The GILTI regime applies in the first taxable year of a CFC beginning after December 31, 2017. Thus, in the case of calendar year CFCs, the application of the GILTI regime generally must be taken into account with respect to all new earnings and profits of a CFC earned starting immediately after the final date for measuring earnings and profits subject to section 965. On the other hand, the tested income of a fiscal year CFC is not subject to the GILTI regime until potentially as late as taxable years beginning on December 1, 2018.

As is the case with respect to the subpart F regime, certain CFC income is taxed under the GILTI regime in section 951A regardless of whether the associated earnings and profits are distributed before the end of the CFC's year, thus converting such earnings into PTEP and turning distributions by the CFC into PTEP distributions that do not constitute dividends eligible for the section 245A deduction. *See* Section 959(c), (d).

B. Need for the Final Regulations

Sections 245A, 965, and 951A generally act to tax foreign source income consistently across taxpayers and sources so long as a U.S. shareholder owns the same amount of stock of a calendar year CFC throughout the CFC's entire taxable year. Deviations from that condition, however, potentially allow taxpayers to avoid tax by claiming a section 245A deduction in situations where otherwise identical income would be subject to U.S. tax. For a description of these situations, see Part II of the Summary of Comments and Explanation of Revisions. This circumstance is inconsistent with the purposes of the international tax regime enacted by Congress. These final regulations are needed to limit the section 245A deduction to its intended scope and, thereby, prevent the provision from converting income that should be subject to U.S. tax into non-taxable dividends. In addition, these final regulations respond to comments received in relation to the proposed and temporary regulations.

C. Overview of the Final Regulations

On June 18, 2019, the Treasury Department and the IRS published temporary and proposed regulations that limit the section 245A deduction with respect to a dividend received by a U.S. corporation from certain SFCs so that the deduction is not available for the earnings and profits attributable to base erosion-type income. The temporary and proposed regulations limit the deduction to the portion of the dividend that exceeds the ''ineligible amount'' of the dividend.

Under the regulations, the term ''ineligible amount'' generally means the amount of the dividend that comprises (i) certain earnings and profits of the CFC that were accrued prior to the application of the GILTI regime in section 951A but after December 31, 2017, the last measurement date under section 965 (''extraordinary disposition amounts'' created in ''extraordinary dispositions''), and (ii) current year earnings and profits of the CFC that are attributable to the CFC's subpart F income or tested income under the GILTI regime and that would have given rise to income inclusions under the

[3] A specified 10-percent owned foreign corporation is any foreign corporation, other than a passive foreign investment corporation with respect to a shareholder that is not also a CFC, with at least one corporate U.S. shareholder.

[4] The legislative history of the Act provides that ''[t]he [transition tax applies in] the last taxable year of a deferred foreign income corporation that begins before January 1, 2018, which is that foreign corporation's last taxable year before the transition to the new corporate tax regime elsewhere in the bill goes into effect.'' H. Rep. 115–466 at 613.

subpart F or GILTI regimes, but for a certain change in CFC ownership (''extraordinary reduction amounts'' created in ''extraordinary reductions''). Absent the temporary and proposed regulations, the section 245A deduction could apply with respect to a dividend composed of such earnings, and, as a result, such earnings and profits would inappropriately escape U.S. tax.

A public hearing was held on November 22, 2019. The Treasury Department and the IRS also received written comments with respect to the temporary and proposed regulations. Written and oral comments were carefully considered in developing the final regulations.

In general, the final regulations retain the approach and structure of the temporary and proposed regulations. However, in response to comments, the final regulations make certain revisions to the rules in the temporary and proposed regulations, some of which are explained in part I.D.3 of these Special Analyses below.

D. Economic Analysis of the Final Regulations

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 final regulations.

2. Summary of Economic Effects Relative to No-Action Baseline

To assess the economic effects of these regulations, the Treasury Department and the IRS considered economic effects from limiting the section 245A deduction for (i) extraordinary disposition amounts and (ii) extraordinary reduction amounts.

(i) Because the disallowance of the section 245A deduction for extraordinary disposition amounts generally applies only to earnings and profits accrued prior to the publication of the final regulations, economic activity will generally not be affected by the regulations. Thus, these provisions will largely not give rise to material economic effects. The Treasury Department and the IRS have, however, identified certain circumstances under which the regulations may affect business activity relative to the no-action baseline, which are described below. It is projected that the economic effects of the provisions in these circumstances will be minor.

(ii) Extraordinary reductions stem from certain transfers of ownership of CFC stock.[5] The final regulations may reduce the number of such ownership transfers relative to the no-action baseline. To the extent that these particular extraordinary reductions would have been undertaken under the no-action baseline and will not be undertaken under the final regulations, the regulations may have associated economic effects.

With respect to extraordinary reductions between unrelated parties, there may be economic losses from efficient transactions that no longer take place as a result of the final regulations. However, this effect should be minor because taxpayers can elect to close the taxable year of the corporation being transferred and, as a result, generally suffer no additional tax cost from extraordinary reductions compared to not undertaking the transaction.

The Treasury Department and the IRS project that under the no-action baseline, the majority of extraordinary reductions between related parties would be undertaken for tax avoidance purposes rather than for market-driven reasons. Thus, there would be an economic gain from the reduction in these transfers under the final regulations. The Treasury Department and the IRS project, however, that this gain will be minor because these transfers would be between related parties and should result in only negligible losses in economic performance due to inefficient changes in management, risk-bearing, or other economic activity; thus, there should be little gain from reducing the frequency of such transfers. There may also be an economic loss from these transfers (and thus a source of gain from the final regulations relative to the no-action baseline) due to taxpayer resources expended to carry out such tax planning activities. It is projected that the election to close the taxable year will not meaningfully counter the decrease in these tax avoidance transactions because the election generally prevents tax from being avoided in an extraordinary reduction.

The Treasury Department and the IRS recognize that some related-party extraordinary reductions might take place under the no-action baseline for non-tax-driven reasons, such as for more efficient risk-bearing or other benefits related to managerial control or financing. If these transfers are deterred by the final regulations, this deterrence represents an economic loss from the final regulations. The Treasury Department and the IRS project that the aggregate value of these foregone benefits will be minimal because these transactions could still be undertaken with no additional tax cost relative to not undertaking the transaction if the taxpayer makes an election to close the taxable year of the corporation being transferred. Thus, an overall economic benefit from a reduction in related-party extraordinary reductions under these regulations is projected relative to the no-action baseline.

The final regulations require taxpayers to compute, track, and report information relevant for determination of extraordinary dispositions and extraordinary reductions. The Treasury Department and the IRS project that these additional costs, relative to the no-action baseline, will be modest. In general, with respect to the initial year of an extraordinary disposition or any extraordinary reduction, taxpayers are already required to keep track of the required information for other purposes. For example, to the extent that a U.S. taxpayer sells stock in its CFC, earns income in its CFC, or receives a dividend from a CFC, the taxpayer would otherwise record the information needed to determine eligibility for the section 245A deduction. Additionally, once calculated, the costs to track amounts related to extraordinary dispositions in future years are expected to be minimal (the extraordinary reduction rules only apply on a year-by-year basis and thus generally do not require any additional information to be tracked and reported across multiple years). Thus, the Treasury Department and the IRS expect the compliance burden from these final regulations to be modest relative to the no-action baseline.

[5] Under the Code, and absent these final regulations, a U.S. corporation that transfers stock in its CFC to a different U.S. corporation generally could avoid tax with respect to all of the subpart F and tested income of the CFC for that year (this type of transaction is generally an extraordinary reduction).

The Treasury Department and the IRS have not undertaken a quantitative estimate of the economic effects arising from any reduction in extraordinary reductions. Any such estimates would be highly uncertain because these tax provisions are new and because many of the transfers would be between related parties and possibly of short duration, both of which make estimating the number and economic value of such transfers difficult. The tax planning costs of effecting these transfers are also highly uncertain because these specific tax planning efforts are new. Because it is projected that the economic effects arising from the final regulations will be small, this question is not pursued further.

While it is not currently feasible for the Treasury Department and the IRS to quantify these economic effects, part I.D.3 of these Special Analyses explains the rationale behind certain provisions of these final regulations and provides a qualitative assessment of the alternatives considered.

3. Economic Effects of Specific Provisions

i. Treatment of Extraordinary Disposition Accounts Following Transfers of SFC Stock

a. Background and Alternatives Considered

An extraordinary disposition account is a way to measure the amount of earnings and profits of an SFC that cannot qualify for the section 245A deduction when distributed because they were generated in an extraordinary disposition during the disqualified period. Guidance is needed for the treatment of these accounts when a section 245A shareholder of an SFC holding such an account transfers stock of the SFC to an entity that is not a section 245A shareholder.[6] Such transfers may occur, for example, when the SFC is acquired by a foreign corporation that is not a controlled foreign corporation (a ''CFC'').

Under the temporary and proposed regulations, a transfer of SFC stock to a different section 245A shareholder generally resulted in the transferee assuming the extraordinary disposition account attached to the transferred SFC stock. If there was no successor (*i.e.,* the stock was sold to someone other than a section 245A shareholder), the temporary and proposed regulations contained a rule providing that the account generally was transferred to an upper-tier SFC of the transferred SFC.

The final regulations remove the rule that transfers an extraordinary disposition account to an upper-tier SFC where there is no successor and instead provide that if an SFC is sold and there is no section 245A shareholder of the target SFC after the transaction, the extraordinary disposition account of the target SFC is generally eliminated.

This modified rule recognizes that extraordinary disposition E&P in an extraordinary disposition account remaining at the time the SFC stock is sold to a third party were never used to obtain a tax benefit. If an SFC is sold to a non-section 245A shareholder when it still has an extraordinary disposition account, that means the seller did not need some or all of its extraordinary disposition E&P to support a dividend eligible for a section 245A deduction. Similarly, the acquiror cannot use the extraordinary disposition E&P to claim the section 245A deduction because it is not a section 245A shareholder. In these cases, the Treasury Department and the IRS determined that it would be more appropriate to eliminate the extraordinary disposition account with respect to the SFC, as the section 245A shareholder did not obtain a tax benefit from those earnings and the transferred account would cause tax to be imposed on a distribution of earnings and profits that were not generated in an extraordinary disposition and did not need extraordinary disposition E&P to qualify as tax-free dividends.

The Treasury Department and the IRS considered alternatives that would (i) retain the rule in the temporary and proposed regulations; (ii) expand the rule to transfer the account to any other SFC owned by the section 245A shareholder rather than only a direct upper-tier SFC that owned the SFC whose stock was sold; or (iii) transfer the account to a non-section 245A shareholder that acquires the SFC, who would not be able to make distributions that are denied the section 245A deduction under § 1.245A–5, but would be required to track the account in the event the SFC was ever transferred back to a section 245A shareholder. The first two alternatives were rejected because they were viewed as being punitive to taxpayers who had an extraordinary disposition account but never benefited from extraordinary disposition E&P as they never used those earnings and profits to support a tax-free dividend. The third alternative was rejected due to the difficulty of administration and compliance in cases where an SFC is sold outside the U.S. tax system, as well as the fact that any potential tax avoidance appeared to be sufficiently protected by clarification of the anti-abuse rule in § 1.245A–5(c)(4)(vii).

Although rules governing extraordinary dispositions generally will not have economic effects (because the underlying transactions occurred during the disqualified period), the Treasury Department and the IRS recognize that rules governing extraordinary disposition accounts upon the transfer of SFC stock may affect the decision to sell or transfer the SFC. Such decisions would then potentially have economic effects. The Treasury Department and the IRS do not have readily available data or models to provide further information about the economic consequences of this provision relative to the no-action baseline or regulatory alternatives.

b. Affected Taxpayers

The taxpayers potentially affected by this provision are taxpayers who (i) have extraordinary disposition accounts with respect to an SFC and (ii) transfer stock of that SFC to an entity that is not a 245A shareholder.

Taxpayers who potentially have extraordinary disposition accounts are direct or indirect U.S. shareholders of certain foreign corporations that are eligible for the section 245A deduction with respect to distributions from the foreign corporation, and the foreign corporation uses a fiscal year, as opposed to the calendar year, as its taxable year. The foreign corporation must have engaged in a sale of property to a related party (1) during the period between January 1, 2018, and the end of the foreign corporation's last taxable year beginning before January 1, 2018, (2) outside the ordinary course of the foreign corporation's activities, and (3) generally, while the corporation was a CFC. Additionally, the property sold must be of a type that would give rise to tested income and the value of the property sold must exceed the lesser of $50 million or 5 percent of the total value of all of the property of the foreign corporation.

The Treasury Department and the IRS have not estimated how many taxpayers are likely to be affected by these regulations because data on the taxpayers that may have engaged in these particular transactions are not readily available. Based on tabulations of the 2014 Statistics of Income Study file the Treasury Department and the IRS estimate that there are approximately 5,000 domestic corporations with at least one fiscal year CFC. However, the actual number of affected taxpayers is smaller than this because a domestic corporation will not

[6] A section 245A shareholder is any U.S. corporation that owns 10 percent of the stock of an SFC and is thus generally eligible to claim a 245A deduction.

be affected unless its fiscal year CFC engages in a non-routine sale with a related party that is of sufficient magnitude that the final regulations apply. The Treasury Department and the IRS do not have readily available data on the number of taxpayers that transfer SFC stock to persons that are not section 245A shareholders.

ii. Election To Close the CFC's Taxable Year

a. Background and Alternatives Considered

In the absence of further regulations, section 245A could facilitate the avoidance of the subpart F and GILTI regimes through extraordinary reductions by allowing a U.S. shareholder to transfer stock of a CFC to a shareholder who, based on various legal criteria, would not be taxed on the CFC's subpart F income or tested income. In these cases, current year subpart F income and GILTI could escape U.S. taxation altogether. This result would undermine the Act's system for taxing foreign earnings.

In the temporary and proposed regulations, the Treasury Department and the IRS provided taxpayers with an election to close the taxable year of the CFC for all purposes of the Code on the date of an extraordinary reduction. Instead of denying the section 245A deduction, such an election would subject the CFC's earnings and profits for the taxable year up to the date of the extraordinary reduction to taxation under the subpart F or GILTI regimes in the seller's hands, while the remaining earnings and profits of the CFC for the year would be subject to taxation under the subpart F or GILTI regimes in the buyer's hands. The election allows taxpayers to choose the tax treatment that would have been imposed in the absence of the interactions among provisions that otherwise generates inappropriate tax results in the taxable year of an extraordinary reduction. Taxpayers who did not take this election with respect to an extraordinary reduction would be denied a section 245A deduction for certain amounts distributed as part of the extraordinary reduction. The Treasury Department and the IRS have determined that providing this election would result in similar tax treatment of otherwise similar income, a result that generally leads to economically efficient outcomes.

The election in the temporary and proposed regulations was intended to be bilateral, requiring filing of the seller and consent of the buyer of the CFC. Comments expressed confusion about whether the election was unilateral or bilateral, and some of them recommended a unilateral election. The final regulations clarify that the election must reflect a consensus between the buyer and seller of the CFC that was the subject of the extraordinary reduction, since the election has potentially important tax implications for both sides. Since the election to close the taxable year affects the amount of taxable income included by both the buyer and the seller for the year of the extraordinary reduction with respect to the target CFC, it is now clarified that buyers and sellers must mutually agree to make the election.

The Treasury Department and the IRS considered as an alternative adopting certain requests to make the election unilateral, but determined that doing so would inappropriately allow one party to a transaction to affect the tax consequences of the other party without their consent.

b. Affected Taxpayers

The taxpayers potentially affected by this provision are U.S. shareholders that own directly or indirectly stock of a CFC that has a controlling section 245A shareholder that owns more than 50 percent of the stock of the CFC. Additionally, during the taxable year, the controlling section 245A shareholder generally must directly or indirectly sell stock in the CFC that exceeds 10 percent of the controlling section 245A shareholder's interest in the CFC and 5 percent of the total value of the stock of the CFC. Furthermore, in the year of the ownership reduction, the subpart F income and tested income of the CFC must exceed the lesser of $50 million or 5 percent of the CFC's total income for the year.

The Treasury Department and the IRS have not estimated the number of taxpayers that are likely to be affected by these regulations because data on the taxpayers that have engaged or would engage in these particular transactions are not readily available. Based on 2014 Statistics of Income tax data, the Treasury Department and the IRS estimate that there are approximately 15,000 domestic corporations with CFCs. The actual number of affected taxpayers is likely much smaller than this because the regulations affect only those domestic corporations with CFCs for which the controlling section 245A shareholder engages in a sale of the CFC's stock of in a year in which the CFC pays a dividend (or deemed dividend).

iii. Ownership Change Thresholds in the Definition of an Extraordinary Reduction

a. Background and Alternatives Considered

Under the extraordinary reduction rules, the final regulations generally limit the amount of the section 245A deduction when either (i) a controlling section 245A shareholder transfers more than 10 percent of its stock of the CFC or (ii) there is a greater than 10 percent change in the controlling section 245A shareholder's overall ownership of the CFC.

In defining an extraordinary reduction, the Treasury Department and the IRS considered other percentage thresholds for these conditions. The Treasury Department and the IRS expect that the ownership change threshold specified in the final regulations provides a reasonable balance between effective administration of section 245A and similar tax treatment of other similar income. The Treasury Department and the IRS do not have readily available data or models to compute an optimal percentage threshold.

b. Affected Taxpayers

The taxpayers potentially affected by this aspect of the final regulations are the same as discussed in section D.3.ii.b.

II. Paperwork Reduction Act

The collection of information in the final regulations are in §§ 1.245A–5(e)(3) and 1.6038–2(f)(16).

The collection of information in § 1.245A–5(e)(3) is elective for a domestic corporation that is a controlling section 245A shareholder of a CFC receiving a dividend from the CFC and wants to elect to have none of the dividend considered an extraordinary reduction amount by closing the CFC's tax year. The collection of information is satisfied by timely filing of the ''Elective Section 245A Year-Closing Statement'' with the domestic corporation's original Form 1120, U.S. Corporation Income Tax Return, for the taxable year in which the dividend is received. For purposes of the Paperwork Reduction Act, the reporting burden associated with § 1.245A–5 will be reflected in the Paperwork Reduction Act submission associated with Form 1120 (OMB control no. 1545–0123).

The collection of information in § 1.6038–2(f)(16) is mandatory for every U.S. person that controls a foreign corporation and files Form 5471 for that period (OMB control number 1545–0123

in the case of business taxpayers, formerly, OMB control number 1545–0704) that (1) has paid a dividend for which a deduction under section 245A was limited by an ineligible amount under § 1.245A–5(b) or paid a dividend for which the section 954(c)(6) exception was limited by a tiered extraordinary disposition amount or tiered extraordinary reduction amount under § 1.245A–5(d) and (f), respectively, (2) maintains an extraordinary disposition account with respect to the CFC for which the Form is being filed, or (3) applies the exception to the extraordinary disposition per se rule pursuant to § 1.245A–5(c)(3)(ii)(C)(*2*) during an annual accounting period. The collection of information in § 1.6038–2(f)(16) is satisfied by providing information about the ineligible amount, tiered extraordinary disposition amount, tiered extraordinary reduction amount, balance of the U.S. person's extraordinary disposition account, or reliance on the exception to the extraordinary disposition per se rule for the corporation's accounting period as Form 5471 and its instructions may prescribe. For purposes of the Paperwork Reduction Act, the reporting burden associated with § 1.6038–2(f)(16) will be reflected in the applicable Paperwork Reduction Act submission, associated with Form 5471. The estimated number of respondents for the reporting burden associated with § 1.6038–2(f)(16) is 12,000–18,000, based on estimates provided by the Research, Applied Analytics and Statistics Division of the IRS.

The related new or revised tax form is as follows:

	New	Revision of existing form	Number of respondents (estimate)
Schedule to Form 5471		✓	12,000–18,000

The current status of the Paperwork Reduction Act submissions related to the new revised Form 5471 as a result of the information collections in the temporary regulations is provided in the accompanying table. The reporting burdens associated with the information collections in §§ 1.245A–5(e)(3) and 1.6038–2(f)(16) are included in the aggregated burden estimates for OMB control number 1545–0123, which represents a total estimated burden time for all forms and schedules for corporations of 3.157 billion hours and total estimated monetized costs of $58.148 billion ($2017). The overall burden estimates provided in 1545–0123 are aggregate amounts that relate to the entire package of forms associated with the OMB control number and will in the future include but not isolate the estimated burden of the tax forms that will be revised as a result of the information collections in the proposed regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the temporary regulations. The Treasury Department and the IRS urge readers to recognize that these numbers are duplicates of estimates provided for informational purposes in other proposed and final regulatory actions and to guard against over-counting the burden that international tax provisions imposed before the Act.

No burden estimates specific to the final regulations are currently available. The Treasury Department and the IRS have not identified any burden estimates, including those for new information collections, related to the requirements under the final regulations. Those estimates would capture both changes made by the Act and those that arise out of discretionary authority exercised in the final regulations.

The Treasury Department and the IRS requested comments on all aspects of information collection burdens related to the temporary 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 the final regulations will be made available for public comment at *https://apps.irs.gov/app/picklist/list/draftTaxForms.html* and will not be finalized until after these forms have been approved by OMB under the PRA.

Information collection	Type of filer	OMB Nos.	Status
Form 5471	Business (NEW Model).	1545–0123	Published in the **Federal Register** on 9/30/19. Public Comment period closed on 11/29/19. Approved by OMB through 1/31/2021.
	https://www.federalregister.gov/documents/2019/09/30/2019-21068/proposed-collection-comment-request-for-forms-1065-1066-1120-1120-c-1120-f-1120-h-1120-nd-1120-s.		

III. Regulatory Flexibility Act

It is hereby certified that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). The small entities that are subject to § 1.245A–5 are small entities that are U.S. shareholders of certain foreign corporations that are otherwise eligible for the section 245A deduction on distributions from the foreign corporation. Additionally, to be subject to the final regulations, the foreign corporation that is owned by the small entity must have engaged in certain related party transactions during its last fiscal taxable year beginning before January 1, 2018, or the U.S. shareholder must have transferred certain stock in the foreign corporation during the taxable year. Based on 2014 Statistics of Income tax data, the Department of the Treasury (''Treasury Department'') and the IRS estimate that there are approximately 15,000 U.S. corporations with controlled foreign corporations (''CFCs''), of which approximately half (6,000–9,000) have less than $25 million in gross receipts. Not all of these corporations will be affected by the final regulations. In particular, only U.S. taxpayers with fiscal year CFCs that transfer assets in related party transactions during the gap period, or

U.S. taxpayers that transfer more than 10 percent of their stock of a CFC in a taxable year or U.S. taxpayers that reduce their ownership of stock of a CFC by more than 10 percent, have the potential to be affected by these regulations. There are several industries that may be identified as small even through their annual receipts are above $25 million or because they have fewer employees than the size standard for that industry. The Treasury Department and the IRS do not have more precise data indicating the number of small entities that will be potentially affected by the regulations. The rule may affect a substantial number of small entities, but data are not readily available to assess how many entities will be affected. Nevertheless, for the reasons described below, the Treasury Department and the IRS have determined that the regulations will not have a significant economic impact on small entities.

The Treasury Department and the IRS have concluded that there is no significant economic impact on such entities as a result of these final regulations. To make this determination, the Treasury Department calculated the ratio of estimated global intangible lowed-taxed income (''GILTI'') and subpart F income tax attributable to these businesses to aggregate total sales data. Bureau of Economic Analysis data on the activities of multinational enterprises report total sales of all foreign affiliates of U.S. parents of $7,183 billion in 2017 (accessed at this web address in December, 2018: *https://apps.bea.gov/iTable/iTable.cfm?ReqID=2&step=1*). Projections for GILTI and Subpart F tax revenues average $20 billion per year over the ten-year budget window (see Joint Committee on Taxation, Estimated Budget Effects of the Conference Agreement for H.R. 1, The ''Tax Act and Jobs Act, JCX–67–17, December 18, 2017), resulting in a less than 1% share of GILTI and Subpart F tax in total sales of U.S.-parented affiliates. Compliance costs for these regulations will be a small fraction of the revenue amounts. The tax thus amounts to less than 3 to 5 percent of receipts (as defined in 13 CFR 121.104), an economic impact that the Treasury Department and IRS regard as the threshold for significant under the Regulatory Flexibility Act. This calculated percentage is furthermore an upper bound on the true expected effect of the final regulations because not all the GILTI and subpart F revenue estimated to be attributable to small entities will be captured by the final regulations. Consequently, the Treasury Department and the IRS have determined that § 1.245A–5 will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, the proposed regulations (REG–106282–18) preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small businesses and no comments were received.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The final 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. The final 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.

Drafting Information

The principal authors of the final regulations are Arielle M. Borsos and Logan M. Kincheloe, 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.

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.

* * * * *

■ **Par. 2.** Reserved §§ 1.245A–1 through 1.245A–4 and § 1.245A–5 are added to read as follows:

§§ 1.245A–1—1.245A–4 [Reserved]

§ 1.245A–5 Limitation of section 245A deduction and section 954(c)(6) exception.

(a) *Overview.* This section provides rules that limit a deduction under section 245A(a) to the portion of a dividend that exceeds the ineligible amount of such dividend or the applicability of section 954(c)(6) when a portion of a dividend is paid out of an extraordinary disposition account or when an extraordinary reduction occurs. Paragraph (b) of this section provides rules regarding ineligible amounts. Paragraph (c) of this section provides rules for determining ineligible amounts attributable to an extraordinary disposition. Paragraph (d) of this section provides rules that limit the application of section 954(c)(6) when one or more section 245A shareholders of a lower-tier CFC have an extraordinary disposition account. Paragraph (e) of this section provides rules for determining ineligible amounts attributable to an extraordinary reduction. Paragraph (f) of this section provides rules that limit the application of section 954(c)(6) when a lower-tier CFC has an extraordinary reduction amount. Paragraph (g) of this section provides special rules for purposes of applying this section. Paragraph (h) of this section provides an anti-abuse rule. Paragraph (i) of this section provides definitions. Paragraph (j) of this section provides examples illustrating the application of this section. Paragraph (k) of this section provides the applicability date of this section.

(b) *Limitation of deduction under section 245A*—(1) *In general.* A section 245A shareholder is allowed a section 245A deduction for any dividend received from an SFC (provided all other applicable requirements are satisfied) only to the extent that the dividend exceeds the ineligible amount of the dividend. See paragraphs (j)(2), (4), and (5) of this section for examples illustrating the application of this paragraph (b)(1).

(2) *Definition of ineligible amount.* The term *ineligible amount* means, with respect to a dividend received by a section 245A shareholder from an SFC, an amount equal to the sum of—

(i) 50 percent of the extraordinary disposition amount (as determined under paragraph (c) of this section); and

(ii) The extraordinary reduction amount (as determined under paragraph (e) of this section).

(c) *Rules for determining extraordinary disposition amount*—(1) *Definition of extraordinary disposition amount.* The term *extraordinary disposition amount* means the portion of a dividend received by a section 245A shareholder from an SFC that is paid out of the extraordinary disposition account with respect to the section 245A shareholder. See paragraph (j)(2) of this section for an example illustrating the application of this paragraph (c).

(2) *Determination of portion of dividend paid out of extraordinary disposition account*—(i) *In general.* For purposes of determining the portion of a dividend received by a section 245A shareholder from an SFC that is paid out of the extraordinary disposition account with respect to the section 245A shareholder, the following rules apply—

(A) The dividend is first considered paid out of non-extraordinary disposition E&P with respect to the section 245A shareholder; and

(B) The dividend is next considered paid out of the extraordinary disposition account to the extent of the section 245A shareholder's extraordinary disposition account balance.

(ii) *Definition of non-extraordinary disposition E&P.* The term *non-extraordinary disposition E&P* means, with respect to a section 245A shareholder and an SFC, an amount of earnings and profits of the SFC equal to the excess, if any, of—

(A) The product of—

(*1*) The amount of the SFC's earnings and profits described in section 959(c)(3), determined as of the end of the SFC's taxable year (for purposes of paragraph (c)(2)(ii) of this section, without regard to distributions during the taxable year other than as provided in this paragraph (c)(2)(ii)(A)(*1*)), but, if during the taxable year the SFC pays more than one dividend, reduced (but not below zero) by the amounts of any dividends paid by the SFC earlier in the taxable year; and

(*2*) The percentage of the stock (by value) of the SFC that the section 245A shareholder owns directly or indirectly immediately before the distribution; over

(B) The balance of the section 245A shareholder's extraordinary disposition account with respect to the SFC, determined immediately before the distribution.

(3) *Definitions with respect to extraordinary disposition accounts*—(i) *Extraordinary disposition account*—(A) *In general.* The term *extraordinary disposition account* means, with respect to a section 245A shareholder of an SFC, an account, the balance of which is equal to the product of the extraordinary disposition ownership percentage and the extraordinary disposition E&P, reduced (but not below zero) by the prior extraordinary disposition amount, and adjusted under paragraph (c)(4) of this section, as applicable. An extraordinary disposition account is maintained in the same functional currency as the extraordinary disposition E&P.

(B) *Extraordinary disposition ownership percentage.* The term *extraordinary disposition ownership percentage* means the percentage of stock (by value) of an SFC that a section 245A shareholder owns directly or indirectly at the beginning of the disqualified period or, if later, on the first day during the disqualified period on which the SFC is a CFC, regardless of whether the section 245A shareholder owns directly or indirectly such stock of the SFC on the date of an extraordinary disposition giving rise to extraordinary disposition E&P; if not, see paragraph (c)(4) of this section.

(C) *Extraordinary disposition E&P.* The term *extraordinary disposition E&P* means an amount of earnings and profits of an SFC equal to the sum of the net gain recognized by the SFC with respect to specified property in each extraordinary disposition. In the case of an extraordinary disposition with respect to the SFC arising as a result of a disposition of specified property by a specified entity (other than a foreign corporation), an interest of which is owned directly or indirectly (through one or more other specified entities that are not foreign corporations) by the SFC, the net gain taken into account for purposes of the preceding sentence is the SFC's distributive share of the net gain recognized by the specified entity with respect to the specified property.

(D) *Prior extraordinary disposition amount*—(*1*) *General rule.* The term *prior extraordinary disposition amount* means, with respect to an SFC and a section 245A shareholder, the sum of the extraordinary disposition amount of each prior dividend received by the section 245A shareholder from the SFC by reason of paragraph (c)(1) of this section and 200 percent of the sum of the amounts included in the section 245A shareholder's gross income under section 951(a) by reason of paragraph (d) of this section (in the case in which the SFC is, or has been, a lower-tier CFC). A section 245A shareholder's prior extraordinary disposition amount also includes—

(*i*) A prior dividend received by the section 245A shareholder from the SFC to the extent not an extraordinary reduction amount and to the extent the dividend would have been an extraordinary disposition amount but for the failure of the dividend to qualify for the section 245A deduction by reason of one or more of the following: Application of section 245A(e); the recipient domestic corporation does not satisfy the holding period requirement of section 246; or the recipient domestic corporation is not a United States shareholder with respect to the foreign corporation from whose earnings and profits the dividend is sourced;

(*ii*) The portion of a prior dividend (to the extent not a tiered extraordinary disposition amount by reason of paragraph (d) of this section) received by an upper-tier CFC from the SFC that by reason of section 245A(e) or being properly allocable to subpart F income of the SFC for the taxable year of the dividend pursuant to section 954(c)(6)(A) was included in the upper-tier CFC's foreign personal holding company income and was included in gross income by the section 245A shareholder under section 951(a) but would have been a tiered extraordinary disposition amount by reason of paragraph (d) of this section had paragraph (d) applied to the dividend;

(*iii*) If a prior dividend received by an upper-tier CFC from a lower-tier CFC gives rise to a tiered extraordinary disposition amount with respect to the section 245A shareholder by reason of paragraph (d) of this section, the qualified portion; and

(*iv*) 200 percent of an amount included in the gross income of a domestic corporation under section 951(a)(1)(B) with respect to a CFC for the taxable year of the domestic corporation in which or with which the CFC's taxable year ends, to the extent so included by reason of the application of this section to the hypothetical distribution described in § 1.956–1(a)(2), or to the extent the amount would have been so included by reason of the application of this section to the hypothetical distribution but for the application of section 245A(e) or the holding period requirement in section 246 to the hypothetical distribution.

(*2*) *Definition of qualified portion*—(*i*) *In general.* The term *qualified portion* means, with respect to a tiered extraordinary disposition amount of a section 245A shareholder and a lower-tier CFC, 200 percent of the portion of the disqualified amount with respect to

the tiered extraordinary disposition amount equal to the sum of the amounts included in gross income by each U.S. tax resident under section 951(a) in the taxable year in which the tiered extraordinary disposition amount arose with respect to the lower-tier CFC by reason of paragraph (d) of this section. For purposes of the preceding sentence, the reference to a U.S. tax resident does not include any section 245A shareholder with a tiered extraordinary disposition amount with respect to the lower-tier CFC.

(*ii*) *Determining a qualified portion if multiple section 245A shareholders have tiered extraordinary disposition amounts.* For the purposes of applying paragraph (c)(3)(i)(D)(*2*)(*i*) of this section, if more than one section 245A shareholder has a tiered extraordinary disposition amount with respect to a dividend received by an upper-tier CFC from a lower-tier CFC, then the qualified portion with respect to each section 245A shareholder is equal to the amount described in paragraph (c)(3)(i)(D)(*2*)(*i*) of this section, without regard to this paragraph (c)(3)(i)(D)(*2*)(*ii*), multiplied by a fraction, the numerator of which is the section 245A shareholder's tiered extraordinary disposition amount with respect to the lower-tier CFC and the denominator of which is the sum of the tiered extraordinary disposition amounts with respect to each section 245A shareholder and the lower-tier CFC.

(ii) *Extraordinary disposition*—(A) *In general.* Except as provided in paragraph (c)(3)(ii)(E) of this section, the term *extraordinary disposition* means, with respect to an SFC, any disposition of specified property by the SFC on a date on which it was a CFC and during the SFC's disqualified period to a related party if the disposition occurs outside of the ordinary course of the SFC's activities. An extraordinary disposition also includes a disposition during the disqualified period on a date on which the SFC is not a CFC if there is a plan, agreement, or understanding involving a section 245A shareholder to cause the SFC to recognize gain that would give rise to an extraordinary disposition if the SFC were a CFC.

(B) *Facts and circumstances.* A determination as to whether a disposition is undertaken outside of the ordinary course of an SFC's activities is made on the basis of facts and circumstances, taking into account whether the transaction is consistent with the SFC's past activities, including with respect to quantity and frequency. In addition, a disposition of specified property by an SFC to a related party may be considered outside of the ordinary course of the SFC's activities notwithstanding that the SFC regularly disposes of property of the same type of, or similar to, the specified property to persons that are not related parties.

(C) *Per se rules*—(*1*) *In general.* Even if a disposition would otherwise be considered to be undertaken in the ordinary course of an SFC's activities under the requirements of paragraph (c)(3)(ii)(B) of this section, that disposition is treated as occurring outside of the ordinary course of an SFC's activities if the disposition is undertaken with a principal purpose of generating earnings and profits during the disqualified period or, except as provided in paragraph (c)(3)(ii)(C)(*2*) of this section, if the disposition is of intangible property, as defined in section 367(d)(4).

(*2*) *Exception to the per se rule for certain property*—(*i*) *Exception.* Paragraph (c)(3)(ii)(C)(*1*) of this section does not apply to a disposition of intangible property that is not described in section 367(d)(4)(C) or (F), provided that the property is transferred to a related person during the disqualified period with a reasonable expectation that the related person will resell the property to an unrelated customer within one year. Subject to paragraph (c)(3)(ii)(C)(*2*)(*ii*) of this section, a disposition of intangible property that satisfies the requirements of this paragraph (c)(3)(ii)(C)(*2*)(*i*) is determined to be within or without the ordinary course of an SFC's activities based on the test described in paragraph (c)(3)(ii)(B) of this section.

(*ii*) *Facts and circumstances presumption for property described in section 367(d)(4)(A).* Notwithstanding paragraph (c)(3)(ii)(B) of this section, any disposition described in paragraph (c)(3)(ii)(C)(*2*)(*i*) of this section of a copyright right within the meaning of § 1.861–18 or of intangible property described in section 367(d)(4)(A) is presumed to take place outside of the ordinary course of an SFC's activities for purposes of paragraph (c)(3)(ii)(A) of this section. The presumption in the preceding sentence may be rebutted only if the taxpayer can show that the facts and circumstances clearly establish that the disposition took place in the ordinary course of the SFC's activities.

(D) *Treatment of dispositions by certain specified entities.* For purposes of paragraph (c)(3)(ii)(A) of this section, an extraordinary disposition with respect to an SFC includes a disposition by a specified entity other than a foreign corporation, provided that immediately before or immediately after the disposition the specified entity is a related party with respect to the SFC, the SFC directly or indirectly (through one or more other specified entities other than foreign corporations) owns an interest in the specified entity, and the disposition would have otherwise qualified as an extraordinary disposition had the specified entity been a foreign corporation.

(E) *De minimis exception to extraordinary disposition.* If the sum of the net gain recognized by an SFC with respect to specified property in all dispositions otherwise described in paragraph (c)(3)(ii)(A) of this section does not exceed the lesser of $50 million or 5 percent of the gross value of all of the SFC's property held immediately before the beginning of its disqualified period, then no disposition of specified property by the SFC is an extraordinary disposition.

(iii) *Disqualified period.* The term *disqualified period* means, with respect to an SFC that is a CFC on any day during the taxable year that includes January 1, 2018, the period beginning on January 1, 2018, and ending as of the close of the taxable year of the SFC, if any, that begins before January 1, 2018, and ends after December 31, 2017.

(iv) *Specified property.* The term *specified property* means any property if gain recognized with respect to such property during the disqualified period is not described in section 951A(c)(2)(A)(i)(I) through (V). If only a portion of the gain recognized with respect to property during the disqualified period is gain that is not described in section 951A(c)(2)(A)(i)(I) through (V), then a portion of the property is treated as specified property in an amount that bears the same ratio to the value of the property as the amount of gain not described in section 951A(c)(2)(A)(i)(I) through (V) bears to the total amount of gain recognized with respect to such property during the disqualified period. Specified property is also property with respect to which a loss was recognized during the disqualified period if the loss is properly allocable to income not described in section 951A(c)(2)(A)(i)(I) through (V) under the principles of section 954(b)(5) (specified loss). If only a portion of the loss recognized with respect to property during the disqualified period is specified loss, then a portion of the property is treated as specified property in an amount that bears the same ratio to the value of the property as the amount of specified loss bears to the total amount of loss recognized with respect to such property during the disqualified period.

(4) *Successor rules for extraordinary disposition accounts.* This paragraph (c)(4) applies with respect to an

extraordinary disposition account upon certain direct or indirect transfers of stock of an SFC by a section 245A shareholder.

(i) *Another section 245A shareholder succeeds to all or portion of account.* Except as provided in paragraph (c)(4)(vi) of this section, paragraphs (c)(4)(i)(A) through (D) of this section apply when a section 245A shareholder of an SFC (the *transferor*) transfers directly or indirectly a share of stock (or a portion of a share of stock) of the SFC that it owns directly or indirectly (the share or portion thereof, a *transferred share*).

(A) If immediately after the transfer (taking into account all transactions related to the transfer) another person is a section 245A shareholder of the SFC, then such other person's extraordinary disposition account with respect to the SFC is increased by the person's proportionate share of the amount allocated to the transferred share.

(B) For purposes of paragraph (c)(4)(i)(A) of this section, the amount allocated to a transferred share is equal to the product of—

(*1*) The balance of the transferor's extraordinary disposition account with respect to the SFC, determined after any reduction pursuant to paragraph (c)(3) of this section by reason of dividends and before the application of this paragraph (c)(4)(i)(B); and

(*2*) A fraction, the numerator of which is the value of the transferred share and the denominator of which is the value of all of the stock of the SFC that the transferor owns directly or indirectly immediately before the transfer.

(C) For purposes of paragraph (c)(4)(i)(A) of this section, a person's proportionate share of the amount allocated to a transferred share under paragraph (c)(4)(i)(B) of this section is equal to the product of—

(*1*) The amount allocated to the share; and

(*2*) The percentage of the share (by value) that the person owns directly or indirectly immediately after the transfer (taking into account all transactions related to the transfer).

(D) The transferor's extraordinary disposition account with respect to the SFC is decreased by the amount by which another person's extraordinary disposition account with respect to the SFC is increased pursuant to paragraph (c)(4)(i)(A) of this section.

(ii) *Certain section 381 transactions*—(A) *In general.* If assets of an SFC (the *acquired corporation*) are acquired by another SFC (the *acquiring corporation*) pursuant to a transaction described in section 381(a) in which the acquired corporation is the transferor corporation for purposes of section 381, then a section 245A shareholder's extraordinary disposition account with respect to the acquiring corporation is increased by the balance of its extraordinary disposition account with respect to the acquired corporation, determined after any reduction pursuant to paragraph (c)(3) of this section by reason of dividends and before the application of this paragraph (c)(4)(ii)(A).

(B) *Certain triangular asset reorganizations.* If, in a transaction described in paragraph (c)(4)(ii)(A) of this section, the section 245A shareholder receives stock of a domestic corporation that controls (within the meaning of section 368(c)) the acquiring corporation, the domestic corporation's extraordinary disposition account with respect to the acquiring corporation is increased by the balance of the section 245A shareholder's extraordinary disposition account with respect to the acquired corporation, determined after any reduction pursuant to paragraph (c)(3) of this section by reason of dividends and before the application of this paragraph (c)(4)(ii)(B).

(iii) *Certain distributions involving section 355 or 356.* In the case of a transaction involving a distribution under section 355 (or so much of section 356 as it relates to section 355) by an SFC (the *distributing corporation*) of stock of another SFC (the *controlled corporation*), a section 245A shareholder's extraordinary disposition account with respect to the distributing corporation is attributed to (and treated as) an extraordinary disposition account with respect to the controlled corporation in a manner similar to how earnings and profits of the distributing corporation and the controlled corporation are adjusted under § 1.312–10. To the extent that a section 245A shareholder's extraordinary disposition account with respect to the distributing CFC is not so attributed to (and treated as) an extraordinary disposition account with respect to the controlled corporation, the extraordinary disposition account remains as an extraordinary disposition account with respect to the distributing corporation.

(iv) *Transfer of all of the stock of the SFC owned by a section 245A shareholder*—(A) *In general.* If, in a transaction described in paragraph (c) of this section, a section 245A shareholder of an SFC transfers directly or indirectly all of the stock of the SFC that it owns directly or indirectly, then, except as provided in paragraph (c)(4)(iv)(B) of this section, any remaining balance of the section 245A shareholder's extraordinary disposition account that is not allocated or attributed under paragraph (c) of this section is eliminated and therefore not taken into account by any person.

(B) *Related party retains the extraordinary distribution account.* If any related party with respect to the section 245A shareholder described in paragraph (c)(4)(iv)(A) of this section is a section 245A shareholder with respect to the SFC immediately after the transfer (taking into account all transactions related to the transfer), then the remaining balance of the section 245A shareholder's extraordinary disposition account with respect to the SFC is added to the related party's extraordinary disposition account. If multiple related parties are section 245A shareholders of the SFC, then the remaining balance of the extraordinary disposition account is allocated between the related parties in proportion to the value of the stock of the SFC that they own directly or indirectly immediately after the transfer (taking into account all transactions related to the transfer).

(v) *Effect of section 338(g) election*—(A) *In general.* Except as provided in paragraph (c)(4)(v)(B) of this section, if an election under section 338(g) is made with respect to a qualified stock purchase (as defined in section 338(d)(3)) of stock of an SFC, then a section 245A shareholder's extraordinary disposition account with respect to the old target (as defined in § 1.338–2(c)(17)) is not treated as (or attributed to) an extraordinary disposition account with respect to the new target (as defined in § 1.338–2(c)(17)). Accordingly, the remaining balance of the old target's extraordinary disposition account is eliminated and is not thereafter taken into account by any person. (B) *Special rules regarding carryover foreign target stock.* If an election under section 338(g) is made with respect to a qualified stock purchase (as described in section 338(d)(3)) of stock of an SFC and there are one or more shares of carryover foreign target stock (''FT stock'') (as described in § 1.338–9(b)(3)(i)), then the following rules apply as to a section 245A shareholder of the new target that after the qualified stock purchase directly or indirectly owns carryover FT stock (such shareholder, the *carryover FT stock shareholder*):

(*1*) In a case in which before the qualified stock purchase the carryover FT stock shareholder directly or indirectly owned carryover FT stock, the carryover FT stock shareholder's extraordinary disposition account with respect to the old target, determined after any reduction pursuant to paragraph (c)(3) of this section by reason

of dividends, is treated as its extraordinary disposition account with respect to the new target.

(*2*) In a case in which before the qualified stock purchase the carryover FT stock shareholder did not directly or indirectly own carryover FT stock, but the stock retains its character as carryover FT stock (taking into account § 1.338–9(b)(3)(vi)), a ratable portion of each section 245A shareholder's extraordinary disposition account with respect to the old target, determined after any reduction pursuant to paragraph (c)(3) of this section by reason of dividends, is treated as the carryover FT stock shareholder's extraordinary disposition account with respect to the new target, based on the value of the carryover FT stock that the carryover FT stock shareholder owns directly or indirectly after the qualified stock purchase relative to the value of all of the stock of the new target.

(vi) *Certain transfers described in § 1.1248–8(a)(1)*—(A) *In general.* If a person transfers stock of an SFC with respect to which a section 245A shareholder has an extraordinary disposition account to a foreign acquiring corporation in a transaction described § 1.1248–8(a)(1) (other than a transfer that is also described in § 1.1248(f)–1(b)(2) or (3)) in which stock of a foreign corporation is received by the transferor, then, except in the case in which the transfer is also described in paragraph (c)(4)(ii) or (iii) of this section, the section 245A shareholder's extraordinary disposition account is not adjusted under this paragraph (c)(4).

(B) *Certain transfers described in § 1.1248(f)–1(b).* In the case of a transfer directly or indirectly of stock of an SFC by a section 245A shareholder described in § 1.1248(f)–1(b)(2) or (3), but which does not result in an income inclusion, in whole or in part, by reason of § 1.1248–2, the section 245A shareholder's extraordinary disposition account with respect to the SFC, determined after any reduction pursuant to paragraph (c)(3) of this section by reason of dividends and before the application of this paragraph (c)(4)(vi)(B), is allocated and adjusted in the same manner as under paragraph (c)(4)(i) of this section, except that, for purposes of applying paragraphs (c)(4)(i)(B) and (C) of this section, stock of the SFC that is owned directly or indirectly by persons who are not section 1248 shareholders (as defined in § 1.1248(f)–1(c)(12)) is disregarded.

(vii) *Anti-abuse rule.* Pursuant to paragraph (h) of this section, if a principal purpose of a transaction or series of transactions is to shift to another person, or to avoid, an amount of a section 245A shareholder's extraordinary disposition account with respect to an SFC or otherwise avoid the purposes of this section, then appropriate adjustments are made for purposes of this section, including disregarding the transaction or series of transactions. A principal purpose described in the preceding sentence is deemed to exist if stock of an SFC is directly or indirectly acquired by one of more section 245A shareholders within one year of a transaction or transactions to which paragraph (c)(4)(iv)(A) of this section would otherwise apply.

(d) *Limitation of amount eligible for section 954(c)(6) when there is an extraordinary disposition account with respect to a lower-tier CFC*—(1) *In general.* If an upper-tier CFC receives a dividend from a lower-tier CFC, then the dividend is eligible for the exception to foreign personal holding company income under section 954(c)(6) (provided all other applicable requirements are satisfied) with respect to the portion of the dividend that exceeds the disqualified amount. With respect to the portion of the dividend that does not exceed the disqualified amount, the exception to foreign personal holding company income under section 954(c)(6) is allowed (provided all other applicable requirements are satisfied) only for the amount equal to 50 percent of the portion of the dividend that does not exceed the disqualified amount. The disqualified amount is the quotient of the amounts described in paragraphs (d)(1)(i) and (ii) of this section.

(i) The sum of each section 245A shareholder's tiered extraordinary disposition amount with respect to the lower-tier CFC.

(ii) The percentage of stock of the upper-tier CFC (by value) owned, in the aggregate, by U.S. tax residents that include in gross income their pro rata share of the upper-tier CFC's subpart F income under section 951(a) on the last day of the upper-tier CFC's taxable year. If a U.S. tax resident is a direct or indirect partner in a domestic partnership that is a United States shareholder of the upper-tier CFC, the amount of stock owned by the U.S. tax resident for purposes of the preceding sentence is determined under the principles of paragraph (g)(3) of this section.

(2) *Definition of tiered extraordinary disposition amount*—(i) *In general.* The term *tiered extraordinary disposition amount* means, with respect to a dividend received by an upper-tier CFC from a lower-tier CFC and a section 245A shareholder, the portion of the dividend that would be an extraordinary disposition amount if the section 245A shareholder received as a dividend its pro rata share of the dividend from the lower-tier CFC. The preceding sentence does not apply to an amount treated as a dividend received by an upper-tier CFC from a lower-tier CFC by reason of section 964(e)(4) (in such case, see paragraphs (b)(1) and (g)(2) of this section).

(ii) *Section 245A shareholder's pro rata share of a dividend received by an upper-tier CFC.* For the purposes of paragraph (d)(2)(i) of this section, a section 245A shareholder's pro rata share of the amount of a dividend received by an upper-tier CFC from a lower-tier CFC equals the amount by which the dividend would increase the section 245A shareholder's pro rata share of the upper-tier CFC's subpart F income under section 951(a)(2) and § 1.951–1(b) and (e) if the dividend were included in the upper-tier CFC's foreign personal holding company income under section 951(a)(1), determined without regard to section 952(c) and as if the upper-tier CFC had no deductions properly allocable to the dividend under section 954(b)(5).

(e) *Extraordinary reduction amount*—(1) *In general.* Except as provided in paragraph (e)(3) of this section, the term *extraordinary reduction amount* means, with respect to a dividend received by a controlling section 245A shareholder from a CFC during a taxable year of the CFC ending after December 31, 2017, in which an extraordinary reduction occurs with respect to the controlling section 245A shareholder's ownership of the CFC, the lesser of the amounts described in paragraph (e)(1)(i) or (ii) of this section. *See* paragraphs (j)(4) through (6) of this section for examples illustrating the application of this paragraph (e).

(i) The amount of the dividend.

(ii) The amount equal to the sum of the controlling section 245A shareholder's pre-reduction pro rata share of the CFC's subpart F income (as defined in section 952(a)) and tested income (as defined in section 951A(c)(2)(A)) for the taxable year, reduced, but not below zero, by the prior extraordinary reduction amount.

(2) *Rules regarding extraordinary reduction amounts*—(i) *Extraordinary reduction*—(A) *In general.* Except as provided in paragraph (e)(2)(i)(C) of this section, an *extraordinary reduction* occurs, with respect to a controlling section 245A shareholder's ownership of a CFC during a taxable year of the CFC, if either of the conditions described in paragraph (e)(2)(i)(A)(*1*) or (*2*) of this section is satisfied. See paragraphs (j)(4) and (5) of this section

for examples illustrating an extraordinary reduction.

(*1*) The condition of this paragraph (e)(2)(i)(A)(*1*) requires that during the taxable year, the controlling section 245A shareholder transfers directly or indirectly (other than by reason of a transfer occurring pursuant to an exchange described in section 368(a)(1)(E) or (F)), in the aggregate, more than 10 percent (by value) of the stock of the CFC that the section 245A shareholder owns directly or indirectly as of the beginning of the taxable year of the CFC, provided the stock transferred, in the aggregate, represents at least 5 percent (by value) of the outstanding stock of the CFC as of the beginning of the taxable year of the CFC; or

(*2*) The condition of this paragraph (e)(2)(i)(A)(*2*) requires that, as a result of one or more transactions occurring during the taxable year, the percentage of stock (by value) of the CFC that the controlling section 245A shareholder owns directly or indirectly as of the close of the last day of the taxable year of the CFC is less than 90 percent of the percentage of stock (by value) that the controlling section 245A shareholder owns directly or indirectly on either of the dates described in paragraphs (e)(2)(i)(B)(*1*) and (*2*) of this section (such percentage, the *initial percentage*), provided the difference between the initial percentage and percentage at the end of the year is at least five percentage points.

(B) *Dates for purposes of the initial percentage.* For purposes of paragraph (e)(2)(i)(A)(*2*) of this section, the dates described in paragraphs (e)(2)(i)(B)(*1*) and (*2*) of this section are—

(*1*) The day of the taxable year on which the controlling section 245A shareholder owns directly or indirectly its highest percentage of stock (by value) of the CFC; and

(*2*) The day immediately before the first day on which stock was transferred directly or indirectly in the preceding taxable year in a transaction (or a series of transactions) occurring pursuant to a plan to reduce the percentage of stock (by value) of the CFC that the controlling section 245A shareholder owns directly or indirectly.

(C) *Transactions pursuant to which CFC's taxable year ends.* A controlling section 245A shareholder's direct or indirect transfer of stock of a CFC that but for this paragraph (e)(2)(i)(C) would give rise to an extraordinary reduction under paragraph (e)(2)(i)(A) of this section does not give rise to an extraordinary reduction if the taxable year of the CFC ends immediately after the transfer, provided that the controlling section 245A shareholder directly or indirectly owns the stock on the last day of such year. Thus, for example, if a controlling section 245A shareholder exchanges all the stock of a CFC pursuant to a complete liquidation of the CFC, the exchange does not give rise to an extraordinary reduction.

(ii) *Rules for determining pre-reduction pro rata share*—(A) *In general.* Except as provided in paragraph (e)(2)(ii)(B) of this section, the term *pre-reduction pro rata share* means, with respect to a controlling section 245A shareholder and the subpart F income or tested income of a CFC, the controlling section 245A shareholder's pro rata share of the CFC's subpart F income or tested income under section 951(a)(2) and § 1.951–1(b) and (e) or section 951A(e)(1) and § 1.951A–1(d)(1), respectively, determined based on the controlling section 245A shareholder's direct or indirect ownership of stock of the CFC immediately before the extraordinary reduction (or, if the extraordinary reduction occurs by reason of multiple transactions, immediately before the first transaction) and without regard to section 951(a)(2)(B) and § 1.951–1(b)(1)(ii), but only to the extent that such subpart F income or tested income is not included in the controlling section 245A shareholder's pro rata share of the CFC's subpart F income or tested income under section 951(a)(2) and § 1.951–1(b) and (e) or section 951A(e)(1) and § 1.951A–1(d)(1), respectively.

(B) *Decrease in section 245A shareholder's pre-reduction pro rata share for amounts taken into account by U.S. tax resident.* A controlling section 245A shareholder's pre-reduction pro rata share of subpart F income or tested income of a CFC for a taxable year is reduced by an amount equal to the sum of the amounts by which each U.S. tax resident's pro rata share of the subpart F income or tested income is increased as a result of a transfer directly or indirectly of stock of the CFC by the controlling section 245A shareholder or an issuance of stock by the CFC (such an amount with respect to a U.S. tax resident, a *specified amount*), in either case, during the taxable year in which the extraordinary reduction occurs. For purposes of this paragraph (e)(2)(ii)(B), if there are extraordinary reductions with respect to more than one controlling section 245A shareholder during the CFC's taxable year, then a U.S. tax resident's specified amount attributable to an acquisition of stock from the CFC is prorated with respect to each controlling section 245A shareholder based on its relative decrease in ownership of the CFC. See paragraph (j)(5) of this section for an example illustrating a decrease in a section 245A shareholder's pre-reduction pro rata share for amounts taken into account by a U.S. tax resident.

(C) *Prior extraordinary reduction amount.* The term *prior extraordinary reduction amount* means, with respect to a CFC and section 245A shareholder and a taxable year of the CFC in which an extraordinary reduction occurs, the sum of the extraordinary reduction amount of each prior dividend received by the section 245A shareholder from the CFC during the taxable year. A section 245A shareholder's prior extraordinary reduction amount also includes—

(*1*) A prior dividend received by the section 245A shareholder from the CFC during the taxable year to the extent the dividend was not eligible for the section 245A deduction by reason of section 245A(e) or the holding period requirement of section 246 not being satisfied but would have been an extraordinary reduction amount had this paragraph (e) applied to the dividend;

(*2*) If the CFC is a lower-tier CFC for a portion of the taxable year during which the lower-tier CFC pays any dividend to an upper tier-CFC, the portion of a prior dividend received by an upper-tier CFC from the lower-tier CFC during the taxable year of the lower-tier CFC that, by reason of section 245A(e), was included in the upper-tier CFC's foreign personal holding company income and that by reason of section 951(a) was included in income of the section 245A shareholder, and that would have given rise to a tiered extraordinary reduction amount by reason of paragraph (f) of this section had paragraph (f) applied to the dividend of which the section 245A shareholder would have included a pro rata share of the tiered extraordinary reduction amount in income by reason of section 951(a); and

(*3*) If the CFC is a lower-tier CFC for a portion of the taxable year during which the lower-tier CFC pays any dividend to an upper-tier CFC, the sum of the portion of the tiered extraordinary reduction amount of each prior dividend received by an upper-tier CFC from the lower-tier CFC during the taxable year that is included in income of the section 245A shareholder by reason of section 951(a).

(3) *Exceptions*—(i) *Elective exception to close CFC's taxable year*—(A) *In general.* For a taxable year of a CFC in which an extraordinary reduction occurs with respect to a controlling

section 245A shareholder and for which, absent this paragraph (e)(3)(i), there would be an extraordinary reduction amount or tiered extraordinary reduction amount greater than zero, no amount is considered an extraordinary reduction amount or tiered extraordinary reduction amount with respect to the controlling section 245A shareholder if each controlling section 245A shareholder elects, and each U.S. tax resident described in paragraph (e)(3)(i)(C)(*2*) of this section agrees, pursuant to this paragraph (e)(3)(i), to close the CFC's taxable year for all purposes of the Internal Revenue Code (and, therefore, as to all shareholders of the CFC) as of the end of the date on which the extraordinary reduction occurs, or, if the extraordinary reduction occurs by reason of multiple transactions, as of the end of each date on which a transaction forming a part of the extraordinary reduction occurs. If an election is made pursuant to this paragraph (e)(3)(i), all shareholders of the CFC that are a controlling section 245A shareholder or a U.S. tax resident described in paragraph (e)(3)(i)(C)(*2*) of this section must file their respective U.S. income tax and information returns consistently with the election. If each controlling section 245A shareholder elects to close the CFC's taxable year, that closing will be treated as a change in accounting period for purposes of the notice requirement in § 1.964–1(c)(3)(iii), treating any controlling section 245A shareholders as controlling domestic shareholders for this purpose. However, the notice described in § 1.964–1(c)(3)(iii) does not need to be provided to persons that are U.S. tax residents described in paragraph (e)(3)(i)(C) of this section. For purposes of applying this paragraph (e)(3)(i), a controlling section 245A shareholder that has an extraordinary reduction (or a transaction forming a part thereof) with respect to a CFC is treated as owning the same amount of stock it owned in the CFC immediately before the extraordinary reduction (or a transaction forming a part thereof) on the end of the date on which the extraordinary reduction occurs (or such transaction forming a part thereof occurs). To the extent that shares of a CFC are treated as owned by a controlling section 245A shareholder as of the close of the CFC's taxable year pursuant to the preceding sentence, such shares are treated as not being owned by any other person as of the close of the CFC's taxable year.

(B) *Allocation of foreign taxes.* If an election is made pursuant to this paragraph (e)(3) to close a CFC's taxable year and the CFC's taxable year under foreign law (if any) does not close at the end of the date on which the CFC's taxable year closes as a result of the election, foreign taxes paid or accrued with respect to such foreign taxable year are allocated between the period of the foreign taxable year that ends with, and the period of the foreign taxable year that begins after, the date on which the CFC's taxable year closes as a result of the election. If there is more than one date on which the CFC's taxable year closes as a result of the election, foreign taxes paid or accrued with respect to the foreign taxable year are allocated to all such periods. The allocation is made based on the respective portions of the taxable income of the CFC (as determined under foreign law) for the foreign taxable year that are attributable under the principles of § 1.1502–76(b) to the periods during the foreign taxable year. Foreign taxes allocated to a period under this paragraph (e)(3)(i)(B) are treated as paid or accrued by the CFC as of the close of that period.

(C) *Time and manner of making election*—(*1*) *Election by controlling section 245A shareholder.* An election pursuant to this paragraph (e)(3) is made and effective if the statement described in paragraph (e)(3)(i)(D) of this section is timely filed (including extensions) by each controlling section 245A shareholder making the election with its original U.S. tax return for the taxable year in which the extraordinary reduction occurs. If a controlling section 245A shareholder is a member of a consolidated group (within the meaning of § 1.1502–1(h)) and participates in the extraordinary reduction, the agent for such group (within the meaning of § 1.1502–77(c)(1)) must file the election described in this paragraph (e)(3) on behalf of such member.

(*2*) *Binding agreement.* Before the filing of the statement described in paragraph (e)(3)(i)(D) of this section, each controlling section 245A shareholder must enter into a written, binding agreement with each U.S. tax resident that on the end of the date on which the extraordinary reduction occurs (or, if the extraordinary reduction occurs by reason of multiple transactions, each U.S. tax resident that on the end of each date on which a transaction forming a part of the extraordinary reduction occurs) owns directly or indirectly, without regard to the final two sentences of paragraph (e)(3)(i)(A) of this section, stock of the CFC and is a United States shareholder with respect to the CFC. In the case of a U.S. tax resident that owns stock of the CFC indirectly through one or more partnerships, the partnership that directly owns the stock of the CFC may enter into the binding agreement on behalf of the U.S. tax resident partner provided that, before the due date of the partner's original Federal income tax return, including extensions, the partner delegated the authority to the partnership to enter into the binding agreement pursuant to a written partnership agreement (within the meaning of § 1.704–1(b)(2)(ii)(*h*)). The written, binding agreement must provide that each controlling section 245A shareholder will elect to close the taxable year of the CFC.

(*3*) *Transition rule.* In the case of an extraordinary reduction occurring before August 27, 2020, the statement described in paragraph (e)(3)(i)(D) of this section is considered timely filed if it is attached by each controlling section 245A shareholder to an original or amended return for the taxable year in which the extraordinary reduction occurs. In the case of an amended return, the statement is considered timely filed only if it is filed with an amended return no later than February 23, 2021.

(D) *Form and content of statement.* The statement required by paragraph (e)(3)(i)(C) of this section is to be titled ''Elective Section 245A Year-Closing Statement.'' The statement must—

(*1*) Identify (by name and tax identification number, if any) each controlling section 245A shareholder, each U.S tax resident described in paragraph (e)(3)(i)(C) of this section, and the CFC;

(*2*) State the date of the extraordinary reduction (or, if the extraordinary reduction includes transactions on more than one date, the dates of all such transactions) to which the election applies;

(*3*) State the filing controlling section 245A shareholder's pro rata share of the subpart F income, tested income, and foreign taxes described in section 960 with respect to the stock of the CFC subject to the extraordinary reduction, and, if applicable, the amount of earnings and profits attributable to such stock within the meaning of section 1248, as of the date of the extraordinary reduction;

(*4*) State that each controlling section 245A shareholder and each U.S tax resident described in paragraph (e)(3)(i)(C) of this section have entered into a written, binding agreement to elect to close the CFC's taxable year in accordance with paragraph (e)(3)(i)(C) of this section; and

(*5*) Be filed in the manner, if any, prescribed by forms, publications, or other guidance published in the Internal Revenue Bulletin.

(E) *Consistency requirements.* If multiple extraordinary reductions occur with respect to one or more controlling section 245A shareholders' ownership in a single CFC during one or more taxable years of the CFC, then to the extent those extraordinary reductions occur pursuant to a plan or series of related transactions, the election described in this paragraph (e)(3) section may be made only if it is made for all such extraordinary reductions with respect to the CFC for which there was an extraordinary reduction amount. Furthermore, if an extraordinary reduction occurs with respect to a controlling section 245A shareholders' ownership in one or more CFCs, then, to the extent those extraordinary reductions occur pursuant to a plan or series of related transactions, the election described in this paragraph (e)(3) may be made only if it is made for each extraordinary reduction for which there was an extraordinary reduction amount with respect to all of the CFCs that have the same or related (within the meaning of section 267(b) or 707(b)) controlling section 245A shareholders.

(ii) *De minimis subpart F income and tested income.* For a taxable year of a CFC in which an extraordinary reduction occurs, no amount is considered an extraordinary reduction amount (or, with respect to a lower-tier CFC, a tiered extraordinary reduction amount under paragraph (f) of this section) with respect to a controlling section 245A shareholder of the CFC if the sum of the CFC's subpart F income and tested income (as defined in section 951A(c)(2)(A)) for the taxable year does not exceed the lesser of $50 million or 5 percent of the CFC's total income for the taxable year.

(f) *Limitation of amount eligible for section 954(c)(6) where extraordinary reduction occurs with respect to lower-tier CFCs*—(1) *In general.* If an extraordinary reduction occurs with respect to a lower-tier CFC and an upper-tier CFC receives a dividend from the lower-tier CFC in the taxable year in which the extraordinary reduction occurs, then the dividend is eligible for the exception to foreign personal holding company income under section 954(c)(6) (provided all other applicable requirements are satisfied) only with respect to the portion of the dividend that exceeds the tiered extraordinary reduction amount. The preceding sentence does not apply to an amount treated as a dividend received by an upper-tier CFC by reason of section 964(e)(4) (in this case, see paragraphs (b)(1) and (g)(2) of this section). See paragraph (j)(7) of this section for an example illustrating the application of this paragraph (f)(1).

(2) *Definition of tiered extraordinary reduction amount.* The term *tiered extraordinary reduction amount* means, with respect to the portion of a dividend received by an upper-tier CFC from a lower-tier CFC during a taxable year of the lower-tier CFC, the amount of such dividend equal to the excess, if any, of—

(i) The product of—

(A) The sum of the amount of the subpart F income and tested income of the lower-tier CFC for the taxable year; and

(B) The percentage (by value) of stock of the lower-tier CFC owned (within the meaning of section 958(a)(2)) by the upper-tier CFC immediately before the extraordinary reduction (or the first transaction forming a part thereof); over

(ii) The following amounts—

(A) The sum of each U.S. tax resident's pro rata share of the lower-tier CFC's subpart F income and tested income under section 951(a) or 951A(a), respectively, that is attributable to shares of the lower-tier CFC owned (within the meaning of section 958(a)(2)) by the upper-tier CFC immediately prior to the extraordinary reduction (or the first transaction forming a part thereof), computed without the application of this paragraph (f);

(B) The sum of each prior tiered extraordinary reduction amount and sum of each amount included in an upper-tier CFC's subpart F income by reason of section 245A(e) with respect to prior dividends from the lower-tier CFC during the taxable year;

(C) The sum of each U.S. tax resident's pro rata share of an upper-tier CFC's subpart F income under section 951(a) and § 1.951–1(e) that is attributable to dividends received from the lower-tier CFC in the taxable year of the extraordinary reduction that do not qualify for the exception to foreign personal holding company income under section 954(c)(6) because the dividends, or portions thereof, are properly allocable to subpart F income of the lower-tier CFC for the taxable year of the extraordinary reduction pursuant to section 954(c)(6)(A);

(D) The sum of the prior extraordinary reduction amounts (but, for this purpose, computed without regard to amounts described in paragraphs (e)(2)(ii)(C)(*2*) and (*3*) of this section) of each controlling section 245A shareholder with respect to shares of the lower-tier CFC that were owned by such controlling section 245A shareholder (including indirectly through a specified entity other than a foreign corporation) for a portion of the taxable year but are owned by an upper-tier CFC (including indirectly through a specified entity other than a foreign corporation) at the time of the distribution of the dividend; and

(E) The product of the amount described in paragraph (f)(2)(i)(B) of this section and the sum of the amounts of each U.S. tax resident's pro rata share of subpart F income and tested income for the taxable year under section 951(a) or 951A(a), respectively, attributable to shares of the lower-tier CFC directly or indirectly acquired by the U.S. tax resident from the lower-tier CFC during the taxable year.

(3) *Transition rule for computing tiered extraordinary reduction amount.* Solely for purposes of applying this paragraph (f) in taxable years of a lower-tier CFC beginning on or after January 1, 2018, and ending before June 14, 2019, a tiered extraordinary reduction amount is determined by treating the lower-tier CFC's subpart F income for the taxable year as if it were neither subpart F income nor tested income.

(g) *Special rules.* The rules in this paragraph (g) apply for purposes of this section.

(1) *Source of dividends.* A dividend received by any person is considered received directly by such person from the foreign corporation whose earnings and profits give rise to the dividend. Therefore, for example, if a section 245A shareholder sells or exchanges stock of an upper-tier CFC and the gain recognized on the sale or exchange is included in the gross income of the section 245A shareholder as a dividend under section 1248(a), then, to the extent the dividend is attributable under section 1248(c)(2) to the earnings and profits of a lower-tier CFC owned, within the meaning of section 958(a)(2), by the section 245A shareholder through the upper-tier CFC, the dividend is considered received directly by the section 245A shareholder from the lower-tier CFC.

(2) *Certain section 964(e) inclusions treated as dividends.* An amount included in the gross income of a section 245A shareholder under section 951(a)(1)(A) by reason of section 964(e)(4) is considered a dividend received by the section 245A shareholder directly from the foreign corporation whose earnings and profits give rise to the amount described in section 964(e)(1). Therefore, for example, if an upper-tier CFC sells or exchanges stock of a lower-tier CFC, and, as a result of the sale or exchange, a section 245A shareholder with respect to the upper-tier CFC includes an amount in gross income under section 951(a)(1)(A) by reason of section

964(e)(4), then the inclusion is treated as a dividend received directly by the section 245A shareholder from the lower-tier CFC whose earnings and profits give rise to the dividend, and the section 245A shareholder is not allowed a section 245A deduction for the dividend to the extent of the ineligible amount of such dividend.

(3) *Rules regarding stock ownership and stock transfers*—(i) *Determining indirect ownership of stock of an SFC or a CFC.* For purposes of this section, if a person owns an interest in, or stock of, a specified entity, including through a chain of ownership of one or more other specified entities, then the person is considered to own indirectly a pro rata share of stock of an SFC or a CFC owned by the specified entity. To determine a person's pro rata share of stock owned by a specified entity, the principles of section 958(a) apply without regard to whether the specified entity is foreign or domestic.

(ii) *Determining indirect transfers for stock owned indirectly.* If, under paragraph (g)(3)(i) of this section, a person is considered to own indirectly stock of an SFC or CFC that is owned by a specified entity, then the following rules apply in determining if the person transfers stock of the SFC or CFC—

(A) To the extent the specified entity transfers stock that is considered owned indirectly by the person immediately before the transfer, the person is considered to transfer indirectly such stock;

(B) If the person transfers an interest in, or stock of, the specified entity, then the person is considered to transfer indirectly the stock of the SFC or CFC attributable to the interest in, or the stock of, the specified entity that is transferred; and

(C) In the case in which the person owns the specified entity through a chain of ownership of one or more other specified entities, if there is a transfer of an interest in, or stock of, another specified entity in the chain of ownership, then the person is considered to transfer indirectly the stock of the SFC or CFC attributable to the interest in, or the stock of, the other specified entity transferred.

(iii) *Definition of specified entity.* The term *specified entity* means any partnership, trust (other than a trust treated as a corporation for U.S. income tax purposes), or estate (in each case, domestic or foreign), or any foreign corporation.

(4) *Coordination rules*—(i) *General rule.* A dividend is first subject to section 245A(e). To the extent the dividend is not a hybrid dividend or tiered hybrid dividend under section 245A(e), the dividend is subject to paragraph (e) or (f) of this section, as applicable, and then, to the extent the dividend is not subject to paragraph (e) or (f) of this section, it is subject to paragraph (c) or (d) of this section, as applicable.

(ii) *Coordination rule for paragraphs (c) and (d) and (e) and (f) of this section, respectively.* If an SFC or CFC pays a dividend (or simultaneous dividends), a portion of which may be subject to paragraph (c) or (e) of this section and a portion of which may be subject to paragraph (d) or (f) of this section, the rules of this section apply by treating the portion of the dividend or dividends that may be subject to paragraph (c) or (e) of this section as if it occurred immediately before the portion of the dividend or dividends that may be subject to paragraph (d) or (f) of this section. For example, if a dividend arising under section 964(e)(4) occurs at the same time as a dividend that would be eligible for the exception to foreign personal holding company income under section 954(c)(6) but for the potential application of paragraph (d) this section, then the tiered extraordinary disposition amount with respect to the other dividend is determined as if the dividend arising under section 964(e)(4) occurs immediately before the other dividend.

(5) *Ordering rule for multiple dividends made by an SFC or a CFC during a taxable year.* If an SFC or a CFC pays dividends on more than one date during its taxable year or at different times on the same date, this section applies based on the order in which the dividends are paid.

(6) *Partner's distributive share of a domestic partnership's pro rata share of subpart F income or tested income.* If a section 245A shareholder or a U.S. tax resident is a direct or indirect partner in a domestic partnership that is a United States shareholder with respect to a CFC and includes in gross income its distributive share of the domestic partnership's inclusion under section 951(a) or 951A(a) with respect to the CFC then, solely for purposes of this section, a reference to the section 245A shareholder's or U.S. tax resident's pro rata share of the CFC's subpart F income or tested income included in gross income under section 951(a) or 951A(a), respectively, includes such person's distributive share of the domestic partnership's pro rata share of the CFC's subpart F income or tested income. A person is an indirect partner with respect to a domestic partnership if the person indirectly owns the domestic partnership through one or more specified entities (other than a foreign corporation).

(7) *Related domestic corporations treated as a single domestic corporation for certain purposes.* For purposes of determining the extent that a dividend is an extraordinary disposition amount or a tiered extraordinary disposition amount, as well as for purposes of determining the extent to which an extraordinary disposition account is reduced by a prior extraordinary disposition amount, domestic corporations that are related parties are treated as a single domestic corporation. Thus, for example, if two domestic corporations are related parties and either or both of them are section 245A shareholders with respect to an SFC, then the extent to which a dividend received by either domestic corporation from the SFC is an extraordinary disposition amount is based on the sum of each domestic corporation's extraordinary disposition account with respect to the SFC. When, by reason of this paragraph (g)(7), the extent to which a dividend is an extraordinary disposition amount or tiered extraordinary disposition amount is determined based on the sum of two or more extraordinary disposition accounts, a pro rata amount in each extraordinary disposition account is considered to give rise to the extraordinary disposition amount or tiered extraordinary disposition amount, if any.

(h) *Anti-abuse rule.* Appropriate adjustments are made pursuant to this section, including adjustments that would disregard a transaction or arrangement in whole or in part, to any amounts determined under (or subject to the application of) this section if a transaction or arrangement is engaged in with a principal purpose of avoiding the purposes of this section. For examples illustrating the application of this paragraph (h), see paragraphs (j)(8) through (10) of this section.

(i) *Definitions.* The following definitions apply for purposes of this section.

(1) *Controlled foreign corporation.* The term *controlled foreign corporation* (or *CFC*) has the meaning provided in section 957.

(2) *Controlling section 245A shareholder.* The term *controlling section 245A shareholder* means, with respect to a CFC, any section 245A shareholder that owns directly or indirectly more than 50 percent (by vote or value) of the stock of the CFC. For purposes of determining whether a section 245A shareholder is a controlling section 245A shareholder with respect to a CFC, all stock of the

CFC owned by a related party with respect to the section 245A shareholder or by other persons acting in concert with the section 245A shareholder to undertake an extraordinary reduction is considered owned by the section 245A shareholder. If section 964(e)(4) applies to a sale or exchange of a lower-tier CFC with respect to a controlling section 245A shareholder, all United States shareholders of the CFC are considered to act in concert with regard to the sale or exchange. In addition, if all persons selling stock in a CFC, held directly, sell such stock to the same buyer or buyers (or a related party with respect to the buyer or buyers) as part of the same plan, all sellers will be considered to act in concert with regard to the sale or exchange.

(3) *Disqualified amount.* The term *disqualified amount* has the meaning set forth in paragraph (d)(1) of this section.

(4) *Disqualified period.* The term *disqualified period* has the meaning set forth in paragraph (c)(3)(iii) of this section.

(5) *Extraordinary disposition.* The term *extraordinary disposition* has the meaning set forth in paragraph (c)(3)(ii) of this section.

(6) *Extraordinary disposition account.* The term *extraordinary disposition amount* has the meaning set forth in paragraph (c)(3)(i) of this section.

(7) *Extraordinary disposition amount.* The term *extraordinary disposition amount* has the meaning set forth in paragraph (c)(1) of this section.

(8) *Extraordinary disposition E&P.* The term *extraordinary E&P* has the meaning set forth in paragraph (c)(3)(i)(C) of this section.

(9) *Extraordinary disposition ownership percentage.* The term extraordinary disposition ownership percentage has the meaning set forth in paragraph (c)(3)(i)(B) of this section.

(10) *Extraordinary reduction.* The term *extraordinary reduction* has the meaning set forth in paragraph (e)(2)(i)(A) of this section.

(11) *Extraordinary reduction amount.* The term *extraordinary reduction amount* has the meaning set forth in paragraph (e)(1) of this section.

(12) *Ineligible amount.* The term *ineligible amount* has the meaning set forth in paragraph (b)(2) of this section.

(13) *Lower-tier CFC.* The term *lower-tier CFC* means a CFC whose stock is owned (within the meaning of section 958(a)(2)), in whole or in part, by another CFC.

(14) *Non-extraordinary disposition E&P.* The term *non-extraordinary disposition E&P* has the meaning set forth in paragraph (c)(2)(ii) of this section.

(15) *Pre-reduction pro rata share.* The term *pre-reduction pro rata share* has the meaning set forth in paragraph (e)(2)(ii) of this section.

(16) *Prior extraordinary disposition amount.* The term *prior extraordinary disposition amount* has the meaning set forth in paragraph (c)(3)(i)(D) of this section.

(17) *Prior extraordinary reduction amount.* The term *prior extraordinary reduction amount* has the meaning set forth in paragraph (e)(2)(ii)(C) of this section.

(18) *Qualified portion.* The term *qualified portion* has the meaning set forth in paragraph (c)(3)(i)(D)(*2*)(*i*) of this section.

(19) *Related party.* The term *related party* means, with respect to a person, another person bearing a relationship described in section 267(b) or 707(b) to the person, in which case such persons are *related.*

(20) *Section 245A deduction.* The term *section 245A deduction* means, with respect to a dividend received by a section 245A shareholder from an SFC, the amount of the deduction allowed to the section 245A shareholder by reason of the dividend.

(21) *Section 245A shareholder.* The term *section 245A shareholder* means a domestic corporation that is a United States shareholder with respect to an SFC and that owns directly or indirectly stock of the SFC.

(22) *Specified 10-percent owned foreign corporation (SFC).* The term *specified 10-percent owned foreign corporation* (or *SFC*) has the meaning provided in section 245A(b)(1).

(23) *Specified entity.* The term *specified entity* has the meaning set forth in paragraph (g)(3)(iii) of this section.

(24) *Specified property.* The term *specified property* has the meaning set forth in paragraph (c)(3)(iv) of this section.

(25) *Tiered extraordinary disposition amount.* The term *tiered extraordinary disposition amount* has the meaning set forth in paragraph (d)(2)(i) of this section.

(26) *Tiered extraordinary reduction amount.* The term *tiered extraordinary reduction amount* has the meaning set forth in paragraph (f)(2) of this section.

(27) *United States shareholder.* The term *United States shareholder* has the meaning provided in section 951(b).

(28) *Upper-tier CFC.* The term *upper-tier CFC* means a CFC that owns (within the meaning of section 958(a)(2)) stock in another CFC.

(29) *U.S. tax resident.* The term *U.S. tax resident* means a United States person described in section 7701(a)(30)(A) or (C).

(j) *Examples.* The application of this section is illustrated by the examples in this paragraph (j).

(1) *Facts.* Except as otherwise stated, the facts described in this paragraph (j)(1) are assumed for purposes of the examples.

(i) US1 and US2 are domestic corporations, each with a calendar taxable year, and are not related parties with respect to each other.

(ii) CFC1, CFC2, and CFC3 are foreign corporations that are SFCs and CFCs.

(iii) Each entity uses the U.S. dollar as its functional currency.

(iv) Year 2 begins on or after January 1, 2018 and has 365 days.

(v) Absent application of this section, dividends received by US1 and US2 from a CFC meet the requirements to qualify for the section 245A deduction, and dividends received by one CFC from another CFC qualify for the exception to foreign personal holding company income under section 954(c)(6).

(vi) The de minimis rules in paragraphs (c)(3)(ii)(E) and (e)(3)(ii) of this section do not apply.

(vii) Section 1059 is not relevant to the tax results described in the examples in this paragraph (j).

(2) *Example 1. Extraordinary disposition*—(i) *Facts.* US1 and US2 own 60% and 40%, respectively, of the single class of stock of CFC1. CFC1 owns all of the single class of stock of CFC2. CFC1 and CFC2 use the taxable year ending November 30 as their taxable year. On November 1, 2018, CFC1 sells specified property to CFC2 in exchange for $200x of cash (the ''Property Transfer''). The Property Transfer is outside of CFC1's ordinary course of activities. The transferred property has a basis of $100x in the hands of CFC1. CFC1 recognizes $100x of gain as a result of the Property Transfer ($200x − $100x). On December 1, 2018, CFC1 distributes $80x pro rata to US1 ($48x) and US2 ($32x), all of which is a dividend within the meaning of section 316 and treated as a distribution out of earnings described in section 959(c)(3). No other distributions are made by CFC1 to either US1 or US2 in CFC1's taxable year ending November 30, 2019. For its taxable year ending on November 30, 2019, CFC1 has $110x of earnings and profits described in section 959(c)(3), without regard to any distributions during the taxable year.

(ii) *Analysis*—(A) *Identification of extraordinary disposition.* Because CFC1 is a CFC and uses the taxable year ending on November 30, under paragraph (c)(3)(iii) of this section, it has a disqualified period beginning on January 1, 2018, and ending on November 30, 2018. In addition, under paragraph (c)(3)(ii) of this section, the Property Transfer is an extraordinary disposition because it: Is a disposition of specified property by CFC1 on a date on

which it was a CFC and during CFC1's disqualified period; is to CFC2, a related party with respect to CFC1; occurs outside of the ordinary course of CFC1's activities; and, is not subject to the de minimis rule in paragraph (c)(3)(ii)(E) of this section.

(B) *Determination of section 245A shareholders and their extraordinary disposition accounts.* Because CFC1 undertook an extraordinary disposition, under paragraph (c)(3)(i) of this section, a portion of CFC1's earnings and profits are extraordinary disposition E&P and, therefore, give rise to an extraordinary disposition account with respect to each of CFC1's section 245A shareholders. Under paragraph (i)(21) of this section, US1 and US2 are both section 245A shareholders with respect to CFC1. The amount of the extraordinary disposition account with respect to US1 is $60x, which is equal to the product of the extraordinary disposition E&P (the amount of the net gain recognized by CFC1 as a result of the Property Transfer ($100x)) and the extraordinary disposition ownership percentage (the percentage of the stock of CFC1 owned directly or indirectly by US1 on January 1, 2018 (60%)), reduced by the prior extraordinary disposition amount ($0). *See* paragraph (c)(3)(i) of this section. Similarly, the amount of the extraordinary disposition account with respect to US2 is $40x, which is equal to the product of the extraordinary disposition E&P (the net gain recognized by CFC1 as a result of the Property Transfer ($100x)) and extraordinary disposition ownership percentage (the percentage of the stock of CFC1 owned directly or indirectly by US2 on January 1, 2018 (40%)), reduced by the prior extraordinary disposition amount ($0).

(C) *Determination of extraordinary disposition amount with respect to US1.* The dividend of $48x paid to US1 on December 1, 2018, is an extraordinary disposition amount to the extent the dividend is paid out of the extraordinary disposition account with respect to US1. *See* paragraph (c)(1) of this section. Under paragraph (c)(2)(i) of this section, the dividend is first considered paid out of non-extraordinary disposition E&P with respect to US1, to the extent thereof. With respect to US1, $6x of CFC1's earnings and profits is non-extraordinary disposition E&P, calculated as the excess of $66x (the product of $110x of earnings and profits described in section 959(c)(3), without regard to the $80x distribution, and 60%) over $60x (the balance of US1's extraordinary disposition account with respect to CFC1, immediately before the distribution). *See* paragraph (c)(2)(ii) of this section. Thus, $6x of the dividend is considered paid out of non-extraordinary disposition E&P with respect to US1. Under paragraph (c)(2)(i)(B) of this section, the remaining $42x of the dividend is next considered paid out of US1's extraordinary disposition account with respect to CFC1, to the extent thereof. Accordingly, $42x of the dividend is considered paid out of the extraordinary disposition account with respect to CFC1 and gives rise to $42x of an extraordinary disposition amount. As a result, US1's prior extraordinary disposition amount is increased by $42x under paragraph (c)(3)(i)(D) of this section, and US1's extraordinary disposition account is reduced to $18x ($60x − $42x) under paragraph (c)(3)(i)(A) of this section.

(D) *Determination of extraordinary disposition amount with respect to US2.* The dividend of $32x paid to US2, on December 1, 2018, is an extraordinary disposition amount to the extent the dividend is paid out of extraordinary disposition E&P with respect to US2. *See* paragraph (c)(1) of this section. Under paragraph (c)(2)(i) of this section, the dividend is first considered paid out of non-extraordinary disposition E&P with respect to US2, to the extent thereof. With respect to US2, $4x of CFC1's earnings and profits is non-extraordinary disposition E&P, calculated as the excess of $44x (the product of $110x of earnings and profits described in section 959(c)(3), without regard to the $80x distribution, and 40%) over $40x (the balance of US2's extraordinary disposition account with respect to CFC1, immediately before the distribution). *See* paragraph (c)(2)(ii) of this section. Thus, $4x of the dividend is considered paid out of non-extraordinary disposition E&P with respect to US2. Under paragraph (c)(2)(i)(B) of this section, the remaining $28x of the dividend is next considered paid out of US2's extraordinary disposition account with respect to CFC1, to the extent thereof. Accordingly, $28x of the dividend is considered paid out of the extraordinary disposition account with respect to US2 and gives rise to $28x of an extraordinary disposition amount. As a result, US2's prior extraordinary disposition amount is increased by $28x under paragraph (c)(3)(i)(D) of this section, and US2's extraordinary disposition account is reduced to $12x ($40x − $28x) under paragraph (c)(3)(i)(A) of this section.

(E) *Determination of ineligible amount with respect to US1 and US2.* Under paragraph (b)(2) of this section, with respect to US1 and the dividend of $48x, the ineligible amount is $21x, the sum of 50 percent of the extraordinary disposition amount ($42x) and extraordinary reduction amount ($0). Therefore, with respect to the dividend received by US1 of $48x, $27x is eligible for a section 245A deduction. With respect to US2 and the dividend of $32x, the ineligible amount is $14x, the sum of 50% of the extraordinary disposition amount ($28x) and extraordinary reduction amount ($0). Therefore, with respect to the dividend received by US2 of $32x, $18x is eligible for a section 245A deduction.

(3) *Example 2. Application of section 954(c)(6) exception with extraordinary disposition account*—(i) *Facts.* The facts are the same as in paragraph (j)(2)(i) of this section (the facts in *Example 1*) except that the Property Transfer is a sale by CFC2 to CFC1 instead of a sale by CFC1 to CFC2, the $80x distribution is by CFC2 to CFC1 in a separate transaction that is unrelated to the Property Transfer, and the description of the earnings and profits of CFC1 is applied to CFC2. Additionally, absent the application of this section, section 954(c)(6) would apply to the distribution by CFC2 to CFC1. Under section 951(a)(2) and § 1.951–1(b) and (e), US1's pro rata share of any subpart F income of CFC1 is 60% and US2's pro rata share of any subpart F income of CFC2 is 40%.

(ii) *Analysis*—(A) *Identification of extraordinary disposition.* The Property Transfer is an extraordinary disposition under the same analysis as provided in paragraph (j)(2)(ii)(A) of this section (the analysis in *Example 1*).

(B) *Determination of section 245A shareholders and their extraordinary disposition accounts.* Both US1 and US2 are section 245A shareholders with respect to CFC2, US1 has an extraordinary disposition account of $60x with respect to CFC2, and US2 has an extraordinary disposition account of $40x with respect to CFC2 under the same analysis as provided in paragraph (j)(2)(ii)(B) of this section (the analysis in *Example 1*).

(C) *Determination of tiered extraordinary disposition amount*—(*1*) *In general.* US1 and US2 each have a tiered extraordinary disposition amount with respect to the $80x dividend paid by CFC2 to CFC1 to the extent that US1 and US2 would have an extraordinary disposition amount if each had received as a dividend its pro rata share of the dividend from CFC2. *See* paragraph (d)(2)(i) of this section. Under paragraph (d)(2)(ii) of this section, US1's pro rata share of the dividend is $48x (60% × $80x), that is, the increase to US1's pro rata share of the subpart F income if the dividend were included in CFC1's foreign personal holding company income, without regard to section 952(c) and the allocation of expenses. Similarly, US2's pro rata share of the dividend is $32x (40% × $80x).

(*2*) *Determination of tiered extraordinary disposition amount with respect to US1.* The extraordinary disposition amount with respect to US1 is $42x, under the same analysis provided in paragraph (j)(2)(ii)(C) of this section (the analysis in *Example 1*). Accordingly, the tiered extraordinary disposition amount with respect to US1 is $42x.

(*3*) *Determination of extraordinary disposition amount with respect to US2.* The extraordinary disposition amount with respect to US2 is $28x, under the same analysis provided in paragraph (j)(2)(ii)(D) of this section (the analysis in *Example 1*). Accordingly, the tiered extraordinary disposition amount with respect to US2 is $28x.

(D) *Limitation of section 954(c)(6) exception.* The sum of US1 and US2's tiered extraordinary disposition amounts is $70x ($42x + $28x). The portion of the stock of CFC1 (by value) owned (within the meaning of section 958(a)) by U.S. tax residents on the last day of CFC1's taxable year is 100%. Under paragraph (d)(1) of this section, the disqualified amount with respect to the dividend is $70x ($70x/100%). Accordingly, the portion of the $80x dividend from CFC2 to CFC1 that is eligible for the exception to foreign personal holding company income under section 954(c)(6) is $45x, equal to the sum of $10x (the portion of the $80x dividend that exceeds the $70x disqualified amount) and $35x (50 percent of $70x, the portion of the dividend that does not exceed the disqualified amount). Under section 951(a)(2) and § 1.951–1(b) and (e), US1 includes $21x (60% × $35x) and US2

includes $14x (40% × $35x) in income under section 951(a).

(E) *Changes in extraordinary disposition account of US1.* Under paragraph (c)(3)(i)(D)(*1*) of this section, US1's prior extraordinary disposition amount with respect to CFC2 is increased by $42x, or 200% of $21x, the amount US1 included in income under section 951(a) with respect to CFC1. Under paragraph (c)(3)(i)(D)(*1*)(*iii*) of this section, US1 has no qualified portion because all of the owners of CFC2 are section 245A shareholders with a tiered extraordinary disposition amount with respect to CFC2. As a result, US1's extraordinary disposition account is reduced to $18x ($60x − $42x) under paragraph (c)(3)(i)(A) of this section.

(F) *Changes in extraordinary disposition account of US2.* Under paragraph (c)(3)(i)(D)(*1*) of this section, US2's prior extraordinary disposition amount with respect to CFC2 is increased by $28x, or 200% of $14x, the amount US2 included in income under section 951(a) with respect to CFC1. Under paragraph (c)(3)(i)(D)(*1*)(*iii*) of this section, US2 has no qualified portion because all of the owners of CFC2 are section 245A shareholders with a tiered extraordinary disposition amount with respect to CFC2. As a result, US2's extraordinary disposition account is reduced to $12x ($40x − $28x) under paragraph (c)(3)(i)(A) of this section.

(4) *Example 3. Extraordinary reduction*—(i) *Facts.* At the beginning of CFC1's taxable year ending on December 31, Year 2, US1 owns all of the single class of stock of CFC1, and no person transferred any CFC1 stock directly or indirectly in Year 1 pursuant to a plan to reduce the percentage of stock (by value) of CFC1 owned by US1. Also as of the beginning of Year 2, CFC1 has no earnings and profits described in section 959(c)(1) or (2), and US1 does not have an extraordinary disposition account with respect to CFC1. As of the end of Year 2, CFC1 has $160x of tested income and no other income. CFC1 has $160x of earnings and profits for Year 2. On October 19, Year 2, US1 sells all of its CFC1 stock to US2 for $100x in a transaction (the ''Stock Sale'') in which US1 recognizes $90x of gain. Under section 1248(a), the entire $90x of gain is included in US1's gross income as a dividend and, pursuant to section 1248(j), the $90x is treated as a dividend for purposes of applying section 245A. At the end of Year 2, under section 951A, US2 takes into account $70x of tested income, calculated as $160x (100% of the $160x of tested income) less $90x, the amount described in section 951(a)(2)(B). The amount described in section 951(a)(2)(B) is the lesser of $90x, the amount of dividends received by US1 with respect to the transferred stock, and $128x, the amount of tested income attributable to the transferred stock ($160x) multiplied by 292/365 (the ratio of the number of days in Year 2 that US2 did not own the transferred stock to the total number of days in Year 2). US1 does not make an election pursuant to paragraph (e)(3)(i) of this section.

(ii) *Analysis*—(A) *Determination of controlling section 245A shareholder and extraordinary reduction of ownership.* Under paragraph (i)(2) of this section, US1 is a controlling section 245A shareholder with respect to CFC1. In addition, the Stock Sale results in an extraordinary reduction with respect to US1's ownership of CFC1. *See* paragraph (e)(2)(i) of this section. The extraordinary reduction occurs because during Year 2, US1 transferred 100% of the CFC1 stock it owned at the beginning of the year and such amount is more than 5% of the total value of the stock of CFC1 at the beginning of Year 2; it also occurs because on the last day of the year the percentage of stock (by value) of CFC1 that US1 owns directly or indirectly (0%) (the end of year percentage) is less than 90% of the stock (by value) of CFC1 that US1 owns directly or indirectly on the day of the taxable year when it owned the highest percentage of CFC1 stock by value (100%) (the initial percentage), no transactions occurred in the preceding year pursuant to a plan to reduce the percentage of CFC1 stock owned by US1, and the difference between the initial percentage and the end of year percentage (100 percentage points) is at least 5 percentage points.

(B) *Determination of extraordinary reduction amount.* Under paragraph (e)(1) of this section, the entire $90x dividend to US1 is an extraordinary reduction amount with respect to US1 because the dividend is at least equal to US1's pre-reduction pro rata share of CFC1's Year 2 tested income described in paragraph (e)(2)(ii)(A) of this section ($160x), reduced by the amount of tested income taken into account by US2, a U.S. tax resident, under paragraph (e)(2)(ii)(B) of this section ($70x).

(C) *Determination of ineligible amount.* Under paragraph (b)(2) of this section, with respect to US1 and the dividend of $90x, the ineligible amount is $90x, the sum of 50% of the extraordinary disposition amount ($0) and extraordinary reduction amount ($90x). Therefore, with respect to the dividend received of $90x, no portion is eligible for the dividends received deduction allowed under section 245A(a).

(iii) *Alternative facts—election to close CFC's taxable year.* The facts are the same as in paragraph (j)(4)(i) of this section (the facts of this *Example 3*), except that, pursuant to paragraph (e)(3)(i) of this section, US1 elects to close CFC1's Year 2 taxable year for all purposes of the Code as of the end of October 19, Year 2, the date on which the Stock Sale occurs; in addition, US1 and US2 enter into a written, binding agreement that US1 will elect to close CFC1's Year 2 taxable year. Accordingly, under section 951A(a), US1 takes into account 100% of CFC1's tested income for the taxable year beginning January 1, Year 2, and ending October 19, Year 2, and US2 takes into account 100% of CFC1's tested income for the taxable year beginning October 20, Year 2, and ending December 31, Year 2. Under paragraph (e)(3)(i)(A) of this section, no amount is considered an extraordinary reduction amount with respect to US1.

(5) *Example 4. Extraordinary reduction; decrease in section 245A shareholder's pre-reduction pro rata share for amounts taken into account by U.S. tax residents*—(i) *Facts.* At the beginning of CFC1's taxable year ending December 31, Year 2, US1 owns all of the single class of stock of CFC1, and no person transferred any CFC1 stock directly or indirectly in Year 1 pursuant to a plan to reduce the percentage of stock (by value) of CFC1 owned by US1. CFC1 generates $120x of subpart F income during its taxable year ending on December 31, Year 2. On October 1, Year 2, CFC1 distributes a $120x dividend to US1. On October 19, Year 2, US1 sells 100% of its stock of CFC1 to PRS, a domestic partnership, in a transaction in which no gain or loss is realized (the ''Stock Sale''). A, an individual who is a citizen of the United States, and B, a foreign individual who is not a U.S. tax resident, each own 50% of the capital and profits interests of PRS. On December 1, Year 2, US2 and FP, a foreign corporation, contribute property to CFC1; in exchange, each of US2 and FP receives 25% of the stock of CFC1. PRS owns the remaining 50% of the stock of CFC1. US1 does not make an election pursuant to paragraph (e)(3)(i) of this section.

(ii) *Analysis*—(A) *Determination of controlling section 245A shareholder and extraordinary reduction.* Under paragraph (i)(2) of this section, US1 is a controlling section 245A shareholder with respect to CFC1. In addition, the Stock Sale results in an extraordinary reduction with respect to US1's ownership of CFC1. *See* paragraph (e)(2)(i) of this section. The extraordinary reduction occurs because during Year 2, US1 transferred 100% of the CFC1 stock it owns on the first day of Year 2, and that amount is more than 5% of the total value of the stock of CFC1 at the beginning of Year 2; it also occurs because on the last day of Year 2 the percentage of stock (by value) of CFC1 that US1 owns directly or indirectly (0%) (the end of year percentage) is less than 90% of the highest percentage of stock (by value) of CFC1 that US1 owns directly or indirectly on the day of the taxable year when it owned the highest percentage of CFC1 stock by value (100%) (the initial percentage), no transactions occurred in the preceding year pursuant to a plan to reduce the percentage of CFC1 stock owned by US1, and the difference between the initial percentage and the end of year percentage (100 percentage points) is at least 5 percentage points.

(B) *Determination of pre-reduction pro rata share.* Before the extraordinary reduction, US1 owned 100% of the stock of CFC1. Thus, under paragraph (e)(2)(ii)(A) of this section, the tentative amount of US1's pre-reduction pro rata share of CFC1's subpart F income is $120x. A and US2 are U.S. tax residents pursuant to paragraph (i)(29) of this section because they are United States persons described in section 7701(a)(30)(A) or (C). Thus, US1's pre-reduction pro rata share amount is subject to the reduction described in paragraph (e)(2)(ii)(B) of this section because U.S. tax residents directly or indirectly acquire stock of CFC1 from US1 or CFC1 during the taxable year in which the extraordinary reduction occurs. With respect to US1's pre-reduction pro rata share of CFC1's subpart F income, the reduction equals the amount of subpart F income of CFC1 taken into account under section 951(a) by these U.S. tax residents.

(C) *Determination of decrease in pre-reduction pro rata share for amounts taken*

into account by U.S. tax resident. On December 31, Year 2, both PRS and US2 will be United States shareholders with respect to CFC1 and will include in gross income their pro rata share of CFC1's subpart F income under section 951(a). With respect to US2, this amount will be $30x, which is equal to 25% of CFC1's subpart F income for the taxable year. With respect to PRS, its pro rata share of $60x under section 951(a)(2)(A) (50% of $120x) will be reduced under section 951(a)(2)(B) by $48x. The section 951(a)(2)(B) reduction is equal to the lesser of the $120x dividend paid with respect to those shares to US1 or $48x (50% × $120x × 292/365, the period during the taxable year that PRS did not own CFC1 stock). Thus, PRS includes $12x in gross income pursuant to section 951(a). Of this amount, $6x is allocated to A (as a 50% partner of PRS) and, therefore, treated as taken into account by A under paragraphs (e)(2)(ii)(B) and (g)(6) of this section. Thus, A and US2 take into account a total of $36x of CFC1's subpart F income under section 951(a). This amount reduces US1's pre-reduction pro rata share of CFC1's subpart F income to $84x ($120x − $36x) under paragraph (e)(2)(ii)(B) of this section. CFC1 did not generate tested income during the taxable year and, therefore, no amount is taken into account under section 951A with respect to CFC1, and US1 has no pre-reduction pro rata share with respect to tested income of CFC1.

(D) *Determination of extraordinary reduction amount.* Under paragraph (e)(1) of this section, the extraordinary reduction amount equals $84x, which is the lesser of the amount of the dividend received by US1 from CFC1 during Year 2 ($120x) and the sum of US1's pre-reduction pro rata share of CFC1's subpart F income ($84x) and tested income ($0).

(E) *Determination of ineligible amount.* Under paragraph (b)(2) of this section, with respect to US1 and the dividend of $120x, the ineligible amount is $84x, the sum of 50% of the extraordinary disposition amount ($0) and extraordinary reduction amount ($84x). Therefore, with respect to the dividend received by US1 from CFC1, $36x ($120x − $84x) is eligible for a section 245A deduction.

(6) *Example 5. Controlling section 245A shareholder*—(i) *Facts.* US1 and US2 own 30% and 25% of the stock of CFC1, respectively. FP, a foreign corporation that is not a CFC, owns all of the stock of US1 and US2. FP owns the remaining 45% of the stock of CFC1. On September 30, Year 2, US1 sells all of its stock of CFC1 to US3, a domestic corporation that is not a related party with respect to FP, US1, or US2. No person transferred any stock of CFC1 directly or indirectly in Year 1 pursuant to a plan to reduce the percentage of stock (by value) of CFC1 owned by US1.

(ii) *Analysis.* Under paragraph (i)(21) of this section, US1 is a section 245A shareholder with respect to CFC1, an SFC. Because US1 owns, together with US2 and FP (related persons with respect to US1), more than 50% of the stock of CFC1, US1 is a controlling section 245A shareholder of CFC1. The sale of US1's CFC1 stock results in an extraordinary reduction occurring with respect to US1's ownership of CFC1. The extraordinary reduction occurs because during Year 2, US1 transferred 100% of the stock of CFC1 that it owned at the beginning of the year and that amount is more than 5% of the total value of the stock of CFC1 at the beginning of Year 2. The extraordinary disposition also occurs because on the last day of the year the percentage of stock (by value) of CFC1 that US1 directly or indirectly owns (0%) (the end of year percentage) is less than 90% of the stock (by value) of CFC1 that US1 directly or indirectly owned on the day of the taxable year when it owned the highest percentage of CFC1 stock by value (30%) (the initial percentage), no transactions occurred in the preceding year pursuant to a plan to reduce the percentage of CFC1 stock owned by US1, and the difference between the initial percentage and end of year percentage (30 percentage points) is at least 5 percentage points.

(7) *Example 6. Limitation of section 954(c)(6) exception with respect to an extraordinary reduction*—(i) *Facts.* At the beginning of CFC1 and CFC2's taxable year ending on December 31, Year 2, US1 and A, an individual who is a citizen of the United States, own 80% and 20% of the single class of stock of CFC1, respectively. CFC1 owns 100% of the stock of CFC2. Both US1 and A are United States shareholders with respect to CFC1 and CFC2, and US1 and A are not related parties with respect to each other. No person transferred CFC2 stock directly or indirectly in Year 2 pursuant to a plan to reduce the percentage of stock (by value) of CFC2 owned by US1, and US1 does not have an extraordinary disposition account with respect to CFC2. At the end of Year 2, and without regard to any distributions during Year 2, CFC2 had $150x of tested income and no other income, and CFC1 had no income or expenses. On June 30, Year 2, CFC2 distributed $150x as a dividend to CFC1, which would qualify for the exception from foreign personal holding company income under section 954(c)(6) but for the application of this section. On August 7, Year 2, CFC1 sells all of its CFC2 stock to US2 for $100x in a transaction (the ''Stock Sale'') in which CFC1 realizes no gain or loss. At the end of Year 2, under section 951A, US2 takes into account $60x of tested income, calculated as $150x (100% of the $150x of tested income) less $90x, the amount described in section 951(a)(2)(B). The amount described in section 951(a)(2)(B) is the lesser of $150x, the amount of dividends received by CFC1 during Year 2 with respect to the transferred stock, and $90x, the amount of tested income attributable to the transferred stock ($150x) multiplied by 219/365 (the ratio of the number of days in Year 2 that US2 did not own the transferred stock to the total number of days in Year 2). US1 does not make an election pursuant to paragraph (e)(3)(i) of this section.

(ii) *Analysis*—(A) *Determination of controlling section 245A shareholder and extraordinary reduction of ownership.* Under paragraph (i)(2) of this section, US1 is a controlling section 245A shareholder with respect to CFC2, but A is not. In addition, the Stock Sale results in an extraordinary reduction with respect to US1's ownership of CFC2. *See* paragraph (e)(2)(i) of this section. The extraordinary reduction occurs because during Year 2, US1 transferred indirectly 100% of the CFC2 stock it owned at the beginning of the year and such amount is more than 5% of the total value of the stock of CFC2 at the beginning of Year 2. The extraordinary disposition also occurs because on the last day of the year the percentage of stock (by value) of CFC2 that US1 owns directly or indirectly (0%) (the end of year percentage) is less than 90% of the stock (by value) of CFC2 that US1 owns directly or indirectly on the day of the taxable year when it owned the highest percentage of CFC2 stock by value (80%) (the initial percentage), no transactions occurred in the preceding year pursuant to a plan to reduce the percentage of CFC2 stock owned by US1, and the difference between the initial percentage and the end of year percentage (80 percentage points) is at least 5 percentage points. Because there is an extraordinary reduction with respect to CFC2 in Year 2 and CFC1 received a dividend from CFC2 in Year 2, under paragraph (f)(1) of this section, it is necessary to determine the limitation on the amount of the dividend eligible for the exception under section 954(c)(6).

(B) *Determination of tiered extraordinary reduction amount.* The limitation on the amount of the dividend eligible for the exception under section 954(c)(6) is based on the tiered extraordinary reduction amount. The sum of the amount of subpart F income and tested income of CFC2 for Year 2 is $150x, and immediately before the extraordinary reduction, CFC1 held 100% of the stock of CFC2. Additionally, US2 is a U.S. tax resident as defined in paragraph (i)(29) of this section because it is a United States person described in section 7701(a)(30)(A) or (C), and US2 has a pro rata share of $60x of tested income under section 951A with respect to CFC2. Accordingly, under paragraph (f)(2) of this section, the tiered extraordinary reduction amount is $90x (($150x × 100%) − $60x).

(C) *Limitation of section 954(c)(6) exception.* Under paragraph (f)(1) of this section, the portion of the $150x dividend from CFC2 to CFC1 that is eligible for the exception to foreign personal holding company income under section 954(c)(6) is $60x ($150x − $90x). To the extent that the $90x that does not qualify for the exception gives rise to additional subpart F income to CFC1, both US1 and A will take into account their pro rata share of that subpart F income under section 951(a)(2) and § 1.951–1(b) and (e).

(8) *Example 7. Application of anti-abuse rule to a prepayment of a royalty*—(i) *Facts.* US1 owns 100% of the single class of stock of CFC1 and CFC2. CFC1 has a November 30 taxable year, and CFC2 has a calendar year taxable year. There is a license agreement between CFC1 and CFC2 pursuant to which CFC2 is obligated to pay annual royalties to CFC1 for the use of intangible property. As of November 1, 2018, the remaining term of the agreement is 10 years. On November 1, 2018, CFC1 receives from CFC2, and accrues into income, $100x of pre-paid royalties that are for the use of the intangible property for the subsequent 10 years. The form of the

arrangement as a license, including the prepayment of the royalty, is respected for U.S. tax purposes; therefore CFC1's receipt of the $100x royalty prepayment does not constitute a disposition of the intangible property and is excluded from CFC1's subpart F income pursuant to section 954(c)(6). A principal purpose of CFC2 prepaying the royalty is for CFC1 to generate earnings and profits during the disqualified period that would not be subject to current U.S. tax yet may be eligible for the section 245A deduction and could, for example, be used to reduce the amount of gain recognized on a disposition of the stock of CFC1 that would be subject to U.S. tax by increasing the portion of such gain treated as a dividend.

(ii) *Analysis.* Because the royalty prepayment was carried out with a principal purpose of avoiding the purposes of this section, appropriate adjustments are required to be made under the anti-abuse rule in paragraph (h) of this section. CFC1 is a CFC that has a November 30 taxable year, so under paragraph (c)(3)(iii) of this section, CFC1 has a disqualified period beginning on January 1, 2018, and ending on November 30, 2018. In addition, even though the intangible property licensed by CFC1 to CFC2 is specified property, CFC2's prepayment of the royalty would not be treated as a disposition of the specified property by CFC1 and, therefore, would not constitute an extraordinary disposition (and thus would not give rise to extraordinary disposition E&P), absent the application of the anti-abuse rule of paragraph (h) of this section. Pursuant to paragraph (h) of this section, the earnings and profits of CFC1 generated as a result of the $100x of prepaid royalty are treated as extraordinary disposition E&P for purposes of this section.

(9) *Example 8. Application of anti-abuse rule to restructuring transaction*—(i) *Facts.* FP, a foreign corporation with no United States shareholders, owns 100% of the single class of stock of US1. US1 owns 100% of the single class of stock of CFC1 that, in turn, owns 100% of the single class of stock of CFC2. CFC2 has $100x of extraordinary disposition E&P, and US1 has a $100x extraordinary disposition account with respect to CFC2. In Year 1, FP transfers property to CFC1 in exchange for newly issued stock of CFC1. After the transfer, FP and US1 own, respectively, 90% and 10% of the single class of stock of CFC1. In Year 3, CFC2 pays a $100x dividend to CFC1, and the dividend gives rise to a tiered extraordinary disposition amount with respect to US1 of $10x. US1 includes $10x in gross income under section 951(a) with respect to the tiered extraordinary disposition amount. The $10x tiered extraordinary disposition amount reduces US1's extraordinary disposition account from $100x to $90x. In Year 5, CFC1 redeems all of the stock of CFC1 held by US1 in exchange for $100x of cash. Under sections 302(d) and 301(c)(1), the redemption results in a $100x dividend to US1. Under section 959(a), $10x of the $100x dividend is not included in US1's gross income and, but for the application of paragraph (h) of this section, US1 would claim a section 245A deduction of $90x with respect to $90x of the dividend. The transfer of property from FP to CFC1 in exchange for stock of CFC1, the $100x dividend from CFC2 to CFC1, and CFC1's redemption of all of its stock held by US1 (together, the ''Transaction'') were undertaken with the principal purpose of avoiding the application of this section to distributions from CFC2. As a result of the redemption, CFC2 is wholly owned by FP through CFC1, and CFC2's earnings and profits can be distributed without incurring U.S. tax irrespective of the availability of the section 245A deduction or the exception under section 954(c)(6).

(ii) *Analysis.* Because the Transaction was carried out with a principal purpose of avoiding the purposes of this section, appropriate adjustments are required to be made under the anti-abuse rule in paragraph (h) of this section. Pursuant to paragraph (h) of this section, all $90x of the dividend included in US1's income in Year 5 is treated as an extraordinary disposition amount. Therefore, $45x of the dividend is treated as an ineligible amount for which US1 cannot claim a section 245A deduction pursuant to paragraph (b)(2)(i) of this section (that is, 50% of the extraordinary disposition amount) and, accordingly, US1 is only allowed a section 245A deduction of $45x ($90x dividend received, less the $45x ineligible amount) with respect to the $90x dividend from CFC1 that it included in income. In addition, US1's extraordinary disposition account with respect to CFC2 is reduced from $90x to zero pursuant to paragraph (c)(3)(i)(A) and (D) of this section.

(10) *Example 9. Application of anti-abuse rule to a related-party loan*—(i) *Facts.* US1 owns 100% of the single class of stock of CFC1 and CFC2. US1 does not own stock of any other foreign corporation. US1 intends to repatriate $100x cash from CFC1 at the end of taxable year Y1. At the end of taxable year Y1, CFC1 has $100x of earnings and profits described in section 959(c)(3) (all of which is extraordinary disposition E&P) and $100x of cash, and US1 has an extraordinary disposition account balance with respect to CFC1 equal to $100x. In addition, at the end of taxable year Y1, CFC2 has $100x of earnings and profits described in section 959(c)(3). US1 does not have an extraordinary disposition account with respect to CFC2. Anticipating the application of this section to a distribution from CFC1, US1 instead causes CFC1 to loan $100x of cash to CFC2 during taxable year Y1 in exchange for a $100x note. The form of the transaction is respected as a loan for U.S. tax purposes. At the end of taxable Y1, CFC2 distributes $100x of cash to US1. The loan and distribution are part of a plan a principal purpose of which is to repatriate CFC1's $100x cash without triggering the application of this section.

(ii) *Analysis.* Because the loan from CFC1 to CFC and the subsequent distribution of cash were carried out with a principal purpose of avoiding the purposes of this section, appropriate adjustments are required to be made under the anti-abuse rule in paragraph (h) of this section. Pursuant to that rule, the distribution of $100x of cash is treated as a distribution out of US1's extraordinary disposition account with respect to CFC1. Accordingly, the $100x distribution is taxed as a dividend, and only $50x of the dividend received by US1 is eligible for the section 245A deduction pursuant to paragraph (b)(1) of this section. As a result of the distribution, the balance of US1's extraordinary disposition account with respect to CFC1 is reduced by $100x to zero pursuant to paragraph (c)(3)(i)(A) of this section.

(k) *Applicability date*—(1) *In general.* This section applies to taxable periods of a foreign corporation ending on or after June 14, 2019, and to taxable periods of section 245A shareholders in which or with which such taxable periods end. For taxable periods described in the previous sentence, this section (and not § 1.245A–5T) applies regardless of whether, but for this paragraph (k)(1), § 1.245A–5T would apply. See § 1.245A–5T as contained in 26 CFR part 1 edition revised as of April 1, 2020 for distributions occurring after December 31, 2017, as to which this section does not apply.

(2) *Early application of this section.* Notwithstanding paragraph (k)(1) of this section, a taxpayer may choose to apply this section to taxable periods of a foreign corporation ending before June 14, 2019, and to taxable periods of section 245A shareholders in which or with which such taxable periods end, provided that the taxpayer and all persons bearing a relationship to the taxpayer described in section 267(b) or 707(b) apply this section in its entirety for all such taxable periods.

§ § 1.245A–1T through 1.245–4T and 1.245A–5T [Removed]

■ **Par. 3.** Sections 1.245A–1T through 1.245–4T and 1.245A–5T are removed.

■ **Par. 4.** Section 1.245A(e)–1 is amended by, for each paragraph listed in the following table, removing the language in the ''Remove'' column and adding in its place the language in the ''Add'' column.

Paragraph	Remove	Add
(b)(2)	1.245A–5T	1.245A–5
(b)(3) introductory text	1.245A–5T(g)(3)(ii)	1.245A–5(g)(3)(ii)
(c)(3)	1.245A–5T(g)(3)(ii)	1.245A–5(g)(3)(ii)

Paragraph	Remove	Add
(d)(5) introductory text	1.245A–5T(g)(3)(ii)	1.245A–5(g)(3)(ii)
(g)(1)(i)	1.245A–5T	1.245A–5
(g)(1)(iii)	1.245A–5T	1.245A–5
(g)(2)(i)	1.245A–5T	1.245A–5

■ **Par. 5.** Section 1.954(c)(6)–1 is added to read as follows:

§ 1.954(c)(6)–1 Certain cases in which section 954(c)(6) exception not available.

(a) *Cross-references to other rules.* For a non-exclusive list of rules that in certain cases limit the applicability of the exception to foreign personal holding company income under section 954(c)(6), see—

(1) Section 1.245A–5(d) (rules regarding the application of section 954(c)(6) to extraordinary disposition amounts);

(2) Section 1.245A–5(f) (rules regarding the application of section 954(c)(6) to tiered extraordinary reduction amounts);

(3) Section 1.245A(e)–1(c) (rules regarding tiered hybrid dividends);

(4) Section 1.367(b)–4(e)(4) (rules regarding income inclusion and gain recognition in certain exchanges following an inversion transaction);

(5) Section 964(e)(4)(A) (rules regarding certain gain from the sale or exchange of stock that is recharacterized as a dividend); and

(6) Section 1.7701(l)–4(e) (rules regarding recharacterization of certain transactions following an inversion transaction).

(b) *Applicability date.* This section applies as of August 27, 2020.

§ 1.954(c)(6)–1T [Removed]

■ **Par. 6.** Section 1.954(c)(6)–1T is removed.

■ **Par. 7.** Section 1.6038–2 is amended by adding paragraphs (f)(16) and (m)(2) to read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations.

* * * * *

(f) * * *

(16) *Amounts related to extraordinary dispositions and extraordinary reductions.* The corporation must report the information 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 if any of the following conditions are met during the corporation's annual accounting period—

(i) The corporation distributes or receives a dividend that gives rise to an ineligible amount (as defined in § 1.245A–5(i)(12)), a tiered extraordinary disposition amount (as defined in § 1.245A–5(i)(25)), or a tiered extraordinary reduction amount (as defined in § 1.245A–5(i)(26));

(ii) A section 245A shareholder with respect to the corporation has an extraordinary disposition account (as defined in § 1.245A–5(i)(6)); or

(iii) The corporation would have been deemed to have undertaken an extraordinary disposition (as defined in § 1.245A–5(i)(5)) but for the application of § 1.245A–5(c)(3)(ii)(C)(*2*).

* * * * *

(m) * * *

(2) *Special rule for paragraph (f)(16) of this section.* Paragraph (f)(16) of this section applies with respect to information for annual accounting periods to which § 1.245A–5 applies.

* * * * *

§ 1.6038–2T [Removed]

■ **Par. 8.** Section 1.6038–2T is removed.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: August 10, 2020.

David Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–18543 Filed 8–21–20; 4:15 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124737–19]

RIN 1545–BP57

Coordination of Extraordinary Disposition and Disqualified Basis Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under sections 245A and 951A of the Internal Revenue Code (the ''Code'') that coordinate the extraordinary disposition rule under section 245A of the Internal Revenue Code (the ''Code'') with the disqualified basis rule under section 951A of the Code. This document also contains proposed regulations under section 6038 of the Code regarding information reporting to facilitate administration of the proposed regulations. The proposed regulations affect corporations that are subject to the extraordinary disposition rule and the disqualified basis rule.

DATES: Written or electronic comments and requests for a public hearing must be received by October 26, 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–124737–19) 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 paper submissions to: CC:PA:LPD:PR (REG–124737–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Logan M. Kincheloe, (202) 317–6937; concerning submission of comments or requests for a hearing, Regina Johnson, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

This document contains proposed amendments to 26 CFR part 1 under sections 245A, 951A, and 6038 (the ''proposed regulations''). Any terms used but not defined in this preamble have the meanings given to them in the proposed regulations.

II. Sections 245A and 954(c)(6)

Section 245A was added to the Code by the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054, 2189 (2017) (the ''Act''), which was enacted on December 22, 2017. Section 245A generally allows a domestic corporation that is a United States shareholder (as defined in section 951(b)) a 100-percent dividends received deduction (a ''section 245A deduction'') for the foreign-source portion of a dividend received after December 31, 2017, from a specified 10-percent owned foreign corporation (an ''SFC''). Section 245A(g) provides the Secretary with authority to prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of section 245A.

Section 954(c)(6) was added to the Code by the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222, 120 Stat. 345 (2006). Section 954(c)(6) generally provides that, for certain taxable years, dividends received or accrued by a controlled foreign corporation (as defined in section 957) (a ''CFC'') from another CFC that is a related person generally are excluded from the foreign personal holding company income (as defined in section 954(c)) (''FPHCI'') of the distributee CFC. Section 954(c)(6)(A) provides the Secretary with the authority to prescribe regulations as may be necessary or appropriate to carry out section 954(c)(6), including regulations as may be necessary or appropriate to prevent the abuse of its purposes. Section 954(c)(6) currently applies to taxable years of foreign corporations beginning before January 1, 2021, and to taxable years of United States shareholders with or within which those taxable years of the foreign corporations end.

On June 18, 2019, the Department of the Treasury (''Treasury Department'') and the IRS published temporary regulations (TD 9865, 84 FR 28398) and cross-referenced proposed regulations (REG–106282–18, 84 FR 28426) (together the ''2019 section 245A regulations'') under sections 245A, 954, and 6038. The 2019 proposed regulations are finalized, and the temporary regulations are removed, in the Final Rules section of this issue of the **Federal Register** (the proposed regulations as finalized, the ''final regulations''). The final regulations include rules that limit the amount eligible for the section 245A deduction and the amount eligible for the section 954(c)(6) exception by 50 percent of the extraordinary disposition amount or tiered extraordinary disposition amount, respectively (together, the ''extraordinary disposition rule''). *See* § 1.245A–5(b) and (d). In general, an extraordinary disposition amount is an amount of earnings and profits (''E&P'') distributed by an SFC that is attributable to an extraordinary disposition, which includes certain non-ordinary course asset sales between related parties during the selling SFC's disqualified period. In general, a tiered extraordinary disposition amount is a dividend received by an upper-tier CFC from a lower-tier CFC that would be an extraordinary disposition amount if received by a section 245A shareholder of the lower-tier CFC. The disqualified period is defined with respect to an SFC as the period beginning on January 1, 2018, and ending as of the close of the taxable year of the SFC, if any, that begins before January 1, 2018, and ends after December 31, 2017. *See* § 1.245A–5(c). The purpose of the extraordinary disposition rule is to prevent taxpayers from obtaining the benefits of the section 245A deduction or the section 954(c)(6) exception for E&P that were generated in certain non-ordinary course transactions occurring during the disqualified period and that were not subject to current U.S. tax solely because the transactions occurred during the disqualified period; these E&P are generally not intended to qualify for the section 245A deduction or the section 954(c)(6) exception. *See* 84 FR 28401.

III. Section 951A

Section 951A, added to the Code by the Act, requires a United States shareholder of any CFC for any taxable year to include in gross income the United States shareholder's global intangible low-taxed income (''GILTI inclusion amount'') for that year. On October 10, 2018, the Treasury Department and the IRS published in the **Federal Register** proposed regulations (REG–104390–18, 83 FR

51072) implementing section 951A. On June 21, 2019, the Treasury Department and the IRS published in the **Federal Register** final regulations (''GILTI final regulations'') (TD 9866, 84 FR 29288) that adopted, with revisions, the proposed regulations under section 951A.

The GILTI final regulations include a rule providing that a deduction or loss attributable to basis created by reason of a transfer of property from a CFC to a related person during the disqualified period (''disqualified basis'') is allocated and apportioned solely to residual CFC gross income (the ''disqualified basis rule''). *See* § 1.951A–2(c)(5)(i).[1] Residual CFC gross income is defined as gross income other than gross tested income, subpart F income, or income effectively connected with the conduct of a trade or business in the United States. *See* § 1.951A–2(c)(5)(iii)(B). The disqualified basis rule also provides that any depreciation, amortization, or cost recovery allowances attributable to disqualified basis are not properly allocable to property produced, or acquired for resale, under section 263, 263A, or 471. *See* § 1.951A–2(c)(5)(i). The purpose of the disqualified basis rule is to prevent taxpayers from obtaining the benefits of tax basis in the transferred asset (for example, depreciation or amortization deductions over time that reduce a CFC's tested income or increase a CFC's tested loss) that was created through related-party transactions effectuated at no U.S. tax cost solely because they occurred during the disqualified period. *See* 84 FR 29299. Thus, the rule creates symmetry between the categorization of non-taxed income created in the transaction generating disqualified basis during the disqualified period and the categorization of deductions generated after the disqualified period attributable to that disqualified basis. *See id.*

Further, recently proposed regulations under section 951A treat a deduction related to certain payments by a CFC to a related recipient CFC during the disqualified period in a manner similar to the treatment of disqualified basis under the GILTI final regulations (the ''disqualified payment rule''). *See* REG–106013–19, 85 FR 19858.

[1] Although the extraordinary disposition rule and the disqualified basis rule define ''disqualified period'' using different terminology, in application, a CFC that has a disqualified period under either rule has a disqualified period under the other rule. *Compare* § 1.245A–5(c)(3)(iii) with § 1.951A–3(h)(2)(ii)(C)(*1*). For this reason, references to a ''disqualified period'' in this preamble refer to the unified concept of a disqualified period under both the extraordinary disposition rule and the disqualified basis rule.

Explanation of Provisions

I. Overview

In certain cases, the extraordinary disposition rule and the disqualified basis rule, when applied together, may give rise to excess taxation as to a section 245A shareholder (or as to the section 245A shareholder and a related party). For example, consider a case in which a CFC that is wholly owned by a section 245A shareholder sells an item of specified property during the disqualified period to another CFC that is wholly owned by the section 245A shareholder. In this case, there is a single amount of gain (the gain that the transferor CFC recognizes upon the sale), which gives rise to both extraordinary disposition E&P of the transferor CFC (the E&P generated upon the sale) and disqualified basis in the item of specified property held by the transferee CFC (the basis step-up in the item of specified property resulting from the sale). The gain will in effect be subject to U.S. tax as to the section 245A shareholder when the extraordinary disposition E&P are distributed as a dividend by the transferor CFC. In addition, an amount (such as an amount of future gross tested income of the transferee CFC) equal to the gain might be indirectly taxed as to the section 245A shareholder as a result of not being offset or reduced by deductions or losses attributable to the disqualified basis (because, but for the disqualified basis rule, such deductions or losses would have offset or reduced the amount and sheltered it from U.S. tax). Moreover, the disqualified basis rule may in certain cases have the effect of reducing, in an amount equal to the gain, E&P of the transferee CFC that would otherwise have been eligible for the section 245A deduction when distributed as a dividend to the section 245A shareholder. This could occur because, in general, deductions or losses that are subject to the disqualified basis rule nevertheless reduce E&P.

The preamble to the 2019 section 245A regulations requested comments on whether and how to coordinate the extraordinary disposition rule and the disqualified basis rule. *See* 84 FR 28402. One comment was received, which recommended these rules be coordinated and suggested two approaches to that effect.

The first approach would permit taxpayers to effectively unwind the tax effect of an extraordinary disposition. Under this approach, a section 245A shareholder's extraordinary disposition account would be eliminated if, with respect to each item of specified property taken into account in determining the initial balance of the account, an election were made pursuant to § 1.951A–3(h)(2)(ii)(B)(*3*) to reduce the item's adjusted basis (and thus eliminate the item's disqualified basis), and provided that certain other requirements are met (for example, the person to which the item of specified property was transferred in the extraordinary disposition was a CFC, which remains a CFC for at least five years after the extraordinary disposition). The proposed regulations do not adopt this approach because the Treasury Department and the IRS have determined that it could give rise to inappropriate results, such as the elimination of an extraordinary disposition account in cases in which it is unlikely that the extraordinary disposition rule and the disqualified basis rule, when applied together, would result in excess taxation. In addition, the approach could be difficult to administer. For example, after the extraordinary disposition, the CFC to which the specified property was transferred might be transferred outside the U.S. taxing jurisdiction but remain a CFC due to the Act's repeal of section 958(b)(4), with the result that in effect there is no or little U.S. tax cost to the CFC having reduced the adjusted basis (and eliminated the disqualified basis) of the item of specified property. Furthermore, because the extraordinary disposition account with respect to the transferor CFC would have been eliminated, the E&P attributable to the extraordinary disposition could reduce gain that would otherwise be recognized on the disposition of stock of the transferor CFC as a result of the section 245A deduction. Moreover, there would be additional administrative and compliance burdens if the regulations adopted an approach pursuant to which an extraordinary disposition account is tentatively eliminated when elections are made pursuant to § 1.951A–3(h)(3) to reduce adjusted bases (and eliminate disqualified basis), but then the extraordinary disposition account is retroactively restored if the transferee CFC ceases to be a CFC or becomes a CFC only by reason of the repeal of section 958(b)(4).

The second approach recommended by the comment would adjust disqualified basis of an item of specified property to the extent that gain to which the disqualified basis is attributable is in effect subject to U.S. tax by reason of the extraordinary disposition rule. Similarly, an extraordinary disposition account of a section 245A shareholder would be adjusted to the extent that, with respect to disqualified basis

attributable to gain to which the extraordinary disposition account is also attributable, the disqualified basis gives rise to deductions or losses that are allocated and apportioned to residual CFC gross income of a CFC by reason of the disqualified basis rule.

As discussed in parts II through IV of this Explanation of Provisions, the proposed regulations adopt a coordination mechanism that is broadly consistent with the second approach recommended by the comment. The coordination mechanism involves two operative rules, one that reduces disqualified basis in certain cases (the ''DQB reduction rule''), and another that reduces an extraordinary disposition account in certain cases (the ''EDA reduction rule'').

In addition, to reduce burden and facilitate compliance, the proposed regulations provide two versions of both the DQB reduction rule and the EDA reduction rule, similar to the approach taken in §§ 1.1248–2 and 1.1248–3 (providing rules for determining earnings and profits attributable to a block of stock in simple and complex cases). *See* proposed §§ 1.245A–7 and 1.245A–8. These versions achieve the same results. The first version (proposed § 1.245A–7) may be applied to simple cases, and the second version (proposed § 1.245A–8) applies to complex cases.

The version for simple cases may be applied when two conditions are satisfied, because those conditions eliminate the need for certain additional rules under the version for complex cases. *See* proposed § 1.245A–6(b). The first condition provides requirements related to the seller SFC with respect to which there is an extraordinary disposition account. *See* proposed § 1.245A–6(b)(1). The second condition provides requirements related to an item of specified property for which an extraordinary disposition occurred and the buyer CFC holding the item. *See* proposed § 1.245A–6(b)(2). As an example, the version for simple cases generally applies if (i) the seller SFC is wholly-owned (directly or indirectly, within the meaning of section 958(a)) by the section 245A shareholder at the time of the extraordinary disposition and remains wholly-owned by the section 245A shareholder, (ii) the seller SFC does not succeed to E&P of another SFC with respect to which there is an extraordinary disposition account, (iii) the items of specified property for which an extraordinary disposition occurred are acquired by a buyer CFC wholly-owned by the section 245A shareholder and certain related parties and the buyer CFC remains wholly-owned by the section 245A shareholder and certain related parties, and (iv) the buyer CFC retains the items of specified property it acquires in the extraordinary disposition and does not acquire items of specified property with disqualified basis that were transferred in another extraordinary disposition. *See* proposed § 1.245A–6(b)(1) and (2).

The determination as to whether the version for simple cases is available is made with respect to a taxable year of a section 245A shareholder. If the conditions for applying the version for simple cases are not satisfied for a taxable year, then the version for complex cases must be applied beginning with that taxable year and all subsequent taxable years. In addition, if the conditions for applying the version for simple cases are satisfied for a taxable year but the section 245A shareholder chooses not to apply the version for simple cases for that taxable year, then the version for complex cases applies to that taxable year. However, for a subsequent taxable year, the section 245A shareholder may apply the version for simple cases, provided that the conditions for applying the version for simple cases are satisfied for that taxable year and have been satisfied for all earlier taxable years.

Further, for purposes of determining whether the conditions for applying the version for simple cases are satisfied, any requirement that references a section 245A shareholder, an SFC, or a CFC does not include a successor of the section 245A shareholder, the SFC, or the CFC, respectively. *See* proposed § 1.245A–6(b) (last sentence). As a result, the version of the rules for simple cases is not available if the section 245A shareholder's extraordinary disposition account with respect to an SFC has been adjusted pursuant to the successor rules of § 1.245A–5(c)(4). Thus, for example, the version of the rules for simple cases is not available if the assets of the section 245A shareholder are acquired by another domestic corporation, or if the assets of the seller SFC are acquired by another SFC, in each case, in a transaction described in section 381 and subject to § 1.245A–5(c)(4)(i) or (ii), respectively.

Section II of this Explanation of Provisions discusses the versions of the DQB reduction rule and the EDA reduction rule that apply for simple cases. Section III of this Explanation of Provisions then discusses the versions of those rules for complex cases. Section IV of this Explanation of Provisions discusses other rules applicable to both simple and complex cases. Section V of this Explanation of Provisions discusses applicability dates, and Section VI of this Explanation of Provisions requests comments.

II. Rules for Simple Cases

A. The DQB Reduction Rule

1. In General

The DQB reduction rule provides that when an extraordinary disposition account of a section 245A shareholder gives rise to an extraordinary disposition amount or tiered extraordinary disposition amount, the disqualified bases of certain items of specified property are reduced by the same amount solely for purposes of § 1.951A–2(c)(5). *See* proposed § 1.245A–7(b)(1). This rule is intended to ensure that as the extraordinary disposition rule applies to cause gain to which extraordinary disposition E&P are attributable to in effect be subject to U.S. tax, the disqualified basis rule generally does not apply to the basis of an item of specified property attributable to that gain (because that basis is no longer generated at no U.S. tax cost) and, accordingly, items of deduction or loss attributable to that basis become eligible to offset income subject to U.S. tax.

More specifically, for a taxable year of a section 245A shareholder, the disqualified bases of items of specified property that ''correspond'' to the section 245A shareholder's extraordinary disposition account are generally reduced by the sum of the extraordinary disposition amounts or tiered extraordinary disposition amounts for the taxable year. *See* proposed § 1.245A–7(b)(1); *see also* proposed § 1.245A–9(b)(1) (general rule providing that an item of specified property corresponds to an extraordinary disposition account if gain was recognized on the extraordinary disposition of the item and was taken into account in determining the initial balance of the account). This correspondence requirement ensures that the rule only reduces disqualified basis of an item of specified property that is attributable to gain that was taken into account in determining the initial balance of the account, and thus the rule does not reduce disqualified basis of an item of specified property that is attributable to other gain (for example, disqualified basis of an item of specified property that corresponds to an extraordinary disposition account of another section 245A shareholder or that does not correspond to an extraordinary disposition account).

The amount of the reduction under the DQB reduction rule is allocated pro rata across the disqualified basis of each item of specified property that

corresponds to the section 245A shareholder's extraordinary disposition account, based on the item's disqualified basis relative to the aggregate disqualified bases of the items. *See* proposed § 1.245A–7(b)(1). The Treasury Department and the IRS have determined that a pro rata approach is appropriate because the initial balance of the extraordinary disposition account reflects an aggregate of the gain of each item of specified property that corresponds to the account (reduced by losses with respect to certain items of specified property). In addition, alternative approaches would be unduly complex, such as a stacking approach pursuant to which a reduction is applied first with respect to disqualified basis of a particular item of specified property, then with respect to another item of specified property, and so on.

2. Timing Rules for Determining and Reducing Disqualified Basis

For purposes of applying the DQB reduction rule for a taxable year of a section 245A shareholder, disqualified basis of an item of specified property is determined as of the beginning of the taxable year of the CFC holding the item that includes the date on which the section 245A shareholder's taxable year ends (and, to avoid circularity issues, without regard to any reductions to disqualified basis of the item of specified property pursuant to the DQB reduction rule for such taxable year of the CFC). *See* proposed § 1.245A–9(b)(2)(i). Then, disqualified basis of the item of specified property is reduced as of the beginning of the taxable year of the CFC. *See* proposed § 1.245A–9(b)(2)(ii). Thus, for example, disqualified basis of an item of specified property is reduced before any depreciation, amortization, or other cost recovery deduction allowances attributable to the basis of the item are determined for the CFC's taxable year.

B. The EDA Reduction Rule

1. In General

The EDA reduction rule provides that when items of deduction or loss attributable to disqualified basis of an item of specified property are allocated and apportioned to residual CFC gross income of a CFC and have the effect of reducing certain E&P of the CFC that could otherwise potentially qualify for the section 245A deduction when distributed, the extraordinary disposition account to which the specified property corresponds is reduced by up to the same amount. *See* proposed § 1.245A–7(c)(1). This rule is generally intended to ensure that as the application of the disqualified basis rule results in income of the CFC being indirectly taxed to a section 245A shareholder (or a related party that is a domestic corporation, a ''domestic affiliate'') and a reduction in the E&P of the CFC available to be distributed to the section 245A shareholder and any domestic affiliates as a dividend to which the section 245A deduction could be available if distributed, the extraordinary disposition rule no longer applies to E&P attributable to gain to which the disqualified basis is also attributable. Requiring reduction in the capacity to pay dividends for which the section 245A deduction could be available if the E&P were distributed ensures that the EDA reduction rule applies only once the disqualified basis rule has resulted in a tax detriment to the section 245A shareholder (or a domestic affiliate). To the extent that there has not been a reduction in the CFC's capacity to pay dividends for which the section 245A deduction could be available if the E&P were distributed, the disqualified basis rule might generally not give rise to a tax detriment to the section 245A shareholder (or a domestic affiliate). This is because the section 245A shareholder's (or domestic affiliate's) basis in its stock of the CFC is generally increased under section 961 by the amount of the income indirectly taxed to the section 245A shareholder (or a domestic affiliate). Such basis increase is, for example, available to reduce gain that would otherwise be recognized on a disposition of stock of the CFC (including gain that would be taxed at the full corporate tax rate even though, for instance, the basis increase is attributable to an inclusion under section 951A that in effect is taxed at a preferential rate).

More specifically, for a taxable year of a CFC, a section 245A shareholder's extraordinary disposition account is generally reduced by the lesser of two amounts. *See* proposed § 1.245A–7(c)(1). The first amount is intended to approximate in an administrable manner the extent to which the disqualified basis rule (by reason of the allocation and apportionment of items of deduction or loss to residual CFC gross income of the CFC) reduced the E&P of the CFC available to be distributed to the section 245A shareholder and any domestic affiliates as a dividend to which the section 245A deduction could be available. *See* proposed § 1.245A–7(c)(1)(i). In order to reduce administrative and compliance burdens, the proposed regulations disregard the holding period requirement of section 246(c) for purposes of determining if a section 245A deduction would be available if E&P were distributed. To compute the first amount, the CFC's E&P at the end of the taxable year are determined, taking into account distributions during the taxable year. Then, those E&P are adjusted, including by generally increasing the E&P by items of deduction or loss that are or have been allocated to residual CFC gross income of the CFC solely by reason of the disqualified basis rule (''adjusted earnings''). *See* proposed § 1.245A–7(c)(3). Lastly, the adjusted earnings are reduced by the sum of the previously taxed earnings and profits accounts with respect to the CFC under section 959 (taking into account any adjustments to the accounts for the taxable year) in order to reflect that an amount equal to such sum would not have been eligible for the section 245A deduction were it distributed by the CFC to the section 245A shareholder and any domestic affiliates. *See* proposed § 1.245A–7(c)(1)(i).

The second amount necessary to determine the reduction in a section 245A shareholder's extraordinary disposition account is the balance of the section 245A shareholder's residual gross income account (''RGI account'') with respect to the CFC. *See* proposed § 1.245A–7(c)(1)(ii). The balance of the RGI account generally reflects items of deduction or loss allocated and apportioned to residual CFC gross income of the CFC solely by reason of the disqualified basis rule, to the extent that the allocation and apportionment is likely to increase income of the CFC that is subject to U.S. taxation at the level of the section 245A shareholder and any domestic affiliates pursuant to section 951 or 951A. *See* proposed § 1.245A–7(c)(4)(i). Tracking such items of deduction or loss through an account mechanism allows for a reduction under, and facilitates compliance with, the EDA reduction rule in certain cases—for example, a case in which a CFC does not have any adjusted earnings for its taxable year in which items of deduction or loss are allocated and apportioned to residual CFC gross income (such that there cannot be a reduction under the EDA reduction rule to the section 245A shareholder's extraordinary disposition account that year) but in a later taxable year has sufficient adjusted earnings to allow for a reduction.

2. Timing Rules for Reducing an Extraordinary Disposition Account

A reduction to an extraordinary disposition account of a section 245A

shareholder by reason of the application of the EDA reduction rule with respect to a taxable year of the CFC occurs as of the end of the taxable year of the section 245A shareholder that includes the date on which the CFC's taxable year ends (and, for example, after the determination of any extraordinary disposition amounts or tiered extraordinary disposition amounts for the taxable year). *See* proposed § 1.245A–9(b)(3). Thus, a reduction to a section 245A shareholder's extraordinary disposition account under the EDA reduction rule occurs after the application of the DQB reduction rule for the taxable year of the section 245A shareholder. *See id.* Absent such an approach, there could be circularity issues because the computation of a reduction under one rule might depend on an amount that is potentially affected by the other rule, and it would be unclear which rule applies first. Applying the EDA reduction rule at the end of a taxable year also ensures that it applies after the full effect of the disqualified basis rule has been taken into account for the year.

III. Rules for Complex Cases

A. The DQB Reduction Rule

1. In General

The version of the DQB reduction rule for complex cases uses the same architecture as the version of the rule for simple cases but provides additional rules to address scenarios in which the conditions provided in proposed § 1.245A–6(b)(1) and (2) are not satisfied. *See* proposed § 1.245A–8. For example, the version for complex cases addresses scenarios in which, after the extraordinary disposition of an item of specified property, the item is transferred to another person (whether the transfer is taxable or non-taxable). *See* proposed § 1.245A–6(b)(2).

2. Ownership Requirement

To address the possibility that an item of specified property may have been transferred after the extraordinary disposition (with the result that the section 245A shareholder or a related party may not directly or indirectly own an interest in the item), the version of the DQB reduction rule for complex cases provides that an ownership requirement must be satisfied for disqualified basis of an item of specified property to be eligible for relief under the DQB reduction rule. *See* proposed § 1.245A–8(b)(1) and (3). The ownership requirement is intended to ensure that the DQB reduction rule applies with respect to an item of specified property only if it is likely that the section 245A shareholder (or the section 245A shareholder and a related party) would be meaningfully affected by the application of the disqualified basis rule as to the item of specified property, such that, absent the DQB reduction rule, the extraordinary disposition rule and the disqualified basis rule would, when applied together, result in meaningful excess taxation as to the section 245A shareholder (or the section 245A shareholder and a related party). In addition, the ownership requirement is intended to ensure that the DQB reduction rule takes into account only disqualified bases of items of specified property for which the section 245A shareholder can reasonably be expected to have or obtain the necessary information to accurately apply the DQB reduction rule.

The ownership requirement is satisfied with respect to an item of specified property if, on one or more days during the taxable year of the section 245A shareholder, the item is held by the section 245A shareholder, a related party, or a specified entity in which the section 245A shareholder or a related party owns directly or indirectly at least a 10-percent interest. *See* proposed § 1.245A–8(b)(3). As a result, the DQB reduction rule can apply to, for example, an item of specified property that is sold at a loss by a CFC of the section 245A shareholder to a third party on any day that falls within the taxable year of the section 245A shareholder, such that a reduced portion of the CFC's loss will be attributable to disqualified basis and thus subject to the disqualified basis rule for the CFC's taxable year. As an additional example, the DQB rule can also apply to an item of specified property that is held by a CFC of the section 245A shareholder all the stock of which is sold by the section 245A shareholder to a third party on any day that falls within the taxable year of the section 245A shareholder, such that a reduced portion of the CFC's amortization deductions with respect to the specified property for its taxable year that includes the sale and its subsequent taxable years will be subject to the disqualified basis rule.

3. Basis Benefit Amounts

i. In General

In certain cases in which an item of specified property with disqualified basis is transferred after the extraordinary disposition of the item, the extraordinary disposition rule and the disqualified basis rule, when applied together, do not give rise to excess taxation as to a section 245A shareholder (or as to the section 245A shareholder and a related party). This may occur, for example, if the section 245A shareholder ''benefits'' from the disqualified basis of the item of specified property pursuant to a transaction that is not subject to the disqualified basis rule, such as through a sale of the item by a CFC of the section 245A shareholder to an unrelated person at a gain (with the result that, but for the use of the disqualified basis, the CFC would have had a greater amount of gain that would have been taken into account in computing the CFC's tested income). In such a case, the DQB reduction rule need not apply to an amount of the section 245A shareholder's extraordinary disposition account equal to the amount of the disqualified basis benefit. *See* proposed § 1.245A–10(c)(2) (*Example 2*).

To address these situations, the proposed regulations provide that, for a taxable year of a section 245A shareholder, the amount of the reduction to disqualified bases under the DQB reduction rule is equal to the sum of the extraordinary disposition amounts or tiered extraordinary disposition amounts for the taxable year, less the balance of the section 245A shareholder's ''basis benefit account'' with respect to the extraordinary disposition account. *See* proposed § 1.245A–8(b)(1). A basis benefit account with respect to an extraordinary disposition account generally reflects the extent to which the disqualified basis of one or more items of specified property that correspond to the extraordinary disposition account has been used to offset or reduce income subject to U.S. tax (the use of disqualified basis to such an extent, a ''basis benefit amount''). *See* proposed § 1.245A–8(b)(4)(ii).

For these purposes, the use of disqualified basis by a U.S. tax resident to offset or reduce taxable income, or the use of disqualified basis by a foreign person (including a CFC) to offset or reduce income effectively connected with a trade or business in the United States (''ECTI''), is always considered to offset or reduce income subject to U.S. tax. *See* proposed § 1.245A–8(b)(4)(ii). As an example, in the case of an item of specified property that is held by a U.S. tax resident and that has disqualified basis by reason of the application of § 1.951A–3(h)(2)(ii)(B)(*1*)(*ii*) to a previous transfer of the item of specified property by a related CFC to the U.S. tax resident, there is a basis benefit amount equal to the portion of the disqualified basis that gives rise to an item of depreciation or amortization of the U.S. tax resident for a taxable year of the U.S. tax resident.

However, the use of disqualified basis by a CFC to offset or reduce income taken into account in computing subpart F income, tested income, or tested loss is considered to offset or reduce income subject to U.S. tax only if the CFC is described in § 1.267A–5(a)(17) and thus a meaningful portion of the CFC's income is indirectly subject to current U.S. tax. *See id.*

Disqualified basis can be used to reduce or offset income subject to U.S. tax regardless of whether the disqualified basis is reduced or eliminated under § 1.951A–3(h)(2)(ii)(B)(*1*). For example, in a case in which a CFC sells an item of specified property with disqualified basis to a related CFC, the rule of § 1.951A–3(h)(2)(ii)(B)(*1*) generally does not prevent the disqualified basis from reducing or offsetting income subject to U.S. tax (for instance, income from the sale that but for the use of the disqualified basis would have been taken into account in computing the seller CFC's tested income), even though the buyer CFC succeeds to the disqualified basis under the rule. Thus, the proposed regulations provide that a basis benefit amount can be created from the use of disqualified basis regardless of whether the disqualified basis is reduced or eliminated as a result. *See* proposed § 1.245A–8(b)(4)(ii)(B); *see also* proposed § 1.245A–8(b)(4)(iii)(B) (anti-duplication rule to address cases in which disqualified basis gives rise a basis benefit amount but is not eliminated or reduced).

Further, the proposed regulations provide certain timing rules regarding when the use of disqualified basis gives rise to a basis benefit amount. *See* proposed § 1.245A–8(b)(4)(ii)(C). For example, if an item of deduction or loss arising from the use of disqualified basis is deferred under section 267(a)(2), then the determination of whether a basis benefit amount arises is made when, in a later taxable year, the deduction or loss is no longer deferred. Similarly, if an item of deduction or loss arising from the use of disqualified basis of an item of specified property is disallowed under section 267(a)(1), then a basis benefit amount would arise when and to the extent that gain is reduced on the sale of that specified property (or other property with basis determined by reference to that specified property) under section 267(d) in the hands of certain persons whose income is directly or indirectly subject to U.S. tax.

ii. Adjustments to a Basis Benefit Account

A basis benefit account is adjusted at the end of each taxable year of a section 245A shareholder. *See* proposed § 1.245A–8(b)(4)(i). Generally, the basis benefit account is increased by a basis benefit amount with respect to an item of specified property that corresponds to the extraordinary disposition account, provided that the basis benefit amount is assigned to the taxable year of the section 245A shareholder. *See* proposed § 1.245A–8(b)(4)(i)(A). However, in the case in which the extraordinary disposition ownership percentage with respect to the extraordinary disposition account is less than 100 percent (such that the initial balance of the extraordinary disposition account reflects only a portion of the gain from the extraordinary disposition of the item of specified property), only the same ratable portion of the basis benefit amount may increase the basis benefit account. *See id.*

A basis benefit amount with respect to an item of specified property is assigned to a taxable year of a section 245A shareholder if two conditions are satisfied. *See* proposed § 1.245A–8(b)(4)(iii). First, the ownership requirement described in part III.A.2 of this Explanation of Provisions must be satisfied with respect to the item of specified property. As a result of this first condition, a basis benefit amount is assigned to a taxable year of a section 245A shareholder (and thus only limits a potential reduction under the DQB reduction rule) only if the use of the disqualified basis giving rise to the basis benefit amount provides a meaningful benefit to the section 245A shareholder or a related party. This first condition is also intended to ensure that the section 245A shareholder can reasonably be expected to obtain information about the item of specified property necessary to accurately calculate and reflect the basis benefit amount. Second, the use of the disqualified basis must occur in the section 245A shareholder's taxable year (in a case in which the section 245A shareholder is the person that uses the disqualified basis) or a taxable year of a person ending with or within—or in certain cases, beginning with or within—the taxable year of the section 245A shareholder (in a case in which the section 245A shareholder is not the person that uses the disqualified basis). As a result of these assignment rules, in a case in which a CFC of a section 245A shareholder holds an item of specified property and the CFC sells the item of specified property (or the section 245A shareholder sells all of the stock of the CFC) to a third party on a day that falls within the taxable year of the section 245A shareholder, a use by the CFC of disqualified basis of the specified property to generate a basis benefit amount on a day that falls within the same taxable year of the section 245A shareholder is generally assigned to such taxable year of the section 245A shareholder.

Further, at the end of each taxable year of a section 245A shareholder, the balance of a basis benefit account is decreased to the extent that the basis benefit account limits a reduction under the DQB reduction rule. *See* proposed § 1.245A–8(b)(4)(i)(B).

4. Timing Rules for Determining and Reducing Disqualified Basis

To address the possibility that an item of specified property may be held by a person other than a CFC, the timing rules for purposes of the version of the DQB reduction rule for complex cases provide that disqualified basis of an item of specified property is generally determined and reduced as of the beginning of the taxable year of the ''specified property owner'' of the item. *See* proposed § 1.245A–9(b)(2)(i) and (ii). The specified property owner of an item of specified property is generally the person that held the item of specified property on at least one day during the taxable year of the person that includes the date on which the section 245A shareholder's taxable year ends. *See* proposed § 1.245A–9(b)(2)(iii).

In addition, to address cases in which, absent a special rule, two or more persons might be considered the specified property owner, a special rule provides that in such cases the specified property owner is the person that held the item of specified property on the earliest date that falls within the section 245A shareholder's taxable year. *See* § 1.245A–9(b)(2)(iii) (last sentence). Thus, for example, if a CFC (''CFC1'') transfers an item of specified property to another CFC (''CFC2'') on a date that falls within the taxable year of a section 245A shareholder and the taxable year of each of CFC1 and CFC2 includes the day of the close of the taxable year of the section 245A shareholder, then CFC1 (and not CFC2) would be the specified property owner for purposes of applying the DQB reduction rule for the taxable year of the section 245A shareholder.

B. The EDA Reduction Rule

1. In General

The version of the EDA reduction rule for complex cases uses the same architecture as the version of the rule for

simple cases but provides additional rules to address scenarios in which the conditions provided in § 1.245A–6(b) are not satisfied. *See* proposed § 1.245A–8. For example, the version for complex cases addresses scenarios in which the CFC that holds an item of specified property that corresponds to an extraordinary disposition account of a section 245A shareholder is not wholly-owned by the section 245A shareholder and any domestic affiliates, or the CFC also holds an item of specified property that corresponds to another extraordinary disposition account. *See* proposed § 1.245A–6(b)(2).

2. Computing the Reduction in Certain Dividend-Paying Capacity of a CFC

As discussed in II.B.1 of this Explanation of Provisions, the EDA reduction rule depends in part on the extent to which the disqualified basis rule has, as to a CFC that holds items of specified property that correspond to an extraordinary disposition account of a section 245A shareholder with respect to an SFC, reduced E&P of the CFC available to be distributed to the section 245A shareholder and any domestic affiliates as a dividend to which the section 245A deduction could be available. The EDA reduction rule for complex cases provides several additional rules for purposes of measuring this reduction to the CFC's capacity to pay dividends eligible for the section 245A deduction, to address the possibility that the section 245A shareholder and any domestic affiliates may not own all of the stock of the CFC (including because the section 245A shareholder or a domestic affiliate disposed of stock of the CFC during the CFC's taxable year) as well as other issues.

First, the version for complex cases provides an ownership requirement pursuant to which, for the section 245A shareholder's extraordinary disposition account to be reduced by reason of the application of the EDA reduction rule with respect to a taxable year of the CFC, the section 245A shareholder (or a domestic affiliate) must, on the last day of the CFC's taxable year, be a United States shareholder with respect to the CFC. *See* proposed § 1.245A–8(c)(1) and (3). The ownership requirement is measured on the last day of a CFC's taxable year because the EDA reduction rule depends on a section 245A shareholder's portion of the CFC's adjusted earnings, which are measured on an annual basis.

Second, the version for complex cases provides special rules for deficits of the CFC subject to § 1.381(c)(2)–1(a)(5). *See* proposed § 1.245A–8(c)(3). These rules generally provide that the CFC's adjusted earnings are determined by not taking into account these deficits in determining E&P because, in general, the deficits do not affect or limit the CFC's ability to distribute its other E&P as a dividend. In addition, for purposes of determining a CFC's adjusted earnings, the CFC's E&P are reduced by the amount of items of deduction or loss that are attributable to disqualified basis and that give or have given rise to a deficit subject to § 1.381(c)(2)–1(a)(5). This is because the application of the disqualified basis rule to these items has not affected or limited the CFC's ability to distribute certain earnings as a dividend and reducing the CFC's E&P by the amount of the items generally ensures that the application of the disqualified basis rule to these items does not give rise to relief under the EDA reduction rule. A CFC could have a deficit subject to § 1.381(c)(2)–1(a)(5) and comprised of items of deduction or loss attributable to disqualified basis if, for example, the CFC acquired in a transaction subject to section 381 the assets of another CFC that held items of specified property with disqualified basis.

Third, the version for complex cases provides a rule that allocates the CFC's adjusted earnings to the section 245A shareholder, based on the percentage of stock of the CFC that the section 245A shareholder and any domestic affiliates own. *See* proposed § 1.245A–8(c)(1)(i)(A). This allocation serves as a proxy for measuring the portion of the adjusted earnings of the CFC that the section 245A shareholder and any domestic affiliates would receive if the CFC were to distribute all of its adjusted earnings to its shareholders. The adjusted earnings as so allocated to a section 245A shareholder are further adjusted to reflect certain previously taxed earnings and profits accounts with respect to the CFC, certain hybrid deduction accounts with respect to shares of stock of the CFC, and the balance of any extraordinary disposition accounts with respect to the CFC (other than, in general and as illustrated in part III.B.6 of this Explanation of Provisions, the portion of the balance of an extraordinary disposition account with respect to the CFC that, by reason of a merger or similar transaction of the SFC into the CFC or vice versa, is attributable to an extraordinary disposition account with respect to the SFC). The end result is intended to measure the extent to which the disqualified basis rule has reduced E&P of the CFC available to be distributed to the section 245A shareholder and any domestic affiliates as a dividend to which the section 245A deduction could be available.

3. Computing the Increase to an RGI Account

As discussed in part II.B.1 of this Explanation of Provisions, the EDA reduction rule depends in part on the balance of a section 245A shareholder's RGI account with respect to a CFC. The EDA reduction rule for complex cases provides several additional rules for purposes of computing an increase to a section 245A shareholder's RGI account with respect to a CFC. *See* proposed § 1.245A–8(c)(4).

First, to address the possibility that the CFC may hold multiple items of specified property, some of which correspond to an extraordinary disposition account of the section 245A shareholder and others of which correspond to another extraordinary disposition account (or to no extraordinary disposition account), the rule for complex cases provides that the section 245A shareholder's RGI account can be increased only by items of deduction or loss (to which the disqualified basis rule applies) that are attributable to disqualified basis of an item of specified property that corresponds to the section 245A shareholder's extraordinary disposition account. *See* proposed § 1.245A–8(c)(4)(i)(A)(*1*)(*i*). In addition, in cases in which the section 245A shareholder owned less than all of the stock of the SFC when the SFC undertook an extraordinary disposition (such that the extraordinary disposition ownership percentage as to the section 245A shareholder's extraordinary disposition account with respect to the SFC is less than 100 percent), the section 245A shareholder's RGI account can be increased by only the same ratable portion of the items of deduction or loss. *See* proposed § 1.245A–8(c)(4)(i)(A)(*2*)(*ii*). These rules ensure that a reduction under the EDA reduction rule to the section 245A shareholder's extraordinary disposition account can occur only by reason of the application of the disqualified basis rule to the portion of disqualified basis of an item of specified property that is attributable to gain to which the extraordinary disposition account is also attributable.

Further, to address the possibility that the section 245A shareholder and any domestic affiliates may not own all of the stock of the CFC holding items of specified property that correspond to an extraordinary disposition account of the section 245A shareholder, a limit applies regarding the extent to which an

item of deduction or loss (or portion thereof) may increase the section 245A shareholder's RGI account. *See* proposed § 1.245A–8(c)(4)(i)(A)(*2*). The limit is generally based on the portion of the CFC's subpart F income or tested income taken into account by the section 245A shareholders and any domestic affiliates under section 951 or 951A. *See* proposed § 1.245A–8(c)(4)(i)(A)(*2*)(*i*). This limit ensures that a reduction under the EDA reduction rule to the section 245A shareholder's extraordinary disposition account can occur only to the extent that the application of the disqualified basis rule has likely increased income of the CFC that is subject to U.S. taxation at the level of the section 245A shareholder and any domestic affiliates.

4. Allocating Certain Reductions Among Extraordinary Disposition Accounts

Because a reduction under the EDA reduction rule to an extraordinary disposition account may be a function of certain adjusted earnings of a CFC (that is, an amount that is not with respect to the extraordinary disposition account), absent a special rule in certain complex cases, the adjusted earnings could give rise to a reduction to two or more extraordinary disposition accounts that, in aggregate, exceeds the adjusted earnings. This could occur, for example, in a case in which a section 245A shareholder has two extraordinary disposition accounts (that is, an extraordinary disposition account with respect to two SFCs) and owns all the stock of a CFC, which, in turn, owns the items of specified property that correspond to each of the extraordinary disposition accounts. In that case the aggregate amount of reductions to the extraordinary disposition accounts could exceed the extent to which the application of the disqualified basis rule has, as measured by certain adjusted earnings of the CFC allocated to the section 245A shareholder, reduced the earnings of the CFC available to be distributed to the section 245A shareholder as a dividend to which the section 245A deduction could apply. To address these cases, the proposed regulations provide a rule that limits the aggregate reductions to extraordinary disposition accounts by reason of the application of the EDA reduction rule with respect to a taxable year of a CFC to certain adjusted earnings of the CFC. *See* proposed § 1.245A–8(c)(6). The proposed regulations also provide an example illustrating this rule. *See* proposed § 1.245A–10(c)(3)(iv).

Finally, the proposed regulations provide a rule that prevents an extraordinary disposition account from being reduced below the balance of the basis benefit account that relates to the extraordinary disposition account. *See* proposed § 1.245A–8(c)(7). This limitation may occur if extraordinary disposition E&P (and therefore the initial balance of the extraordinary disposition account) reflect losses recognized with respect to one or more items of specified property transferred in the extraordinary disposition.

5. Certain Items of Property Treated as Items of Specified Property That Correspond to an Extraordinary Disposition Account

In certain complex cases, an item of property may have disqualified basis even though the item itself was not transferred as part of an extraordinary disposition. For example, a share of stock may have disqualified basis if the share was received in exchange for an item of specified property with disqualified basis in a transaction to which section 351 applies. *See* § 1.951A–3(h)(2)(ii)(B)(*2*)(*ii*). Absent special rules, the share of stock would not correspond to an extraordinary disposition account of a section 245A shareholder and thus, for example, the disqualified basis of the share of stock could not be reduced under the DQB reduction rule.

The proposed regulations provide special rules to address this and similar issues. For instance, the proposed regulations provide that certain items of property that have disqualified basis by reason of § 1.951A–3(h)(2)(ii)(B)(*2*)(*i*) (increase corresponding to adjustments in other property), (*ii*) (exchanged basis property), or (*iii*) (increase by reason of section 732(d)) are generally treated as items of specified property that correspond to an extraordinary disposition account of a section 245A shareholder. *See* proposed § 1.245A–8(d). As a result, the disqualified basis of such items of property may be reduced under the DQB reduction rule, and items of deduction and loss attributable to such disqualified basis and allocated and apportioned to residual CFC gross income of a CFC may give rise to a reduction to an extraordinary disposition account under the EDA reduction rule.

The proposed regulations also include an anti-duplication rule to ensure that disqualified basis of an item of specified property, as well as disqualified basis of another item of property attributable to that disqualified basis (''duplicate DQB''), are not both taken into account for purposes of the DQB reduction rule, as taking into account both amounts of disqualified basis could inappropriately limit the reductions under the DQB reduction rule. *See* proposed § 1.245A–8(b)(5)(i)(A). In addition, to the extent that, pursuant to the anti-duplication rule, duplicate DQB is not taken into account for purposes of the DQB reduction, the duplicate DQB is generally reduced to the same extent that the disqualified basis of the item of specified property to which the duplicate DQB is attributable is reduced. *See* proposed §§ 1.245A–8(b)(5)(i)(B) and 1.245A–10(c)(5) (*Example 5*).

As an example of the application of these special rules, consider a case in which a single item of specified property (''Item A'') corresponds to an extraordinary disposition account of a section 245A shareholder, and Item A is transferred, in a transaction to which section 351 applies, in exchange for a share of stock (''Item B''). In addition, assume that the extraordinary disposition account gives rise to a $10x extraordinary disposition amount and that, at that time, Item A has $10x of disqualified basis and Item B also has $10x of disqualified basis (all of which is attributable to the disqualified basis of Item A). Here, Item B is considered an item of specified property that corresponds to the extraordinarily disposition account, but generally only the disqualified basis of Item A is taken into account for purposes of the DQB reduction rule, with the result that the entire $10x reduction under the DQB reduction rule is allocated to Item A (such that Item A's disqualified basis is reduced by $10x). However, pursuant to the special rule of proposed § 1.245A–8(b)(5)(i)(B), Item B's disqualified basis is then reduced by the same amount.

6. Extraordinary Disposition Account Adjusted Pursuant to Successor Rules Under § 1.245A–5(c)(4)

In certain complex cases, an extraordinary disposition account of a section 245A shareholder may be adjusted pursuant to the rules of § 1.245A–5(c)(4), with the result, for example, that another section 245A shareholder succeeds to a portion of the extraordinary disposition account or a portion of the extraordinary disposition account is attributed to another extraordinary disposition account. The proposed regulations provide two sets of special rules to address these cases.

First, in cases in which a portion of an extraordinary disposition account is attributed (the ''attributed account'') to another extraordinary disposition account (the ''successor account''), the proposed regulations ensure that the disqualified bases of the items of specified property that correspond to the attributed account are eligible to be

reduced under the DQB reduction rule by reason of an amount in the successor account that gives rise to an extraordinary deposition amount or tiered extraordinary disposition amount, to the extent attributable to the attributed account. *See* proposed § 1.245A–8(e)(1). This rule also ensures that the successor account, to the extent attributable to the attributed account, may be reduced under the EDA reduction rule by reason of an allocation and apportionment of an item of deduction or loss attributable to disqualified basis of an item of specified property that corresponds to the attributed account. *See id.* This rule ensures these results by treating the attributed account and successor account as separate extraordinary disposition accounts for purposes of the proposed regulations. *See id.*

As an example of this rule, consider a case in which US1, a domestic corporation, owns all of the stock of CFC1, a CFC as to which US1 has an extraordinary disposition account with a $40x balance (the ''CFC1 EDA''), and CFC2, a CFC as to which US1 has an extraordinary disposition account with a $60x balance (the ''CFC2 EDA''). If CFC1 were to merge into CFC2 and thus under the rules of § 1.245A–5(c)(4) the $40x balance of the CFC1 EDA were attributed to the CFC2 EDA (such that the balance of the CFC2 EDA would become $100x), then $40x of the $100x balance of the CFC2 EDA would be treated for purposes of the proposed regulations as an extraordinary disposition account with respect to CFC1 (the CFC2 EDA to such extent, the ''deemed CFC1 EDA''), even though CFC1 would no longer be in existence. As a result, after the merger, the deemed CFC1 EDA would, by reason of the application of the EDA reduction rule to a taxable year of CFC2, generally be reduced by the lesser of (i) the adjusted earnings of CFC2, less the balance of (a) the previously taxed earnings and profits accounts with respect to CFC2, (b) the hybrid deduction accounts with respect to shares of stock of the CFC2, (c) the balance of the CFC2 EDA (but not including the portion of the balance of the CFC2 EDA that is treated as the deemed CFC1 EDA), to the extent taken into account as described in proposed § 1.245A–8(c)(1)(i)(B)(*3*), and (d) the balance of the deemed CFC1 EDA, to the extent taken into account as described in proposed § 1.245A–8(c)(1)(i)(B)(*3*); and (ii) the balance of the RGI account (if any) with respect to CFC2 that relates to the deemed CFC1 EDA.

Second, special rules address the extraordinary disposition ownership percentage. As discussed in parts III.A.3.i and III.B.3 of this Explanation of Provisions, the DQB reduction rule and the EDA reduction rule take into account the extraordinary disposition ownership percentage as to a section 245A shareholder's extraordinary disposition account, which generally represents the portion of gain on the extraordinary disposition of an item of specified property that is reflected in the initial balance of the extraordinary disposition account. Special rules ensure, after an extraordinary disposition account is adjusted pursuant to § 1.245A–5(c)(4), the extraordinary disposition ownership percentage continues to accurately reflect the portion of gain that is reflected in the (adjusted) balance of the extraordinary disposition account. *See* proposed § 1.245A–8(e)(1) and (2).

As an example of the application of these special rules regarding the extraordinary disposition ownership percentage, consider a case which the extraordinary disposition ownership percentage as to a section 245A shareholder's extraordinary disposition account with respect to an SFC (''EDA 1'') is 80 percent, and by reason of § 1.245A–5(c)(4)(i) another section 245A shareholder (that did not previously have an extraordinary disposition account with respect to the SFC) succeeds to a portion of EDA 1 equal to 40 percent of the balance of EDA 1 (the portion of EDA 1 to which the other section 245A shareholder succeeds, ''EDA 2''). Here, the extraordinary disposition ownership percentage as to EDA 1 is thereafter 48 percent for purposes of the proposed regulations (80%, less 80% multiplied by 40%), and the extraordinary disposition ownership percentage as to EDA 2 is 32 percent for purposes of the proposed regulations (80% multiplied by 40%). As an additional example, if in the example in the previous sentence the other section 245A shareholder instead had an extraordinary disposition account with respect to the SFC and the extraordinary disposition ownership percentage as to such extraordinary disposition account was 20 percent (''EDA 2''), then, pursuant to proposed § 1.245A–8(e)(1), the extraordinary disposition ownership percentage as to EDA 2 would become 52 percent for purposes of the proposed regulations (20%, plus the product of 80% and 40%).

IV. Other Rules

A. Coordination With Disqualified Payment Rule

The coordination mechanism of the proposed regulations also applies to cases in which a prepayment during the disqualified period gives rise to extraordinary disposition E&P of an SFC under the anti-avoidance rule of § 1.245A–5(h) and items of deduction or loss of a CFC are allocated and apportioned to residual CFC gross income under the disqualified payment rule. *See* proposed § 1.245A–5(j)(8) (*Example 7*). The coordination mechanism generally applies in the same manner as if the disqualified payment had given rise to disqualified basis of an item of specified property that corresponds to the extraordinary disposition account. *See id.*

B. Currency Translation Rules

Accounts created under the proposed regulations are maintained in the functional currency of the items to which they relate. *See* proposed § 1.245A–9(b)(4). Therefore, a basis benefit account is maintained in the same functional currency as the extraordinary disposition account to which it relates. Similarly, an RGI account is maintained in the functional currency of the CFC whose allocations to residual CFC gross income are being measured and tracked by that account.

The application of the DQB reduction rule and the EDA reduction rule may also require currency translation because these rules require amounts determined in the functional currency of one person to be applied to reduce attributes of another person that may have a different functional currency. In this regard, the proposed regulations provide that the disqualified basis of, and a basis benefit amount with respect to, an item of specified property that corresponds to an extraordinary disposition account are translated into the functional currency in which the extraordinary disposition account is maintained, using the spot rate on the date the extraordinary disposition occurred. *See* proposed § 1.245A–9(b)(4). Moreover, proposed § 1.245A–9(b)(4) provides that a reduction in disqualified basis of an item of specified property under the DQB reduction rule is translated into the functional currency in which the disqualified basis of the item of specified property is maintained, and reductions in an extraordinary disposition account are translated into the functional currency in which the extraordinary disposition account is maintained, in each case using the spot rate on the date the associated extraordinary disposition occurred.

C. Anti-Avoidance Rule

Proposed § 1.245A–9(b)(5) contains an anti-avoidance rule providing that appropriate adjustments are made if a

transaction or arrangement is engaged in with a principal purpose of avoiding the purposes of these proposed regulations. As an example, the anti-avoidance rule applies if a section 245A shareholder causes its taxable year to end on a particular date with a principal purpose of avoiding a basis benefit amount from being assigned to that taxable year.

D. Existing Election To Eliminate Disqualified Basis

Taxpayers may have elected to reduce an item of specified property's adjusted basis (and thus eliminate the item's disqualified basis) pursuant to § 1.951A–3(h)(2)(ii)(B)(*3*) (a ''basis elimination election'') before the proposed regulations were issued. In certain cases, the proposed regulations once finalized may provide more favorable outcomes for taxpayers than a basis elimination election. Therefore, the proposed regulations permit taxpayers to revoke a basis elimination election during a transition period, which under the proposed regulations is 90 days after the proposed regulations are finalized. *See* proposed § 1.245A–9(c)(1). This transition period is intended to provide a taxpayer sufficient time to consider whether it would prefer a basis elimination election or to apply the rules of the proposed regulations. The proposed regulations set forth the procedures for revoking a basis elimination election. *See* proposed § 1.245A–9(c)(1) and (2). These procedures require a taxpayer to file a revocation statement, as well as amended returns reflecting the revocation of the election. *See id.*

V. Applicability Dates

The proposed regulations are proposed to apply to taxable years of foreign corporations beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** (the ''finalization date''), and to taxable years of a U.S. person in which or with which such taxable years of foreign corporations end. *See* proposed § 1.245A–11(a). For taxable years beginning before the finalization date, a taxpayer may apply the rules set forth in the final regulations, provided that the taxpayer and all related parties consistently apply the rules to those taxable years. *See* proposed § 1.245A–11(b); *see* also section 7805(b)(7).

VI. Comment Requests

The Treasury Department and the IRS request comments on all aspects of the proposed regulations. In addition, comments are specifically requested on the issues discussed below.

A. The DQB Reduction Rule

The DQB reduction rule applies only if a distribution gives rise to an extraordinary disposition amount or a tiered extraordinary disposition amount. The Treasury Department and the IRS are considering whether the DQB reduction rule should apply by reason of a prior extraordinary disposition amount described in § 1.245A–5(c)(3)(D)(*i*) through (*iv*), such that disqualified basis of an item of specified property would be reduced to the same extent a reduction would occur under the DQB reduction rule were the prior extraordinary disposition amount an extraordinary disposition amount or tiered extraordinary disposition amount. For example, an investment in United States property subject to sections 951(a)(1)(B) and 956(a) and § 1.956–1(a)(2) may give rise to a prior extraordinary disposition amount under § 1.245A–5(c)(3)(i)(D)(*1*)(*iv*). As an additional example, prior dividends that would have been subject to § 1.245A–5(c) but failed to qualify for the section 245A deduction because they did not satisfy the requirement that the recipient domestic corporation be a United States shareholder with respect to the distributing may give rise to a prior extraordinary disposition amount under § 1.245A–5(c)(3)(i)(D)(*1*)(*i*). The Treasury Department and the IRS are studying whether applying the DQB reduction rule would be appropriate with respect to any of these prior extraordinary disposition amounts, including whether it would be necessary to prevent meaningful excess taxation or give rise to undue complexity. The Treasury Department and the IRS welcome comments on the matter.

B. The EDA Reduction Rule

Pursuant to section 952(c)(1)(A), the subpart F income of a CFC for any taxable year cannot exceed the CFC's E&P for the taxable year. In addition, any amount excluded from subpart F income under section 952(c)(1)(A) is recaptured under section 952(c)(2) in future taxable years to the extent the CFC would otherwise have E&P in excess of subpart F income. Although the disqualified basis rule prevents deductions or losses attributable to disqualified basis from reducing subpart F income, tested income, or ECTI, those deductions or losses still reduce E&P and may be used by a CFC to avoid current inclusions of subpart F income under section 952(c)(1)(A). The Treasury Department and the IRS are studying the extent to which the EDA reduction rule (for example, under the RGI account rules) should take into account this benefit derived from disqualified basis, and request comments on the matter.

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. The Executive 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 proposed regulations have been designated by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) 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. OIRA has determined that the proposed rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by OMB.

A. Background and Overview of the Proposed Regulations

The Tax Cuts and Jobs Act (''the Act'') enacted section 245A, which generally allows U.S. corporations a 100-percent deduction (the ''section 245A deduction'') for certain dividends received from 10-percent owned foreign corporations (''SFCs''). As a result of this deduction, certain types of foreign-source income earned by foreign corporations may not be subject to U.S. tax at the U.S. shareholder level. Section 245A applies only to dividends paid after December 31, 2017.

The Act also enacted section 951A, which subjects U.S. shareholders of controlled foreign corporations (''CFCs'') to current taxation under section 951A on their global intangible low-taxed income (''GILTI''). Generally, the U.S. shareholder calculates its GILTI

by subtracting a routine return on tangible assets from ''tested income,'' which is essentially the income of the U.S. shareholder's CFCs (other than subpart F income, income effectively connected with the conduct of a U.S. trade or business (''ECTI''), and certain other excluded items of income). Section 951A applies for CFC tax years beginning after December 31, 2017, meaning that tested income of a fiscal year CFC is not subject to the GILTI regime until potentially as late as December 1, 2018.

The Act also enacted section 965, which imposed a new tax on the post-1986 earnings and profits of foreign corporations that had gone untaxed under the pre-Act international tax regime, measured as of no later than December 31, 2017. By subjecting post-1986 earnings and profits to a transition tax, section 965 generally ensured for calendar-year CFCs that only earnings first subjected to the anti-base erosion provisions of the Act could qualify for the section 245A deduction.

The difference in the dates for which sections 965 and 951A apply provides the context for the proposed regulations. For a CFC with a calendar taxable year, section 951A first applies on January 1, 2018, immediately after the final measurement date for section 965. However, a fiscal year CFC has a period from January 1, 2018, until the beginning of its first taxable year in 2018 (the ''disqualified period'') in which it could engage in transactions that generate income subject to neither section 965 nor 951A. These transactions could be used to create two types of tax benefits. First, earnings generated from transactions during the disqualified period could support tax-free distributions of cash or other assets to the United States using the section 245A deduction. Second, assets transferred to related CFCs during the disqualified period would have fair market value tax basis in the hands of the transferee, generating future depreciation deductions or other losses against U.S. taxable income such as GILTI. In many cases, these two benefits arise from the same transaction undertaken during the disqualified period because a transfer of low-basis assets can generate earnings eligible for the section 245A deduction for the seller and allow the buyer to take the assets with fair market value basis that generates future depreciation deductions (on assets that otherwise may have had no or low basis in the hands of the seller).

To address the earnings and profits created in these transactions, temporary and proposed regulations were published under section 245A on June 18, 2019 (the ''2019 section 245A regulations'') that limit the ability to obtain the section 245A deduction for certain earnings and profits generated during the disqualified period. The 2019 section 245A regulations are being finalized with certain changes alongside the issuance of the proposed regulations. To address the fair market value basis generated in these transactions, final regulations were published under section 951A (''GILTI final regulations'') on June 21, 2019, that allocate depreciation or amortization deductions resulting from basis generated in certain disqualified period transactions to income not subject to U.S. tax.

The 2019 section 245A regulations, as finalized, contain § 1.245A–5, which generally denies the section 245A deduction for 50 percent of the earnings generated from an SFC's disposition of property to a related party during the disqualified period. This denial applies if (i) the disposition was outside the SFC's ordinary course of business and (ii) the disposition generated earnings that would have been subject to tax under section 951A had the disposition not occurred during the disqualified period (an ''extraordinary disposition''). Section 1.245A–5 establishes an extraordinary disposition account for taxpayers to track the amount of earnings and profits generated from extraordinary dispositions. The section 245A deduction is limited for dividends out of that account.

Section 1.951A–2(c)(5) of the GILTI final regulations focuses on the consequences to the transferee in transactions that were generally extraordinary dispositions. It requires that deductions or losses attributable to the basis of an asset resulting from certain transfers during the disqualified period (''disqualified basis'') be allocated and apportioned to ''residual CFC gross income'' (that is, income other than tested income, subpart F income, or ECTI). As a result, the deductions or losses attributable to disqualified basis cannot reduce the CFC's income subject to U.S. tax. Instead, the deductions and losses reduce the untaxed earnings and profits of the CFC, including those earnings and profits that would otherwise be eligible for a section 245A deduction when distributed to a U.S. shareholder.

The 2019 section 245A regulations requested comments regarding options for coordinating § 1.245A–5 with § 1.951A–2(c)(5). After carefully considering the comments on this topic, the Treasury Department and the IRS are providing the proposed regulations, which coordinate § 1.245A–5 with § 1.951A–2(c)(5).

Generally, the proposed regulations provide relief from either § 1.245A–5 or § 1.951A–2(c)(5) to the extent that the other rule results in U.S. taxation on the same underlying transaction. Thus, to the extent that the section 245A deduction is limited with respect to distributions out of an extraordinary disposition account, a corresponding amount of disqualified basis attributable to the property that generated that extraordinary disposition account through an extraordinary disposition is converted to basis that is not subject to § 1.951A–2(c)(5). The Treasury Department and the IRS project that this situation is likely to be relatively rare in the near future, because of the rule in § 1.245A–5(c)(2)(i) specifying that distributions out of the extraordinary disposition account are made after all other E&P have been distributed. In the reverse scenario, to the extent that § 1.951A–2(c)(5) allocates a CFC's deductions or losses from property acquired during the disqualified period to residual CFC gross income and thereby causes an increase to the CFC's tested income, subpart F income, or ECTI while reducing its untaxed E&P, the extraordinary disposition account of the U.S. shareholder created from the transfer of that property during the disqualified period is reduced by a corresponding amount.

B. Need for the Proposed Regulations

The existence of two separate sets of rules governing the same types of income or transactions suggests that taxpayers would benefit from their coordination, and comments have requested this coordination. The proposed regulations respond to these comments and help to ensure proper functioning of the regulations governing the Act.

C. Economic Analysis of the Proposed Regulations

1. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations. Under the baseline, §§ 1.245A–5 and 1.951A–2(c)(5) can both apply as a result of the same transaction.

2. Economic Effects

i. Summary

The proposed regulations coordinate the treatment of extraordinary

disposition accounts and disqualified basis. An example of how they do so is presented in part I.C.2.ii of this Special Analyses. Both extraordinary disposition accounts and disqualified basis were created during the disqualified period, which ended before the issuance of the proposed regulations; thus, the proposed regulations will not further economic activity. Thus, these provisions will largely not give rise to economic effects.

The Treasury Department and the IRS have, however, identified some circumstances under which the proposed regulations may affect business activity relative to the no-action baseline. In particular, the proposed regulations may affect the extent to which the basis of certain assets transferred during the disqualified period can reduce potentially taxable income. This means that for affected taxpayers who distribute dividends subject to the extraordinary disposition rule and thereby correspondingly reduce disqualified basis under the proposed regulations, the amount of deduction or loss allowed against potentially taxable income is generally higher under the proposed regulations than under the no-action baseline. This outcome leads to a lower effective tax rate for affected taxpayers on future income under the proposed regulations than under the no-action baseline.

The lower tax rate under the proposed regulations may lead to an increase in economic activity for affected taxpayers relative to the no-action baseline. This incentive for additional economic activity, relative to the no-action baseline, will generally persist for as long as the difference in effective tax rates exists (described in part I.C.2.ii of this Special Analyses).[2] The Treasury Department and the IRS project that the fact pattern leading to this situation will likely be relatively rare, however, because it relies on taxpayers distributing income from their extraordinary disposition accounts during the useful life of the asset, which is likely to be uncommon because of the ordering rule that requires that earnings from extraordinary disposition accounts be distributed after all other earnings and profits.

The Treasury Department and the IRS have not undertaken quantitative estimates of this economic effect. Data or models are not readily available to indicate (i) the amounts of potentially disqualified basis (which depends on the volume, value, and basis of assets transferred during the disqualified period; see related discussion in part I.C.2.iii of this Special Analyses) held by taxpayers and the amount of any corresponding extraordinary disposition accounts; (ii) differences in effective tax rates for affected taxpayers (taxpayers that have disqualified basis and a corresponding extraordinary disposition account) between the proposed regulations and the no-action baseline; (iii) the amount and period of the depreciation deductions related to the potentially disqualified basis to which the previous item applies; and (iv) the amount of additional economic activity that might be undertaken by these affected taxpayers as a result of the difference in effective tax rates. The combined effect of these four items gives rise to any potential economic effects of the proposed regulations.

The Treasury Department and the IRS also considered the effect of the regulations on compliance costs relative to the no-action baseline. The compliance costs arising from the proposed regulations stem only from those record-keeping, reporting, and related compliance activities that would not have been undertaken in the absence of the proposed regulations. However, because the final regulations in §§ 1.245A–5 and 1.951A–2(c)(5) already require collection of most of the information and record keeping necessary to implement these coordination rules, the Treasury Department and the IRS project that any additional costs of the proposed regulations, relative to the no-action baseline, will be modest. For example, to the extent that a U.S. taxpayer distributes a taxable dividend from its extraordinary disposition account, that taxpayer will already know the value of that dividend as well as the amount of disqualified basis generated in the transaction that created the extraordinary disposition account, such that any added burden generally lies only in identifying and reducing the corresponding disqualified basis by the amount of the dividend, as well as reporting such amounts to the extent required by the IRS.

Although the Treasury Department and the IRS have not undertaken quantitative estimates of the proposed regulations, it is projected that the proposed regulations could modestly enhance U.S. economic performance relative to the no-action baseline. The treatment of disqualified basis and the reduction in effective tax rates that it engenders for affected taxpayers will enhance economic activity.

The Treasury Department and the IRS solicit comments on the economic effects of the proposed regulations and particularly solicit data, models, or other evidence that could enhance the rigor of the analysis underlying the final regulations.

ii. Example

The potential difference in effective tax rates between the proposed regulations and the no-action baseline can be illustrated by an example.

Suppose CFC A (a wholly-owned foreign subsidiary of a U.S. parent) has $0 E&P and transfers assets worth $100x to CFC B (also a wholly-owned foreign subsidiary of the same U.S. parent) during the disqualified period in a transaction that is an extraordinary disposition, and suppose the transferred assets have basis of $0 immediately before the transfer. CFC A obtains $100x of earnings and profits of which, because of the final regulations under section 245A, only 50 percent qualifies for the section 245A deduction (if distributed to the U.S. parent as a dividend). Also, as a result of the sale of the asset during the disqualified period, CFC B obtains $100x of basis in the asset which, because of § 1.951A–2(c)(5), cannot be used to offset subpart F income, tested income for GILTI purposes, or ECTI as it is amortized or depreciated. Additionally, the amortization or depreciation deductions on this $100x of disqualified basis reduce CFC B's earnings that otherwise may have qualified for the section 245A deduction.

Thus, over the life of the amortization or depreciation of the asset with $100x basis, CFC B could, absent the proposed regulations, have $100x more tested income (potentially taxed at an effective rate of 10.5%, or $10.50x tax) than it would have had if the $100x of amortization or depreciation had been allowed to reduce tested income (assuming that CFC B has at least $100x of gross tested income in that period and neither it nor its U.S parent has any other attributes that can reduce GILTI). The amortization or depreciation deductions would also reduce CFC B's untaxed earnings and profits by $100x, potentially eliminating the ability to distribute $100x tax-free under section 245A.

Suppose that, in the same taxable year as the extraordinary disposition to CFC B, CFC A makes a dividend distribution to the U.S. parent of $100x out of the extraordinary disposition account. The section 245A deduction is limited to 50 percent of the earnings distributed

[2] The potential discrepancy in effective tax rates can exist for a period up to the remaining useful life of a depreciable or amortizable asset with (formerly) disqualified basis starting from the year that an amount is distributed out of an extraordinary disposition account and reduces that disqualified basis.

(under § 1.245A–5) and hence the U.S. parent pays $10.50x of tax (assuming CFC A's earnings and profits are solely attributable to the extraordinary disposition transaction). U.S. parent's extraordinary disposition account with respect to CFC A is reduced by $100x and subsequent income earned by CFC A can be repatriated tax free.

Under the proposed regulations, once CFC A makes that distribution of $100x out of its extraordinary disposition account subject to a $10.50x tax, the $100x of basis that CFC B has in the asset transferred during the disqualified period is no longer disqualified basis and can give rise to amortization or depreciation deductions that offset CFC B's gross tested income, potentially eliminating $10.50x tax on CFC B's tested income. This lowers the effective tax rate on CFC B's future income and may spur additional economic activity.

iii. Profile of Affected Taxpayers

The taxpayers potentially affected by the proposed regulations are direct or indirect U.S. shareholders of at least two related foreign corporations, one that has an extraordinary disposition account and the other that has assets with disqualified basis corresponding to the extraordinary disposition account. This means that the foreign corporation with the extraordinary disposition account has a fiscal year and engaged in a disposition of property (i) during the period between January 1, 2018, and the end of the transferor foreign corporation's last taxable year beginning before January 1, 2018; (ii) outside the ordinary course of the foreign corporation's activities; and (iii) generally, while the corporation was a CFC.

The Treasury Department and the IRS have not estimated how many taxpayers are likely to be affected by the proposed regulations because data on the taxpayers that may have engaged in these particular transactions are not readily available. Based on tabulations of the 2014 Statistics of Income Study file, the Treasury Department and the IRS estimate that there are approximately 5,000 domestic corporations with at least one fiscal year CFC. However, the number of potentially affected taxpayers is likely substantially smaller than the number of domestic corporations with at least one fiscal year CFC because a domestic corporation will not be affected unless it has a fiscal year CFC that engaged in a non-routine sale with a related party during the disqualified period that created an extraordinary disposition account and disqualified basis under §§ 1.245A–5 and 1.951A–2(c)(5), and the domestic corporation must then incur the type of cost (limitation of the section 245A deduction or allocation of deductions or losses to residual CFC gross income and reduction in untaxed earnings) that causes the proposed regulations to apply.

II. Paperwork Reduction Act

The collections of information in the proposed regulations are in § 1.6038–2(f)(17) and (18).

The collection of information in § 1.6038–2(f)(17) is mandatory for every U.S. shareholder of a CFC that holds an item of property that has disqualified basis within the meaning of § 1.951A–3(h)(2) during an annual accounting period and files Form 5471 for that period (OMB control number 1545–0123). The collection of information in § 1.6038–2(f)(17) is satisfied by providing information about the items of property with disqualified basis held by the CFC during the CFC's accounting period as Form 5471 and its instructions may prescribe. For purposes of the Paperwork Reduction Act, the reporting burden associated with § 1.6038–2(f)(17) will be reflected in the applicable Paperwork Reduction Act submission associated with Form 5471. As provided below, the estimated number of respondents for the reporting burden associated with § 1.6038–2(f)(17) is 7,500–8,500, based on estimates provided by the Research, Applied Analytics and Statistics Division of the IRS.

The related new or revised tax form is as follows:

	New	Revision of existing form	Number of respondents (estimate)
Schedule to Form 5471		✓	7,500–8,500

The collection of information in § 1.6038–2(f)(18) is mandatory for every U.S. shareholder of a CFC that applies the rules of proposed §§ 1.245A–6 through 1.245A–11 during an annual accounting period and files Form 5471 for that period (OMB control number 1545–0123). The collection of information in § 1.6038–2(f)(18) is satisfied by providing information about the reduction to an extraordinary disposition account made pursuant to proposed § 1.245A–7(b) or § 1.245A–8(b) and reductions to an item of specified property's disqualified basis pursuant to proposed § 1.245A–7(c) or § 1.245A–8(c) during the corporation's accounting period as Form 5471 and its instructions may prescribe. For purposes of the Paperwork Reduction Act, the reporting burden associated with § 1.6038–2(f)(18) will be reflected in the applicable Paperwork Reduction Act submission associated with Form 5471. As provided below, the estimated number of respondents for the reporting burden associated with § 1.6038–2(f)(18) is 7,500–8,500, based on estimates provided by the Research, Applied Analytics and Statistics Division of the IRS.

The related new or revised tax form is as follows:

	New	Revision of existing form	Number of respondents (estimate)
Schedule to Form 5471		✓	7,500–8,500

The current status of the Paperwork Reduction Act submissions related to the new revised Form 5471 as a result of the information collections in the proposed regulations is provided in the accompanying table. The reporting burdens associated with the information collections in § 1.6038–2(f)(17) and (18) are included in the aggregated burden estimates for OMB control number 1545–0123, which represents a total estimated burden time for all forms and schedules for corporations of 3.157 billion hours and total estimated monetized costs of $58.148 billion

($2017). The overall burden estimates provided in 1545–0123 are aggregate amounts that relate to the entire package of forms associated with the OMB control number and will in the future include but not isolate the estimated burden of the tax forms that will be revised as a result of the information collections in the proposed regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the temporary regulations. The Treasury Department and the IRS urge readers to recognize that these numbers are duplicates of estimates provided for informational purposes in other proposed and final regulatory actions and to guard against over-counting the burden that international tax provisions imposed before the Act.

No burden estimates specific to the proposed regulations are currently available. The Treasury Department and the IRS have not identified any burden estimates, including those for new information collections, related to the requirements under the proposed regulations. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize the paperwork burden. Proposed revisions to these forms that reflect the information collections contained in these proposed regulations will be made available for public comment at *www.irs.gov/draftforms* and will not be finalized until after approved by OMB under the PRA.

Information collection	Type of filer	OMB No.(s)	Status
Form 5471	Business (new model).	1545–0123	Published in the **Federal Register** on 9/30/19. Public Comment period closed on 11/29/19. Approved by OMB through 1/31/2021.
	https://www.federalregister.gov/documents/2019/09/30/2019-21068/proposed-collection-comment-request-for-forms-1065-1066-1120-1120-c-1120-f-1120-h-1120-nd-1120-s		

III. Regulatory Flexibility Act

It is hereby certified that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). The small entities that are subject to § 1.245A–5 are small entities that are U.S. shareholders of certain foreign corporations that are otherwise eligible for the section 245A deduction on distributions from the foreign corporation. The small entities that are subject to § 1.951A–2(c)(5) are U.S. shareholders of certain foreign corporations that are subject to tax under section 951 with respect to subpart F income of those foreign corporations or section 951A with respect to tested income of those foreign corporations.

The taxpayers potentially affected by these proposed regulations are U.S. shareholders of at least two related foreign corporations, one that has an extraordinary disposition account and the other that has assets with disqualified basis corresponding to the extraordinary disposition account. This means that the foreign corporation with the extraordinary disposition account has or had a fiscal year and engaged in a disposition of property (i) during the period between January 1, 2018, and the end of the transferor foreign corporation's last taxable year beginning before 2018; (ii) outside the ordinary course of the foreign corporation's activities; and (iii) generally, while the corporation was a CFC.

The Treasury Department and the IRS have not estimated how many taxpayers are likely to be affected by these regulations because data on the taxpayers that may have engaged in these particular transactions are not readily available. Based on tabulations of the 2014 Statistics of Income Study file the Treasury Department and the IRS estimate that there are approximately 5,000 domestic corporations with at least one fiscal year CFC. Previous estimates suggest that approximately half of domestic corporations with CFCs have less than $25 million in gross receipts. However, the number of potentially affected taxpayers is smaller than the number of domestic corporations with at least one fiscal year CFC because a domestic corporation will not be affected unless its fiscal year CFC engages in a non-routine sale with a related party that creates an extraordinary disposition account and disqualified basis, and the domestic corporation must then incur the type of cost (limitation of the section 245A deduction or allocation of deductions or losses to residual CFC gross income and reduction in untaxed earnings) that causes these proposed regulations to apply. There are several industries that may be identified as small even through their annual receipts are above $25 million or because they have fewer employees than the SBA Size Standard for that industry. The Treasury Department and the IRS do not have more precise data indicating the number of small entities that will be potentially affected by the regulations. The rule may affect a substantial number of small entities, but data are not readily available to assess how many entities will be affected. Nevertheless, for the reasons described below, the Treasury Department and the IRS have determined that the regulations will not have a significant economic impact on small entities.

The Treasury Department and the IRS have concluded that there is no significant economic impact on such entities as a result of the proposed regulations. To make this determination, the Treasury Department and the IRS calculated the ratio of estimated global intangible lowed-taxed income (''GILTI'') and subpart F income tax attributable to these businesses to aggregate total sales data. Bureau of Economic Analysis data on the activities of multinational enterprises report total sales of all foreign affiliates of U.S. parents of $7,183 billion in 2017 (accessed at this web address in December, 2018: *https://apps.bea.gov/iTable/iTable.cfm?ReqID=2&step=1*). Projections for GILTI and Subpart F tax revenues average $20 billion per year over the ten-year budget window (see Joint Committee on Taxation, Estimated Budget Effects of the Conference Agreement for H.R. 1, The ''Tax Cuts and Jobs Act, JCX–67–17, December 18, 2017), resulting in a less than 1 percent share of GILTI and Subpart F tax in total sales of U.S.—parented affiliates. Compliance costs for these regulations will be a small fraction of the revenue amounts. Thus, any tax regulation that affects the proceeds from GILTI and subpart F income would have an economic impact of less than 3 to 5

percent of ''receipts'' (as that term is defined in 13 CFR 121.104, the provision for calculating small business receipts, to mean sales and any other measure of gross income), an economic impact that the Treasury Department and IRS regard as the threshold for significant under the Regulatory Flexibility Act. This calculated percentage is furthermore an upper bound on the true expected effect of the proposed regulations because not all the GILTI and subpart F income estimated to be attributable to small entities will be affected by the proposed regulations. For example, GILTI and subpart F income that is not attributable to a CFC that holds property with disqualified basis (or property that would otherwise have disqualified basis in the absence of these regulations) is not affected by these proposed regulations. Consequently, the Treasury Department and the IRS have determined that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small businesses.

Comments and Requests for Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. 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.

Drafting Information

The principal authors of the proposed regulations are Logan M. Kincheloe and Shane M. McCarrick, 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 adding an entry in numerical order for §§ 1.245A–6 through 1.245A–11 to read in part as follows:

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

Sections 1.245A–6 through 1.245A–11 also issued under 26 U.S.C. 245A(g), 882(c)(1)(A), 951A, 954(b)(5), 954(c)(6), and 965(o).

* * * * *

■ **Par. 2.** Section 1.245A–5 is amended by:

■ 1. In the first sentence of paragraph (c)(3)(i)(A), adding immediately after the language ''by the prior extraordinary disposition amount'' the language ''and as provided in § 1.245A–7 or § 1.245A–8.''

■ 2. Revising paragraph (j)(8)(ii).

The revision reads as follows:

§ 1.245A–5 Limitation of section 245A deduction and section 954(c)(6) exception.

* * * * *

(j) * * *

(8) * * *

(ii) *Analysis.* Because the royalty prepayment was carried out with a principal purpose of avoiding the purposes of this section, appropriate adjustments are required to be made under the anti-abuse rule in paragraph (h) of this section. CFC1 is a CFC that has a November 30 taxable year, so under paragraph (c)(3)(iii) of this section, CFC1 has a disqualified period beginning on January 1, 2018, and ending on November 30, 2018. In addition, even though the intangible property licensed by CFC1 to CFC2 is specified property, CFC2's prepayment of the royalty would not be treated as a disposition of the specified property by CFC1 and, therefore, would not constitute an extraordinary disposition (and thus would not give rise to extraordinary disposition E&P), absent the application of the anti-abuse rule of paragraph (h) of this section. Pursuant to paragraph (h) of this section, the earnings and profits of CFC1 generated as a result of the $100x of prepaid royalty are treated as extraordinary disposition E&P for purposes of this section and, therefore, US1 has an extraordinary disposition account with respect to CFC1 of $100x. In addition, the prepaid royalty gives rise to a disqualified payment (as defined in § 1.951A–2(c)(6)(ii)(A)) of $100x. As a result, § 1.245A–7(b) or § 1.245A–8(b), as applicable, applies to reduce the disqualified payment in the same manner as if the disqualified payment were disqualified basis, and § 1.245A–7(c) or § 1.245A–8(c), as applicable, applies to reduce the extraordinary disposition account in the same manner as if the deductions directly or indirectly related to the disqualified payment were deductions attributable to disqualified basis of an item of specified property that corresponds to the extraordinary disposition account.

* * * * *

■ **Par. 3.** Sections 1.245A–6 through 1.245A–11 are added to read as follows:

Sec.

* * * * *

1.245A–6 Coordination of extraordinary disposition and disqualified basis rules.
1.245A–7 Coordination rules for simple cases.
1.245A–8 Coordination rules for complex cases.
1.245A–9 Other rules and definitions.
1.245A–10 Examples.
1.245A–11 Applicability dates.

* * * * *

§ 1.245A–6 Coordination of extraordinary disposition and disqualified basis rules.

(a) *Scope.* This section and §§ 1.245A–7 through 1.245A–11 coordinate the application of the extraordinary disposition rules of § 1.245A–5(c) and (d) and the disqualified basis rule of § 1.951A–2(c)(5). Section 1.245A–7 provides coordination rules for simple cases, and § 1.245A–8 provides coordination rules for complex cases. Section 1.245A–9 provides definitions and other rules, including rules of general applicability for purposes of this section and §§ 1.245A–7 through 1.245A–11. Section 1.245A–10 provides examples illustrating the application of this section and §§ 1.245A–7 through 1.245A–9. Section 1.245A–11 provides applicability dates.

(b) *Conditions to apply coordination rules for simple cases.* For a taxable year of a section 245A shareholder for which the conditions described in paragraphs (b)(1) and (2) of this section are satisfied, the section 245A shareholder may apply the coordination rules of § 1.245A–7 (rules for simple cases) to an extraordinary disposition account of the section 245A shareholder with respect to an SFC and disqualified basis of an

item of specified property that corresponds to the extraordinary disposition account (as determined pursuant to § 1.245A–9(b)(1)). If the conditions are not satisfied, then the coordination rules of § 1.245A–8 (rules for complex cases) apply beginning with the first day of the first taxable year of the section 245A shareholder for which the conditions are not satisfied and all taxable years thereafter. If the conditions are satisfied for a taxable year of the section 245A shareholder but the section 245A shareholder chooses not to apply the coordination rules of § 1.245A–7 for that taxable year, then the coordination rules of § 1.245A–8 apply to that taxable year (though, for a subsequent taxable year, the section 245A shareholder may apply the coordination rules of § 1.245A–7, provided that the conditions described in paragraphs (b)(1) and (2) of this section are satisfied for such subsequent taxable year and have been satisfied for all earlier taxable years). For purposes of applying paragraphs (b)(1) and (2) of this section, a reference to a section 245A shareholder, an SFC, or a CFC does not include a successor of the section 245A shareholder, the SFC, or the CFC, respectively.

(1) *Requirements related to the SFC.* The condition of this paragraph (b)(1) is satisfied for a taxable year of the section 245A shareholder if the following requirements are satisfied:

(i) On January 1, 2018, the section 245A shareholder owns (within the meaning of section 958(a)) all of the stock (by vote and value) of the SFC.

(ii) On each day of the taxable year of the section 245A shareholder, the section 245A shareholder owns (within the meaning of section 958(a)) all of the stock (by vote and value) of the SFC.

(iii) On no day during the taxable year of the section 245A shareholder was the SFC a distributing or controlled corporation in a transaction described in a section 355, or did the SFC acquire the assets of a corporation as to which there is an extraordinary disposition account pursuant to a transaction described in section 381 (that is, taking into account the requirements of this paragraph (b)(1) and paragraph (b)(2) of this section, the section 245A shareholder's extraordinary disposition account with respect to the SFC has not been not been adjusted pursuant to the rules of § 1.245A–5(c)(4)).

(2) *Requirements related to an item of specified property that corresponds to an extraordinary disposition account and a CFC holding the item.* The condition of this paragraph (b)(2) is satisfied for a taxable year of a section 245A shareholder if the following requirements are satisfied:

(i) For each item of specified property with disqualified basis that corresponds to the extraordinary disposition account, the item of specified property is held by a CFC immediately after the extraordinary disposition of the item of specified property.

(ii) For each CFC described in paragraph (b)(2)(i) of this section—

(A) All of the stock (by vote and value) of the CFC is owned (within the meaning of section 958(a)) by the section 245A shareholder and any domestic affiliates of the section 245A shareholder immediately after the extraordinary disposition described in paragraph (b)(2)(i) of this section;

(B) For each taxable year of the CFC that ends with or within the taxable year of the section 245A shareholder, there is no extraordinary disposition account with respect to the CFC, and the sum of the balance of the hybrid deduction accounts (as described in § 1.245A(e)–1(d)(1)) with respect to shares of stock of the CFC is zero (determined as of the end of the taxable year of the CFC and taking into account any adjustments to the accounts for the taxable year); and

(C) On each day of each taxable year of the CFC that ends with or within the taxable year of the section 245A shareholder, and on each day of each taxable year of the CFC that begins with or within the taxable year of the section 245A shareholder—

(*1*) The CFC holds the item of specified property described in paragraph (b)(1)(i) of this section;

(*2*) The section 245A shareholder and any domestic affiliates own (within the meaning of section 958(a)) all of the stock (by vote and value) of the CFC;

(*3*) The CFC does not hold any item of specified property with disqualified basis other than an item of specified property that corresponds to the extraordinary disposition account;

(*4*) The CFC does not own an interest in a partnership, trust, or estate (directly or indirectly through one or more other partnerships, trusts, or estates) that holds an item of specified property with disqualified basis; and

(*5*) The CFC is not engaged in the conduct of a trade or business in the United States and therefore does not have ECTI, and the CFC does not have any deficit in earnings and profits subject to § 1.381(c)(2)-1(a)(5).

§ 1.245A–7 Coordination rules for simple cases.

(a) *Scope.* This section applies for a taxable year of a section 245A shareholder for which the conditions of § 1.245A–6(b)(1) and (2) are satisfied and for which the section 245A shareholder chooses to apply this section (in lieu of § 1.245A–8).

(b) *Reduction of disqualified basis by reason of an extraordinary disposition amount or tiered extraordinary disposition amount*—(1) *In general.* If, for a taxable year of a section 245A shareholder, an extraordinary disposition account of the section 245A shareholder gives rise to one or more extraordinary disposition amounts or tiered extraordinary disposition amounts, then, with respect to an item of specified property that corresponds to the extraordinary disposition account, the disqualified basis of the item of specified property is, solely for purposes of § 1.951A–2(c)(5), reduced (but not below zero) by an amount (determined in the functional currency in which the extraordinary disposition account is maintained) equal to the product of—

(i) The sum of the extraordinary disposition amounts and the tiered extraordinary disposition amounts; and

(ii) A fraction, the numerator of which is the disqualified basis of the item of specified property, and the denominator of which is the sum of the disqualified basis of each item of specified property that corresponds to the extraordinary disposition account.

(2) *Timing rules regarding disqualified basis.* See § 1.245A–9(b)(2) for timing rules regarding the determination of, and reduction to, disqualified basis of an item of specified property.

(c) *Reduction of extraordinary disposition account by reason of the allocation and apportionment of deductions or losses attributable to disqualified basis*—(1) *In general.* If, for a taxable year of a CFC, the CFC holds one or more items of specified property that correspond to an extraordinary disposition account of a section 245A shareholder with respect to an SFC, then the extraordinary disposition account is reduced (but not below zero) by the lesser of the amounts described in paragraphs (c)(1)(i) and (ii) of this section (each determined in the functional currency of the CFC).

(i) The excess (if any) of the adjusted earnings of the CFC for the taxable year of the CFC, over the sum of the previously taxed earnings and profits accounts with respect to the CFC for purposes of section 959 (determined as of the end of the taxable year of the CFC and taking into account any adjustments to the accounts for the taxable year).

(ii) The balance of the section 245A shareholder's RGI account with respect to the CFC (determined as of the end of the taxable year of the CFC, but without

regard to the application of paragraph (c)(4)(ii) of this section for the taxable year).

(2) *Timing of reduction to extraordinary disposition account.* See § 1.245A–9(b)(3) for timing rules regarding the reduction to an extraordinary disposition account.

(3) *Adjusted earnings.* The term *adjusted earnings* means, with respect to a CFC and a taxable year of the CFC, the earnings and profits of the CFC, determined as of the end of the CFC's taxable year (taking into account all distributions during the taxable year), and with the adjustments described in paragraphs (c)(3)(i) through (iii) of this section.

(i) The earnings and profits are increased by the amount of any deduction or loss that is or was allocated and apportioned to residual CFC gross income of the CFC solely by reason of § 1.951A–2(c)(5)(i).

(ii) The earnings and profits are decreased by the amount by which an RGI account with respect to the CFC has been decreased pursuant to paragraph (c)(4)(ii) of this section for a prior taxable year of the CFC.

(iii) The earnings and profits are determined without regard to income described in section 245(a)(5)(A) or dividends described in section 245(a)(5)(B) (determined without regard to section 245(a)(12)).

(4) *RGI account.* For a taxable year of a CFC, the following rules apply to determine the balance of a section 245A shareholder's RGI account with respect to the CFC:

(i) The balance of the RGI account is increased by the sum of the amounts of deductions and losses of the CFC that, but for § 1.951A–2(c)(5)(i), would have decreased one or more categories of the CFC's positive subpart F income or the CFC's tested income, or increased or given rise to a tested loss or one or more qualified deficits of the CFC.

(ii) The balance of the RGI account is decreased to the extent that, by reason of the application of paragraph (c)(1) of this section with respect to the taxable year of the CFC, there is a reduction to the extraordinary disposition account of the section 245A shareholder.

§ 1.245A–8 Coordination rules for complex cases.

(a) *Scope.* This section applies beginning with the first day of the first taxable year of a section 245A shareholder for which § 1.245A–7 does not apply and for all taxable years thereafter, or for a taxable year of a section 245A shareholder for which the section 245A shareholder chooses not to apply § 1.245A–7.

(b) *Reduction of disqualified basis by reason of an extraordinary disposition amount or tiered extraordinary disposition amount*—(1) *In general.* If, for a taxable year of a section 245A shareholder, an extraordinary disposition account of the section 245A shareholder gives rise to one or more extraordinary disposition amounts or tiered extraordinary disposition amounts, then, with respect to an item of specified property that corresponds to the extraordinary disposition account and for which the ownership requirement of paragraph (b)(3)(i) of this section is satisfied for the taxable year of the section 245A shareholder, solely for purposes of § 1.951A–2(c)(5), the disqualified basis of the item of specified property is reduced (but not below zero) by an amount (determined in the functional currency in which the extraordinary disposition account is maintained) equal to the product of—

(i) The excess (if any) of—

(A) The sum of the extraordinary disposition amounts and the tiered extraordinary disposition amounts; over

(B) The basis benefit account with respect to the extraordinary disposition account (determined as of the end of the taxable year of the section 245A shareholder, and without regard to the application of paragraph (b)(4)(i)(B) of this section for the taxable year); and

(ii) A fraction, the numerator of which is the disqualified basis of the item of specified property, and the denominator of which is the sum of the disqualified basis of each item of specified property that corresponds to the extraordinary disposition account and for which the ownership requirement of paragraph (b)(3)(i) of this section is satisfied for the taxable year of the section 245A shareholder.

(2) *Timing rules regarding disqualified basis.* See § 1.245A–9(b)(2) for timing rules regarding the determination of, and reduction to, disqualified basis of an item of specified property.

(3) *Ownership requirement with respect to an item of specified property*—(i) *In general.* For a taxable year of a section 245A shareholder, the ownership requirement of this paragraph (b)(3)(i) is satisfied with respect to an item of specified property if, on at least one day that falls within the taxable year, the item of specified property is held by—

(A) The section 245A shareholder;

(B) A person (other than the section 245A shareholder) that, on at least one day that falls within the section 245A shareholder's taxable year, is a related party with respect to the section 245A shareholder (such a person, a *qualified related party* with respect to the section 245A shareholder for the taxable year of the section 245A shareholder); or

(C) A specified entity at least ten percent of the interests of which are, on at least one day that falls within the section 245A shareholder's taxable year, owned directly or indirectly through one or more other specified entities by the section 245A shareholder or a qualified related party.

(ii) *Rules for determining an interest in a specified entity.* For purposes of paragraph (b)(3)(i)(C) of this section, the phrase ''*at least 10 percent of the interests*'' means—

(A) If the specified entity is a foreign corporation, at least 10 percent of the stock (by vote or value) of the foreign corporation;

(B) If the specified entity is a partnership, at least 10 percent of the interests in the capital or profits of the partnership; or

(C) If the specified entity is not a foreign corporation or a partnership, at least 10 percent of the value of the interests in the specified entity.

(4) *Basis benefit account*—(i) *General rules.* The term *basis benefit account* means, with respect to an extraordinary disposition account of a section 245A shareholder, an account of the section 245A shareholder (the initial balance of which is zero), adjusted pursuant to the rules of paragraphs (b)(4)(i)(A) and (B) of this section on the last day of each taxable year of the section 245A shareholder. The basis benefit account must be maintained in the same functional currency as the extraordinary disposition account.

(A) The balance of the basis benefit account is increased to the extent that a basis benefit amount with respect to an item of specified property that corresponds to the section 245A shareholder's extraordinary disposition account is assigned to the taxable year of the section 245A shareholder. However, if the extraordinary disposition ownership percentage applicable to the section 245A shareholder's extraordinary disposition account is less than 100 percent, then, the basis benefit account is instead increased by the amount equal to the basis benefit amount multiplied by the extraordinary disposition ownership percentage.

(B) The balance of the basis benefit account is decreased to the extent that, for a taxable year that includes the date on which the section 245A shareholder's taxable year ends, disqualified basis of an item of specified property would have been reduced pursuant to paragraph (b)(1) of this

section but for an amount in the basis benefit account.

(ii) *Rules for determining a basis benefit amount*—(A) *In general.* The term *basis benefit amount* means, with respect to an item of specified property that has disqualified basis, the portion of disqualified basis that, for a taxable year, is directly (or indirectly through one or more specified entities that are not corporations) taken into account for U.S. tax purposes by a U.S. tax resident, a CFC described in § 1.267A–5(a)(17), or a specified foreign person and—

(*1*) Reduces the amount of the U.S. tax resident's taxable income, one or more categories of the CFC's positive subpart F income, the CFC's tested income, or the specified foreign person's ECTI, as applicable; or

(*2*) Prevents a decrease or offset of the amount of the CFC's tested loss or qualified deficits.

(B) *Rules for determining whether disqualified basis of an item of specified property is taken into account.* For purposes of paragraph (b)(4)(ii)(A) of this section, disqualified basis of an item of specified property is taken into account for U.S. tax purposes without regard to whether the disqualified basis is reduced or eliminated under § 1.951A–3(h)(2)(ii)(B)(*1*).

(C) *Timing rules when disqualified basis gives rise to a deferred or disallowed loss.* To the extent disqualified basis of an item of specified property gives rise to a deduction or loss during a taxable year that is deferred, then the determination of whether the item of deduction or loss gives rise to a basis benefit amount under paragraph (b)(4)(ii)(A) of this section is made when the item of deduction or loss is no longer deferred. In addition, to the extent disqualified basis of an item of specified property gives rise to a deduction or loss during a taxable year that is disallowed under section 267(a)(1), then a basis benefit amount is treated as occurring in the taxable year when and to the extent that gain is reduced pursuant to section 267(d), and provided that the gain is described in paragraph (b)(4)(ii)(A) of this section.

(iii) *Rules for assigning a basis benefit amount to a taxable year of a section 245A shareholder*—(A) *In general.* For purposes of applying paragraph (b)(4)(i)(A) of this section with respect to a section 245A shareholder, a basis benefit amount with respect to an item of specified property is assigned to a taxable year of the section 245A shareholder if—

(*1*) With respect to the item of specified property, the ownership requirement of paragraph (b)(3)(i) of this section is satisfied for the taxable year of the section 245A shareholder; and

(*2*) The basis benefit amount occurs during the taxable year of the section 245A shareholder, or a taxable year of a U.S. tax resident (other than the section 245A shareholder), a CFC described in § 1.267A–5(a)(17), or a specified foreign person, as applicable, that—

(*i*) Ends with or within the taxable year of the section 245A shareholder; or

(*ii*) Begins with or within the taxable year of the section 245A shareholder, but only in a case in which but for this paragraph (b)(4)(iii)(A)(*2*)(*ii*) the basis benefit amount would not be assigned to a taxable year of the section 245A shareholder.

(B) *Anti-duplication rule.* For purposes of paragraph (b)(4)(i)(A) of this section, to the extent that disqualified basis of an item of specified property gives rise to a basis benefit amount that is assigned to a taxable year of a section 245A shareholder under paragraph (b)(4)(iii)(A) of this section, and thereafter such disqualified basis gives rise to an additional basis benefit amount, the additional basis benefit amount cannot be assigned to another taxable year of any section 245A shareholder. Thus, for example, if the entire amount of disqualified basis of an item of specified property gives rise to a basis benefit amount for a particular taxable year of a CFC and is assigned to a taxable year of a section 245A shareholder but, pursuant to § 1.951A–3(h)(2)(ii)(B)(*1*)(*ii*), the disqualified basis is not reduced or eliminated in such taxable year of the CFC (because, for example, the buyer is a CFC that is a related party) and, as a result, the disqualified basis thereafter gives rise to an additional basis benefit amount, then no portion of the additional basis benefit amount is assigned to a taxable year of any section 245A shareholder.

(iv) *Successor rules for basis benefit accounts.* To the extent that an extraordinary disposition account of a section 245A shareholder is adjusted pursuant to § 1.245A–5(c)(4), a basis benefit account with respect to the extraordinary disposition account is adjusted in a similar manner.

(5) *Special rules regarding duplicate DQB of an item of exchanged basis property*—(i) *Adjustments to certain rules in applying paragraph (b)(1) of this section.* For purposes of paragraph (b)(1) of this section for a taxable year of a section 245A shareholder, the following rules apply with respect to duplicate DQB of an item of exchanged basis property:

(A) Duplicate DQB of the item of exchanged basis property with respect to an item of specified property to which the item of exchanged property relates is not taken into account for purposes of paragraph (b)(1) of this section if the disqualified basis of the item of specified property is taken into account for purposes of paragraph (b)(1) of this section. Thus, for example, if for a taxable year of a section 245A shareholder the ownership requirement of paragraph (b)(3) of this section is satisfied with respect to an item of specified property and an item of exchanged basis property that relates to the item of specified property, all of the disqualified basis of which is duplicate DQB with respect to the item of specified property, then only the disqualified basis of the item of specified property is taken into account for purposes of, and is subject to reduction under, paragraph (b)(1) of this section.

(B) If, pursuant to paragraph (b)(5)(i)(A) of this section, duplicate DQB of an item of exchanged basis property with respect to an item of specified property is not taken into account for purposes of paragraph (b)(1) of this section, then, solely for purposes of § 1.951A–2(c)(5), the duplicate DQB of the item of exchanged basis property is reduced (in the same manner as it would be if the disqualified basis were taken into account for purposes of paragraph (b)(1) of this section) by the product of the amounts described in paragraphs (b)(5)(i)(B)(*1*) and (*2*) of this section.

(*1*) The reduction, under paragraph (b)(1) of this section for the taxable year of the section 245A shareholder, to the disqualified basis of the item of specified property to which the item of exchanged basis property relates.

(*2*) A fraction, the numerator of which is the duplicate DQB of the item of exchanged basis property with respect to the item of specified property, and the denominator of which is the sum of the amounts of duplicate DQB with respect to the item of specified property of each item of exchanged basis property that relates to the item of specified property and for which the ownership requirement of paragraph (b)(3)(i) of this section is satisfied for the taxable year of the section 245A shareholder. For purposes of determining this fraction, duplicate DQB of an item of exchanged basis property is determined pursuant to the rules of paragraph (b)(2)(i) of this section (by replacing the term ''paragraph (b)(1)'' in that paragraph with the term ''paragraph (b)(5)(i)(B)''). In addition, duplicate DQB of an item of exchanged basis property is excluded from the denominator of the fraction to

the extent the duplicate DQB is attributable to duplicate DQB of another item of exchanged basis property that is included in the denominator of the fraction.

(ii) *Adjustments to certain rules in applying paragraph (b)(4) of this section.* For purposes of paragraph (b)(4)(i)(A) of this section, to the extent that disqualified basis of an item of specified property gives rise to a basis benefit amount that is assigned to a taxable year of a section 245A shareholder under paragraph (b)(4)(iii)(A) of this section, and thereafter duplicate DQB attributable to such disqualified basis of the item of specified property gives rise to an additional basis benefit amount, the additional basis benefit amount cannot be assigned to another taxable year of any section 245A shareholder. Similarly, for purposes of paragraph (b)(4)(i)(A) of this section, to the extent that duplicate DQB attributable to disqualified basis of an item of specified property gives rise to a basis benefit amount that is assigned to a taxable year of a section 245A shareholder under paragraph (b)(4)(iii)(A) of this section, and thereafter such disqualified basis of the item of specified property (or duplicate DQB attributable to such disqualified basis of the item of specified property) gives rise to an additional basis benefit amount, the additional basis benefit amount cannot be assigned to another taxable year of any section 245A shareholder.

(c) *Reduction of extraordinary disposition account by reason of the allocation and apportionment of deductions or losses attributable to disqualified basis*—(1) *In general.* For a taxable year of a CFC, if there is an RGI account with respect to the CFC that relates to an extraordinary disposition account of a section 245A shareholder with respect to an SFC, and the section 245A shareholder satisfies the ownership requirement of paragraph (c)(5) of this section for the taxable year of the CFC, then, subject to the limitations in paragraphs (c)(6) and (7) of this section, the extraordinary disposition account is reduced (but not below zero) by the lesser of the following amounts (each determined in the functional currency of the CFC)—

(i) The excess (if any) of—

(A) The product of—

(*1*) The adjusted earnings of the CFC for the taxable year of the CFC; and

(*2*) The percentage of stock of the CFC (by value) that, in aggregate, is owned directly or indirectly through one or more specified entities by the section 245A shareholder and any domestic affiliates on the last day of the taxable year of the CFC; over

(B) The sum of—

(*1*) The sum of the balance of the section 245A shareholder's and any domestic affiliates' previously taxed earnings and profits accounts with respect to the CFC for purposes of section 959 (determined as of the end of the taxable year of the CFC and taking into account any adjustments to the accounts for the taxable year);

(*2*) The sum of the balance of the hybrid deduction accounts (as described in § 1.245A(e)–1(d)(1)) with respect to shares of stock of the CFC that the section 245A shareholder and any domestic affiliates own (within the meaning of section 958(a), and determined by treating a domestic partnership as foreign) as of the end of the taxable year of the CFC and taking into account any adjustments to the accounts for the taxable year; and

(*3*) The sum of the balance of the section 245A shareholder's and any domestic affiliates' extraordinary disposition accounts with respect to the CFC (determined as of the end of the taxable year of the CFC and taking into account any adjustments to the accounts for the taxable year). However, if the section 245A shareholder or a domestic affiliate has an RGI account with respect to the CFC that relates to an extraordinary disposition account with respect to the CFC, then only the excess, if any, of the balance of the extraordinary disposition account over the balance of the RGI account that relates to the extraordinary disposition account (determined as of the end of the taxable year of the CFC, but without regard to the application of paragraph (c)(4)(i)(B) of this section for the taxable year) is taken into account for purposes of this paragraph (c)(1)(i)(B)(*3*). In addition, for purposes of this paragraph (c)(1)(i)(B)(*3*), an extraordinary disposition account that but for paragraph (e)(1) of this section would be with respect to the CFC for purposes of this section is treated as an extraordinary disposition account with respect to the CFC and thus is taken into account for purposes of this paragraph (c)(1)(i)(B)(*3*).

(ii) The balance of the RGI account with respect to the CFC that relates to the section 245A shareholder's extraordinary disposition account with respect to the SFC (determined as of the end of the taxable year of the CFC, but without regard to the application of paragraph (c)(4)(i)(B) of this section for the taxable year).

(2) *Timing of reduction to extraordinary disposition account.* See § 1.245A–9(b)(3) for timing rules regarding the reduction to an extraordinary disposition account.

(3) *Adjusted earnings.* The term *adjusted earnings* means, with respect to a CFC and a taxable year of the CFC, the earnings and profits of the CFC, determined as of the end of the CFC's taxable year (taking into account all distributions during the taxable year, and not taking into account any deficit in earnings and profits subject to § 1.381(c)(2)–1(a)(5)) and with the adjustments described in paragraphs (c)(3)(i) through (iv) of this section.

(i) The earnings and profits are increased by the amount of any deduction or loss that—

(A) Is or was attributable to disqualified basis of an item of specified property, but only to the extent that gain recognized on the extraordinary disposition of the item of specified property was included in the initial balance of an extraordinary disposition account;

(B) Is or was allocated and apportioned to residual CFC gross income of the CFC (or a predecessor) solely by reason of § 1.951A–2(c)(5)(i); and

(C) Does not or has not given rise to or increased a deficit in earnings and profits subject to § 1.381(c)(2)–1(a)(5), determined as of the end of the taxable year of the CFC.

(ii) The earnings and profits are decreased by the amount by which any RGI account with respect to the CFC has been decreased pursuant to paragraph (c)(4)(i)(B) of this section for a prior taxable year of the CFC.

(iii) The earnings and profits are determined without regard to earnings attributable to income described in section 245(a)(5)(A) or dividends described in section 245(a)(5)(B) (determined without regard to section 245(a)(12)).

(iv) The earnings and profits are decreased by the amount of any deduction or loss that, but for paragraph (c)(3)(i)(C) of this section, would be described in paragraph (c)(3)(i) of this section.

(4) *RGI account*—(i) *In general.* For a taxable year of a CFC, the following rules apply to determine the balance of a section 245A shareholder's RGI account that is with respect to the CFC and that relates to an extraordinary disposition account of the section 245A shareholder with respect to an SFC:

(A) The balance of the RGI account is increased by the product of the amounts described in paragraphs (c)(4)(i)(A)(*1*) and (*2*) of this section for a taxable year of the CFC.

(*1*) The sum of the amounts of deductions and losses of the CFC that—

(*i*) Are attributable to disqualified basis of one or more items of specified property that correspond to the extraordinary disposition account; and

(*ii*) But for § 1.951A–2(c)(5)(i), would have decreased one or more categories of the CFC's positive subpart F income, the CFC's tested income, or the CFC's ECTI, or increased or given rise to a tested loss or one or more qualified deficits of the CFC.

(*2*) The lesser of—

(*i*) A fraction (expressed as a percentage), the numerator of which is the sum of the portions of the CFC's subpart F income and tested income or tested loss (expressed as a positive number) taken into account under sections 951(a)(1)(A) and 951A(a) (as determined under the rules of §§ 1.951–1(b) and (e) and 1.951A–1(d)) by the section 245A shareholder and any domestic affiliates of the section 245A shareholder and the section 245A shareholder's and any domestic affiliates' pro rata shares of the CFC's qualified deficits (expressed as a positive number), and the denominator of which is the sum of the CFC's subpart F income, tested income or tested loss (expressed as a positive number), and qualified deficits (expressed as a positive number), but for purposes of this paragraph (c)(4)(i)(A)(*2*)(*i*) treating ECTI (expressed as a positive number) as if it were subpart F income; and

(*ii*) The extraordinary disposition ownership percentage applicable as to the section 245A shareholder's extraordinary disposition account.

(B) The balance of the RGI account is decreased to the extent that, by reason of the application of paragraph (c)(1) of this section with respect to the taxable year of the CFC, there is a reduction to the extraordinary disposition account of the section 245A shareholder.

(ii) *Successor rules for RGI accounts.* To the extent that an extraordinary disposition account of a section 245A shareholder is adjusted pursuant to § 1.245A–5(c)(4), an RGI account of a CFC with respect to the extraordinary disposition account is adjusted in a similar manner.

(5) *Ownership requirement with respect to a CFC.* For a taxable year of a CFC, a section 245A shareholder satisfies the ownership requirement of this paragraph (c)(5) if, on the last day of the CFC's taxable year, the section 245A shareholder or a domestic affiliate is a United States shareholder with respect to the CFC.

(6) *Allocation of reductions among multiple extraordinary disposition accounts.* This paragraph (c)(6) applies if, by reason of the application of paragraph (c)(1) of this section with respect to a taxable year of a CFC (and but for the application of this paragraph (c)(6) and paragraph (c)(7) of this section), the sum of the reductions under paragraph (c)(1) of this section to two or more extraordinary disposition accounts of a section 245A shareholder or a domestic affiliate of the section 245A shareholder would exceed the amount described in paragraph (c)(1)(i)(A) of this section (the amount of such excess, the *excess amount*). When this paragraph (c)(6) applies, the reduction to each extraordinary disposition account described in the previous sentence is equal to the reduction that would occur but for this paragraph (c)(6) and paragraph (c)(7) of this section, less the product of the excess amount and a fraction, the numerator of which is the balance of the extraordinary disposition account, and the denominator of which is the sum of the balances of all of the extraordinary dispositions accounts described in the previous sentence. For purposes of determining this fraction, the balance of an extraordinary disposition account is determined as of the end of the taxable year of the section 245A shareholder or the domestic affiliate, as applicable, that includes the date on which the CFC's taxable year ends (and after the determination of any extraordinary disposition amounts or tiered extraordinary disposition amounts for the taxable year of the section 245A shareholder or the domestic affiliate, as applicable, and adjustments to the extraordinary disposition account for prior extraordinary disposition amounts).

(7) *Extraordinary disposition account not reduced below balance of basis benefit account.* An extraordinary disposition account of a section 245A shareholder cannot be reduced pursuant to paragraph (c)(1) of this section below the balance of the basis benefit account with respect to the extraordinary disposition account (determined when a reduction to the extraordinary disposition account would occur under paragraph (c)(1) of this section).

(d) *Special rules for determining when specified property corresponds to an extraordinary disposition account*—(1) *Substituted property*—(i) *Treatment as specified property that corresponds to an extraordinary disposition account.* For purposes of this section, an item of substituted property is treated as an item of specified property that corresponds to an extraordinary disposition account to which the related item of specified property (that is, the item of specified property to which the item of substituted property relates, as described in paragraph (d)(1)(ii) of this section) corresponds. In addition, in a case in which an item of substituted property relates to an item of specified property that corresponds to a particular extraordinary disposition account and an item of specified property that corresponds to another extraordinary disposition account (such that, pursuant to this paragraph (d)(1)(i), the item of substituted property is treated as corresponding to multiple extraordinary disposition accounts), only the disqualified basis of the item of substituted property attributable to the first item of specified property is taken into account for purposes of applying this section as to the first extraordinary disposition account, and, similarly, only the disqualified basis of the item of substituted property attributable to the second item of specified property is taken into account for purposes of applying this section as to the second extraordinary disposition account.

(ii) *Definition of substituted property.* The term *substituted property* means an item of property the disqualified basis of which is, pursuant to § 1.951A–3(h)(2)(ii)(B)(*2*)(*i*) or (*iii*), increased by reason of a reduction under § 1.951A–3(h)(2)(ii)(*B*)(*1*) in disqualified basis of an item of specified property. An item of substituted property relates to an item of specified property if the disqualified basis of the item of substituted property was increased by reason of a reduction in disqualified basis of the item of specified property.

(2) *Exchanged basis property*—(i) *Treatment as specified property that corresponds to an extraordinary disposition account for certain purposes.* For purposes of this section, an item of exchanged basis property is treated as an item of specified property that corresponds to an extraordinary disposition account to which the related item of specified property (that is, the item of specified property to which the item of exchanged basis property relates) corresponds.

(ii) *Definition of exchanged basis property.* The term *exchanged basis property* means an item of property the disqualified basis of which, pursuant to § 1.951A–3(h)(2)(ii)(B)(*2*)(*ii*), includes disqualified basis of an item of specified property. An item of exchanged basis property relates to an item of specified property if the disqualified basis of the item of exchanged basis property includes disqualified basis of the item of specified property.

(iii) *Definition of duplicate DQB*—(A) *In general.* The term *duplicate DQB* means, with respect to an item of exchanged basis property and the item of specified property to which the exchanged basis property relates, the

disqualified basis of the item of exchanged basis property that includes or is attributable to disqualified basis of the item of specified property.

(B) *Certain nonrecognition transfers involving stock or a partnership interest.* To the extent that an item of exchanged basis property that is stock or an interest in a partnership (*lower-tier item*) includes disqualified basis of an item of specified property to which the lower-tier item relates (*contributed item*), and another item of exchanged basis property that is stock or a partnership interest (*upper-tier item*) includes disqualified basis of the lower-tier item that is attributable to disqualified basis of the contributed item, the disqualified basis of the upper-tier item is attributable to disqualified basis of the contributed item and the upper-tier item is an item of exchanged basis property that relates to the contributed item. The principles of the preceding sentence apply each time disqualified basis of an item of exchanged basis property that is stock or an interest in a partnership is included in disqualified basis of another item of exchanged basis property that is stock or an interest in a partnership.

(C) *Multiple nonrecognition transfers of an item of specified property.* To the extent that multiple items of exchanged basis property that are stock or interests in a partnership include disqualified basis of the same item of specified property (*contributed item*) to which the items of exchanged basis property relate, and the issuer of one of the items of exchanged basis property (*upper-tier successor item*) receives the other item of exchanged basis property (*lower-tier successor item*) in exchange for the contributed property, the disqualified basis of the upper-tier successor item is attributable to disqualified basis of the lower-tier successor item and the upper-tier successor item is an item of exchanged basis property that relates to the lower-tier successor item. The principles of the preceding sentence apply each time disqualified basis of an item of specified property to which an item of exchanged basis property that is stock or an interest in partnership relates is included in disqualified basis of another item of exchanged basis property that is stock or an interest in a partnership.

(e) *Special rules when extraordinary disposition accounts are adjusted pursuant to § 1.245A–5(c)(4)*—(1) *Extraordinary disposition account with respect to multiple SFCs.* This paragraph (e)(1) applies if, pursuant to § 1.245A–5(c)(4)(ii) or (iii) (the transaction or transactions by reason of which § 1.245A–5(c)(4)(ii) or (iii) applies, the *adjustment transaction*), an extraordinary disposition account of a section 245A shareholder with respect to an SFC (such extraordinary disposition account, the *transferor ED account;* and such SFC, the *transferor SFC*) gives rise to an increase in the balance of an extraordinary disposition account with respect to another SFC (such extraordinary disposition account, the *transferee ED account;* such SFC, the *transferee SFC;* and such increase, the *adjustment amount*). When this paragraph (e)(1) applies, the following rules apply for purposes of this section:

(i) A ratable portion of the transferee ED account is treated as retaining its status as an extraordinary disposition account with respect to the transferor SFC and is not treated as an extraordinary disposition account with respect to the transferee SFC (the transferee ED account to such extent, the *deemed transferor ED account*), based on the adjustment amount relative to the balance of the transferee ED account (without regard to this paragraph (e)(1)) immediately after the adjustment transaction. Thus, for example, whether or not the transferor SFC is in existence immediately after the transaction, the items of specified property that correspond to the deemed transferor ED account are the same as the items of specified property that correspond to the transferor ED account. As an additional example, whether or not the transferor SFC is in existence immediately after the transaction the extraordinary disposition ownership percentage with respect to the deemed transferor ED account is the same as the extraordinary disposition ownership percentage with respect to the transferor ED account (except to the extent the extraordinary disposition ownership percentage is adjusted pursuant to the rules of paragraph (e)(2) of this section).

(ii) In the case of an amount (such as an extraordinary disposition amount or tiered extraordinary disposition amount) determined by reference to the transferee ED account (without regard to this paragraph (e)(1)), the portion of the amount that is considered attributable to the deemed transferor ED account (and not the transferee ED account) is equal to the product of such amount and a fraction, the numerator of which is the balance of the deemed transferor ED account, and the denominator of which is the balance of the transferee ED account (determined without regard to this paragraph (e)(1)). Thus, for example, if after an adjustment transaction the transferee ED account (without regard to this paragraph (e)(1)) gives rise to an extraordinary disposition amount, and if the fraction (expressed as a percentage) is 40, then, for purposes of this section, 40 percent of the extraordinary disposition amount is treated as attributable to the deemed transferor ED account and the remaining 60 percent of the extraordinary disposition amount is attributable to the transferee ED account, and the balance of each of the deemed transferor ED account and the transferee ED account is correspondingly reduced.

(2) *Extraordinary disposition accounts with respect to a single SFC.* If an extraordinary disposition account of a section 245A shareholder with respect to an SFC is reduced by reason of § 1.245A–5(c)(4), then, except as provided in paragraph (e)(1) of this section, for purposes of this section, the extraordinary disposition ownership percentage as to the extraordinary disposition account (as well as the extraordinary disposition ownership percentage as to any extraordinary disposition account with respect to the SFC that is increased by reason of the reduction) is adjusted in a similar manner.

§ 1.245A–9 Other rules and definitions.

(a) *In general.* This section provides rules of general applicability for purposes of §§ 1.245A–6 through 1.245A–10, a transition rule to revoke an election to eliminate disqualified basis, and definitions.

(b) *Rules of general applicability*—(1) *Correspondence.* An item of specified property corresponds to a section 245A shareholder's extraordinary disposition account if gain was recognized on the extraordinary disposition of the item and the gain was taken into account in determining the initial balance of the account. See § 1.245A–8(d) for additional rules regarding when an item of property is treated as corresponding to an extraordinary disposition account in certain complex cases.

(2) *Timing rules related to disqualified basis for purposes of applying §§ 1.245A–7(b) and 1.245A–8(b)*—(i) *Determination of disqualified basis.* For purposes of determining the fraction described in § 1.245A–7(b)(1)(ii) or § 1.245A–8(b)(1)(ii) when applying § 1.245A–7(b)(1) or § 1.245A–8(b)(1)(ii), respectively, for a taxable year of a section 245A shareholder, disqualified basis of an item of specified property is determined as of the beginning of the taxable year of the CFC that holds the item of specified property (in a case in which § 1.245A–7(b) applies) or the specified property owner (in a case in which § 1.245A–8(b) applies), in either case, that includes the date on which the section 245A shareholder's taxable year ends (and without regard to any reductions to the disqualified basis of

the item of specified property pursuant to § 1.245A–7(b)(1) or § 1.245A–8(b)(1) for such taxable year of the CFC or the specified property owner, as applicable). However, if disqualified basis of the item of specified property arose as a result of an extraordinary disposition that occurred after the beginning of the taxable year of the CFC or the specified property owner described in the preceding sentence, then the disqualified basis of the item of specified property is determined as of the date on which the extraordinary disposition occurred (and without regard to any reductions to the disqualified basis of the item of specified property pursuant to paragraph (b)(1) of this section for such taxable year of the CFC or the specified property owner).

(ii) *Reduction to disqualified basis of an item of specified property.* The reduction to disqualified basis of an item of specified property pursuant to § 1.245A–7(b)(1) or § 1.245A–8(b)(1) occurs on the date described in paragraph (b)(2)(i) of this section.

(iii) *Definition of specified property owner.* For purposes of applying § 1.245A–8(b)(1) and paragraphs (b)(2)(i) and (ii) of this section for a taxable year of a section 245A shareholder, the term *specified property owner* means, with respect to an item of specified property, the person that, on at least one day of the taxable year of the person that includes the date on which the section 245A shareholder's taxable year ends, held the item of specified property. However, if, but for this sentence, there would be more than one specified property owner with respect to the item of specified property, then the specified property owner is the person that held the item of specified property on the earliest date that falls within the section 245A shareholder's taxable year.

(3) *Timing rules for reducing an extraordinary disposition account under §§ 1.245A–7(c) and 1.245A–8(c).* For purposes of § 1.245A–7(c)(1) or § 1.245A–8(c)(1), as applicable, with respect to a taxable year of a CFC, the reduction to an extraordinary disposition account pursuant to § 1.245A–7(c)(1) or § 1.245A–8(c)(1) occurs as of the end of the taxable year of the section 245A shareholder that includes the date on which the CFC's taxable year ends (and after the determination of any extraordinary disposition amounts or tiered extraordinary amounts, adjustments to the extraordinary disposition account for prior extraordinary disposition amounts, and the application of § 1.245A–7(b) or § 1.245A–8(b), as applicable, each for the taxable year of the section 245A shareholder).

(4) *Currency translation.* For purposes of applying §§ 1.245A–7(b) and 1.245A–8(b), the disqualified basis of (and, if applicable, a basis benefit amount with respect to) an item of specified property that corresponds to an extraordinary disposition account are translated (if necessary) into the functional currency in which the extraordinary disposition account is maintained, using the spot rate on the date the extraordinary disposition occurred. A reduction in disqualified basis of an item of specified property determined under § 1.245A–7(b)(1) or § 1.245A–8(b)(1) is translated (if necessary) into the functional currency in which the disqualified basis of the item of specified property is maintained, and a reduction in an extraordinary disposition account determined under § 1.245A–7(c) or § 1.245A–8(c) section is translated (if necessary) into the functional currency in which the extraordinary disposition account is maintained, in each case using the spot rate described in the preceding sentence.

(5) *Anti-avoidance rule.* Appropriate adjustments are made pursuant to this paragraph (b)(5), including adjustments that would disregard a transaction or arrangement in whole or in part, to any amounts determined under (or subject to application of) this section if a transaction or arrangement is engaged in with a principal purpose of avoiding the purposes of §§ 1.245A–6 through 1.245A–10.

(c) *Transition rule to revoke election to eliminate disqualified basis*—(1) *In general.* This paragraph (c)(1) applies to an election that is filed, pursuant to § 1.951A–3(h)(2)(ii)(B)(*3*), to eliminate the disqualified basis of an item of specified property. An election to which this paragraph (c)(1) applies may be revoked if, on or before [date 90 days after a Treasury decision adopting these rules as final regulations is published in the **Federal Register**]—

(i) All controlling domestic shareholders (as defined in § 1.964–1(c)(5)) of the CFC (or, in the case of an election made by a partnership, the partnership) each attach a revocation statement (in the manner described in paragraph (c)(2) of this section) to an amended return, for the taxable year to which the election applies, that revokes the election (or, in the case of a partnership subject to subchapter C of chapter 63 of the Internal Revenue Code, requests administrative adjustment under section 6227); and

(ii) The controlling domestic shareholders (or the partnership) each file an amended tax return, for any other taxable years reflecting the election to eliminate the disqualified basis, that reflects the election having been revoked (or, in the case of a partnership subject to subchapter C of chapter 63, requests administrative adjustment under section 6227).

(2) *Revocation statement.* Except as otherwise provided in publications, forms, instructions, or other guidance, a revocation statement attached by a person to an amended tax return must include the person's name, taxpayer identification number, and a statement that the revocation statement is filed pursuant to paragraph (c)(1) of this section to revoke an election pursuant to § 1.951A–3(h)(2)(ii)(B)(*3*). In addition, the revocation statement must be filed in the manner prescribed in publications, forms, instructions, or other guidance.

(d) *Definitions.* In addition to the definitions in § 1.245A–5, the following definitions apply for purposes of §§ 1.245A–6 through 1.245A–11.

(1) The term *adjusted earnings* has the meaning provided in § 1.245A–7(c)(3) or § 1.245A–8(c)(3), as applicable.

(2) The term *basis benefit account* has the meaning provided in § 1.245A–8(b)(4)(i).

(3) The term *basis benefit amount* has the meaning provided in § 1.245A–8(b)(4)(ii).

(4) The term *disqualified basis* has the meaning provided in § 1.951A–3(h)(2)(ii).

(5) The term *domestic affiliate* means, with respect to a section 245A shareholder, a domestic corporation that is a related party with respect to the section 245A shareholder. *See also* § 1.245A–5(i)(19) (defining related party).

(6) The term *duplicate DQB* has the meaning provided in § 1.245A–8(d)(2)(iii).

(7) The term *ECTI* means, with respect to a taxable year of a specified foreign person, the taxable income (or loss) of the specified foreign person determined by taking into account only items of income and gain that are, or are treated as, effectively connected with the conduct of a trade or business in the United States (as described in § 1.882–4(a)(1)) and are not exempt from U.S. tax pursuant to a treaty obligation of the United States, and items of deduction and loss that are allocated and apportioned to such items of income and gain.

(8) The term *exchanged basis property* has the meaning provided in § 1.245A–8(d)(2)(ii).

(9) The term *qualified deficit* has the meaning provided in section 952(c)(1)(B)(ii).

(10) The term *qualified related party* has the meaning provided in § 1.245A–8(b)(3)(ii).

(11) The term *RGI account* means, with respect to a CFC and an extraordinary disposition account of a section 245A shareholder with respect to an SFC, an account of the section 245A shareholder with respect to an SFC (the initial balance of which is zero), adjusted at the end of each taxable year of the CFC pursuant to the rules of § 1.245A–7(c)(4) or § 1.245A–8(c)(4), as applicable. The RGI account must be maintained in the functional currency of the CFC.

(12) The term *specified foreign person* means a nonresident alien individual (as defined in section 7701(b) and the regulations under section 7701(b)) or a foreign corporation (including a CFC) that conducts, or is treated as conducting, a trade or business in the United States (as described in § 1.882–4(a)(1)).

(13) The term *specified property owner* has the meaning provided in § 1.245A–8(b)(2)(iii).

(14) The term *subpart F income* has the meaning provided in section 952(a).

(15) The term *substituted property* has the meaning provided in § 1.245A–8(d)(1)(ii).

(16) The term *tested income* has the meaning provided in section 951A(c)(2)(A).

(17) The term *tested loss* has the meaning provided in section 951A(c)(2)(B).

§ 1.245A–10 Examples.

(a) *Scope.* This section provides examples illustrating the application of §§ 1.245A–6 through 1.245A–9.

(b) *Presumed facts.* For purposes of the examples in the section, except as otherwise stated, the following facts are presumed:

(1) US1 and US2 are both domestic corporations that have calendar taxable years.

(2) CFC1, CFC2, CFC3, and CFC4 are all SFCs and CFCs that have taxable years ending November 30.

(3) Each entity uses the U.S. dollar as its functional currency.

(4) There are no items of deduction or loss attributable to an item of specified property.

(5) Absent the application of § 1.245A–5, any dividends received by US1 from CFC1 would meet the requirements to qualify for the section 245A deduction.

(6) All dispositions of items of specified property by an SFC during a disqualified period of the SFC to a related party give rise to an extraordinary disposition.

(7) None of the CFCs have a deficit subject to § 1.381(c)(2)–1(a)(5), and none of the CFCs are engaged in the conduct of a trade or business in the United States (and therefore none of the CFCs have ECTI).

(8) There is no previously taxed earnings and profits account with respect to any CFC for purposes of section 959. In addition, each hybrid deduction account with respect to a share of stock of a CFC has a zero balance at all times. Further, there is no extraordinary disposition account with respect to any CFC.

(9) Under § 1.245A–11(b), taxpayers choose to apply §§ 1.245A–6 through 1.245A–11 to the relevant taxable years.

(c) *Examples*—(1) *Example 1. Reduction of disqualified basis under rule for simple cases by reason of dividend paid out of extraordinary disposition account*—(i) *Facts.* US1 owns 100% of the single class of stock of CFC1 and CFC2. On November 30, 2018, in a transaction that is an extraordinary disposition, CFC1 sells two items of specified property, Item 1 and Item 2, to CFC2 in exchange for $150x of cash (the ''Disqualified Transfer''). Item 1 is sold for $90x and Item 2 is sold for $60x. Item 1 and Item 2 each has a basis of $0 in the hands of CFC1 immediately before the Disqualified Transfer, and therefore CFC1 recognizes $150x of gain as a result of the Disqualified Transfer ($150x − $0). After the Disqualified Transfer, CFC2's only assets are Item 1 and Item 2. On November 30, 2018, and thus during US1's taxable year ending December 31, 2018, CFC1 distributes $150x of cash to US1, and all of the distribution is characterized as a dividend under section 301(c)(1) and treated as a distribution out of earnings and profits described in section 959(c)(3). For CFC1's taxable year ending on November 30, 2018, CFC1 has $160x of earnings and profits described in section 959(c)(3), without regard to any distributions during the taxable year. CFC2 continues to hold Item 1 and Item 2. Lastly, because the conditions of § 1.245A–6(b)(1) and (2) are satisfied for US1's 2018 taxable year, US1 chooses to apply § 1.245A–7 (rules for simple cases) in lieu of § 1.245A–8 (rules for complex cases) for that taxable year.

(ii) *Analysis*—(A) *Application of §§ 1.245A–5 and 1.951A–2 as a result of the Disqualified Transfer.* As a result of the Disqualified Transfer, under § 1.951A–2(c)(5), Item 1 has disqualified basis of $90x, and Item 2 has disqualified basis of $60x. In addition, as a result of the Disqualified Transfer, under § 1.245A–5(c)(3)(i)(A), US1 has an extraordinary disposition account with respect to CFC1 with an initial balance of $150x. Under § 1.245A–5(c)(2)(i), $10x of the dividend is considered paid out of non-extraordinary disposition E&P of CFC1 with respect to US1, and $140x of the dividend is considered paid out of US1's extraordinary disposition account with respect to CFC1 to the extent of the balance of the extraordinary disposition account ($150x). Thus, the dividend of $150x is an extraordinary disposition amount, within the meaning of § 1.245A–5(c)(1), to the extent of $140x. As a result, the balance of the extraordinary disposition account is reduced to $10x ($150x − $140x).

(B) *Correspondence requirement.* Under § 1.245A–9(b)(1), each of Item 1 and Item 2 corresponds to US1's extraordinary disposition account with respect to CFC1, because as a result of the Disqualified Transfer CFC1 recognized gain with respect to Item 1 and Item 2, and the gain was taken into account in determining the initial balance of US1's extraordinary disposition account with respect to CFC1.

(C) *Reduction of disqualified basis of Item 1.* Because Item 1 corresponds to US1's extraordinary disposition account, the disqualified basis of Item 1 is reduced pursuant to § 1.245A–7(b)(1) by reason of US1's $140x extraordinary disposition amount for US1's 2018 taxable year. Paragraphs (c)(2)(ii)(C)(*1*) through (*3*) of this section describe the determinations pursuant to § 1.245A–7(b)(1).

(*1*) To determine the reduction to the disqualified basis of Item 1, the disqualified basis of Item 1, as well as the disqualified basis of Item 2, must be determined as of the date described in § 1.245A–9(b)(2)(i) (and before the application of § 1.245A–7(b)(1)). *See* § 1.245A–7(b)(1)(ii). For each of Item 1 and Item 2, that date is December 1, 2018. December 1, 2018, is the first day of the taxable year of CFC2 (the CFC that holds Item 1 and Item 2) beginning on December 1, 2018, which is the taxable year of CFC2 that includes December 31, 2018, the date on which US1's 2018 taxable year ends. *See* § 1.245A–9(b)(2)(i).

(*2*) Pursuant to § 1.245A–7(b)(1), the disqualified basis of Item 1 is reduced by $84x, computed as the product of—

(*i*) $140x, the extraordinary disposition amount; and

(*ii*) A fraction, the numerator of which is $90x (the disqualified basis of Item 1 on December 1, 2018, and before the application of § 1.245A–7(b)(1)), and the denominator of which is $150x (the disqualified basis of Item 1, $90x, plus the disqualified basis of Item 2, $60x, in each case determined on December 1, 2018, and before the application of § 1.245A–7(b)(1)). *See* § 1.245A–7(b)(1).

(*3*) The $84x reduction to the disqualified basis of Item 1 occurs on December 1, 2018, the date on which the disqualified basis of Item 1 is determined for purposes of determining the reduction pursuant to § 1.245A–7(b)(1). *See* § 1.245A–9(b)(2)(ii).

(D) *Reduction of disqualified basis of Item 2.* For reasons similar to those described in paragraph (c)(2)(ii)(C) of this section, on December 1, 2018, the disqualified basis of Item 2 is reduced by $56x, the amount equal to the product of $140x, the extraordinary disposition amount, and a fraction, the numerator of which is $60x (the disqualified basis of Item 2 on December 1, 2018, and before the application of § 1.245A–7(b)(1)), and the denominator of which is $150x (the disqualified basis of Item 1, $90x, plus the disqualified basis of Item 2, $60x, in each case determined on December 1, 2018, and before the application of § 1.245A–7(b)(1)).

(2) *Example 2. Basis benefit amount and impact on reduction to disqualified basis*

under rule for complex cases—(i) *Facts.* The facts are the same as in paragraph (c)(1)(i) of this section (*Example 1*) (and the results are the same as in paragraph (c)(1)(ii)(A) of this section), except that, on December 1, 2018, CFC2 sells Item 1 for $90x of cash to an individual that is not a related party with respect to US1 or CFC2 (such transaction, the ''Sale,'' and such individual, ''Individual A''). At the time of the Sale, CFC2's basis in Item 1 is $90x (all of which is disqualified basis, as described in § 1.951A–3(h)(2)(ii)(A)). CFC2 takes into the account the disqualified basis of Item 1 for purposes of determining the amount of gain recognized on the Sale, which is $0 ($90x − $90x); but for the disqualified basis, CFC2 would have had $90x of gain that would have been taken into account in computing its tested income. As a result of the Sale, the condition of § 1.245A–6(b)(2) is not satisfied, because on at least one day of CFC2's taxable year beginning on December 1, 2018 (which begins within US1's 2018 taxable year) CFC2 does not hold Item 1. *See* § 1.245A–6(b)(2)(ii)(C)(*1*). US1 therefore applies § 1.245A–8 (rules for complex cases) for its 2018 taxable year. *See* § 1.245A–6(b).

(ii) *Analysis*—(A) *Ownership requirement.* With respect to each of Item 1 and Item 2, the ownership requirement of § 1.245A–8(b)(3)(i) is satisfied for US1's 2018 taxable year. This is because on at least one day that falls within US1's 2018 taxable year, each of Item 1 and Item 2 is held by CFC2, and US1 directly owns all of the stock of CFC2 throughout such taxable year (and thus, for purposes of applying § 1.245A–8(b)(3)(i), US1 owns at least 10% of the interests of CFC2 on at least one day that falls within such taxable year). *See* § 1.245A–8(b)(3).

(B) *Basis benefit amount with respect to Item 1 as a result of the Sale.* Under § 1.245A–8(b)(4)(i), US1 has a basis benefit account with respect to its extraordinary disposition account with respect to CFC1. As described in paragraphs (c)(2)(ii)(B)(*1*) through (*3*) of this section, the balance of the basis benefit account (which is initially zero) is, on December 31, 2018, increased by $90x, the basis benefit amount with respect to Item 1 and assigned to US1's 2018 taxable year.

(*1*) By reason of the Sale, for CFC2's taxable year beginning December 1, 2018, and ending November 30, 2019, the entire $90x of disqualified basis of Item 1 is taken into account for U.S. tax purposes by CFC2 and, as a result, reduces CFC2's tested income or increases CFC2's tested loss. Accordingly, for such taxable year, there is a $90x basis benefit amount with respect to Item 1. *See* § 1.245A–8(b)(4)(ii)(A). The result would be the same if the Sale were to a related person and thus, pursuant to § 1.951A–3(h)(2)(ii)(B)(*1*)(*ii*), no portion of the $90x of disqualified basis were eliminated or reduced by reason of the Sale. *See* § 1.245A–8(b)(4)(ii)(B).

(*2*) The $90x basis benefit amount with respect to Item 1 is assigned to US1's 2018 taxable year. This is because the ownership requirement of § 1.245A–8(b)(3)(i) is satisfied with respect to Item 1 for US1's 2018 taxable year, and the basis benefit amount occurs in CFC2's taxable year beginning December 1, 2018, a taxable year of CFC2 that begins within US1's 2018 taxable year (and, but for § 1.245A–8(b)(4)(iii)(A)(*2*)(*ii*), the basis benefit amount would not be assigned to a taxable year of US1, such as the taxable year of US1 beginning January 1, 2019, given that, as result of the Sale, the ownership requirement of § 1.245A–8(b)(3)(i) would not be satisfied with respect to Item 1 for such taxable year). *See* § 1.245A–8(b)(4)(iii)(A).

(*3*) On December 31, 2018 (the last day of US1's 2018 taxable year), US1's basis benefit account with respect to its extraordinary disposition account with respect to CFC1 is increased by $90x, the $90x basis benefit amount with respect to Item 1 and assigned to US1's 2018 taxable year. The basis benefit account is increased by such amount because Item 1 corresponds to US1's extraordinary disposition account with respect to CFC1, and the extraordinary disposition ownership percentage applicable to such extraordinary disposition account is 100. *See* § 1.245A–8(b)(4)(i)(A).

(C) *Basis benefit amount limitation on reduction to disqualified basis.* By reason of US1's $140x extraordinary disposition amount for US1's 2018 taxable year, the disqualified basis of Item 1 is reduced by $30x, and the disqualified basis of Item 2 is reduced by $20x, pursuant to § 1.245A–8(b)(1). *See* § 1.245A–8(b). Paragraphs (c)(2)(ii)(C)(*1*) through (*4*) of this section describe the determinations pursuant to § 1.245A–8(b)(1).

(*1*) For purposes of determining the reduction to the disqualified bases of Item 1 and Item 2, the disqualified bases of the Items are determined on December 1, 2018 (and before the application of § 1.245A–8(b)(1)). *See* § 1.245A–8(b)(1)(ii). The disqualified bases of the Items are determined on December 1, 2018, because that date is the first day of the taxable year of CFC2 beginning on December 1, 2018, which is the taxable year of CFC2 (the specified property owner of each of Item 1 and Item 2) that includes December 31, 2018, the date on which US1's 2018 taxable year ends. *See* § 1.245A–8(b)(2)(i). For purposes of applying §§ 1.245A–8(b)(1) and § 1.245A–9(b)(2) for US1's 2018 taxable year, CFC2 is the specified property owner of each of Item 1 and Item 2 because, on at least one day of CFC2's taxable year that includes the date on which US1's 2018 taxable year ends (that is, on at least one day of CFC2's taxable year beginning December 1, 2018), CFC2 held the Item. *See* § 1.245A–9(b)(2)(iii). CFC2 is the specified property owner of Item 1 even though Individual A also held Item 1 during Individual A's taxable year that includes the date on which US1's 2018 taxable year ends because CFC2 held Item 1 on an earlier date than Individual A. *See* § 1.245A–9(b)(2)(iii).

(*2*) Pursuant to § 1.245A–8(b)(1), the disqualified basis of Item 1 is reduced by $30x, computed as the product of—

(*i*) $50x, the excess of the extraordinary disposition amount ($140x) over the balance of the basis benefit account with respect to US1's extraordinary disposition with respect to CFC1 ($90x); and

(*ii*) A fraction, the numerator of which is $90x (the disqualified basis of Item 1 on December 1, 2018, and before the application of § 1.245A–8(b)(1)), and the denominator of which is $150x (the disqualified basis of Item 1, $90x, plus the disqualified basis of Item 2, $60x, in each case determined on December 1, 2018, and before the application of § 1.245A–8(b)(1)). *See* paragraph § 1.245A–8(b)(1).

(*3*) Pursuant to § 1.245A–8(b)(1), the disqualified basis of Item 2 is reduced by $20x, computed as the product of—

(*i*) $50x, the excess of the extraordinary disposition amount ($140x) over the balance of the basis benefit account with respect to US1's extraordinary disposition with respect to CFC1 ($90x); and

(*ii*) A fraction, the numerator of which is $60x (the disqualified basis of Item 2 on December 1, 2018, and before the application of paragraph (b)(1) of this section), and the denominator of which is $150x (the disqualified basis of Item 1, $90x, plus the disqualified basis of Item 2, $60x, in each case determined on December 1, 2018, and before the application of § 1.245A–8(b)(1)). *See* § 1.245A–8(b)(1).

(*4*) The $30x and $20x reductions to the disqualified bases of Item 1 and Item 2, respectively, occur on December 1, 2018, the date on which the disqualified bases of the Items are determined for purposes of determining the reductions pursuant to § 1.245A–8(b)(1). *See* § 1.245A–9(b)(2)(ii).

(D) *Reduction of basis benefit account.* The balance of the basis benefit account with respect to US1's extraordinary disposition account with respect to CFC1 is decreased by $90x, the amount by which, for CFC2's taxable year beginning December 1, 2018, the disqualified bases of Item 1 and Item 2 would have been reduced pursuant to § 1.245A–8(b)(1) but for the $90x balance of the basis benefit account. *See* § 1.245A–8(b)(4)(i)(B). The reduction to the balance of the basis benefit account occurs on December 31, 2018, and after the completion of all other computations pursuant to § 1.245A–8(b). *See* § 1.245A–8(b)(4)(i)(B).

(3) *Example 3. Reduction in balance of extraordinary disposition account under rules for simple cases by reason of allocation and apportionment of deductions to residual CFC gross income*—(i) *Facts.* The facts are the same as in paragraph (c)(1)(i) of this section (*Example 1*) (and the results are the same as in paragraph (c)(1)(ii)(A) of this section), except that CFC1 does not make a distribution to US1. In addition, during CFC2's taxable year beginning December 1, 2018, and ending November 30, 2019, the disqualified basis of Item 1 gives rise to a $6x amortization deduction, and the disqualified basis of Item 2 gives rise to a $4x amortization deduction, and each of the amortization deductions is allocated and apportioned to residual CFC gross income of CFC2 solely by reason of § 1.951A–2(c)(5) (though, but for § 1.951A–2(c)(5), would have been allocated and apportioned to gross tested income of CFC2). Further, as of the end of CFC2's taxable year ending November 30, 2019, CFC2 has $15x of earnings and profits. Lastly, because the conditions of § 1.245A–6(b)(1) and (2) are satisfied for US1's 2018 taxable year, US1 chooses to apply § 1.245A–7 (rules for simple cases) in lieu of § 1.245A–8 (rules for complex cases) for that taxable year.

(ii) *Analysis.* Pursuant to § 1.245A–7(c)(1), US1's extraordinary disposition account with respect to CFC1 is reduced by the lesser of the amount described in § 1.245A–7(c)(1)(i) with respect to US1, and the RGI account of US1 with respect to CFC2 that relates to its extraordinary disposition account with respect to CFC1. *See* § 1.245A–7(c)(1). Paragraphs (c)(3)(ii)(A) through (D) of this section describe the determinations pursuant to § 1.245A–8(c)(1).

(A) *Computation of adjusted earnings of CFC2, and amount described in § 1.245A–7(c)(1)(i) with respect to US1.* To determine the amount described in § 1.245A–7(c)(1)(i) with respect to US1, the adjusted earnings of CFC2 must be computed for CFC2's taxable year ending November 30, 2019. *See* § 1.245A–7(c)(1)(i). Paragraphs (c)(3)(ii)(A)(*1*) and (*2*) of this section describe these determinations.

(*1*) The adjusted earnings of CFC2 for its taxable year ending November 30, 2019, is $25x, computed as $15x (CFC2's earnings and profits as of November 30, 2019, the last day of that taxable year), plus $10x (the sum of the $6x and $4x amortization deductions of CFC2 for that taxable year, which is the amount of all deductions or losses of CFC2 that is or was attributable to disqualified basis of items of specified property and allocated and apportioned to residual CFC gross income of CFC2 solely by reason of § 1.951A–2(c)(5)(i)). *See* § 1.245A–7(c)(3).

(*2*) For CFC2's taxable year ending November 30, 2019, the amount described in § 1.245A–7(c)(1)(i) with respect to US1 is $25x, computed as the excess of $25x (the adjusted earnings) over $0 (the sum of the balance of the previously taxed earnings and profits accounts with respect to CFC2).

(B) *Increase to balance of RGI account.* Under § 1.245A–9(d)(11), US1 has an RGI account with respect to CFC2 that relates to its extraordinary disposition account with respect to CFC1. On November 30, 2019 (the last day of CFC2's taxable year), the balance of the RGI account (which is initially zero) is increased by $10x, the sum of the $6x and $4x amortization deductions of CFC2 for its taxable year ending November 30, 2019. *See* § 1.245A–7(c)(4)(i). Each of the amortization deductions is taken into account for this purpose because, but for § 1.951A–2(c)(5)(i), the deduction would have decreased CFC2's tested income or increased or given rise to a tested loss of CFC2. *See* § 1.245A–7(c)(4)(i).

(C) *Reduction in balance of extraordinary disposition account.* Pursuant to § 1.245A–7(c)(1), US1's extraordinary disposition account with respect to CFC1 is reduced by $10x, the lesser of the amount described in § 1.245A–7(c)(1)(i) with respect to US1 for CFC2's taxable year ending November 30, 2019 ($25x), and the balance of US1's RGI account with respect to CFC2 that relates to its extraordinary disposition account with respect to CFC1 ($10x, determined as of November 30, 2019, but without regard to the application of § 1.245A–7(c)(4)(ii) for the taxable year of CFC2 ending on that date). *See* § 1.245A–7(c)(1). The $10x reduction in the balance of US1's extraordinary disposition account occurs on December 31, 2019, the last day of US1's taxable year that includes November 30, 2019 (the last day of CFC2's taxable year). *See* § 1.245A–9(c)(3).

(D) *Reduction in balance of RGI account.* On November 30, 2019 (the last day of CFC2's taxable year), the balance of US1's RGI account with respect to CFC2 that relates to its extraordinary disposition account with respect to CFC1 is decreased by $10x, the amount of the reduction, pursuant to § 1.245A–7(c)(1) section and by reason of the RGI account, to US1's extraordinary disposition account with respect to CFC1. *See* § 1.245A–7(c)(4)(ii). Therefore, following that reduction, the balance of the RGI account is zero ($10x − $10x).

(iii) *Alternative facts in which the reduction is limited by earnings and profits.* The facts are the same as in paragraph (c)(3)(i) of this section (*Example 3*), except that CFC2 has a $5x deficit in its earnings and profits as of the end of its taxable year ending November 30, 2019. In this case—

(A) The adjusted earnings of CFC2 for its taxable year ending November 30, 2019, is $5x, computed as −$5x (CFC2's deficit in earnings and profits as of November 30, 2019) plus $10x (the sum of the $6x and $4x amortization deductions of CFC2), *see* § 1.245A–7(c)(3);

(B) The amount described in § 1.245A–7(c)(1)(i) with respect to US1 for CFC's taxable year ending November 30, 2019, is $5x, computed as the excess of $5x (the adjusted earnings) over $0 (the sum of the balance of the previously taxed earnings and profits accounts with respect to CFC2), *see* § 1.245A–7(c)(1)(i);

(C) On December 31, 2019, US1's extraordinary disposition account with respect to CFC1 is reduced by $5x, the lesser of the amount described in § 1.245A–7(c)(1)(i) with respect to US1 for CFC2's taxable year ending November 30, 2019 ($5x), and the balance of US1's RGI account with respect to CFC2 that relates to its extraordinary disposition account with respect to CFC1 ($10x, determined as of November 30, 2019, but without regard to the application of § 1.245A–8(c)(4)(i)(B) for the taxable year of CFC2 ending on that date), *see* §§ 1.245A–7(c)(1) and 1.245A–9(c)(3); and

(D) On November 30, 2019 (the last day of CFC2's taxable year), the balance of US1's RGI account with respect to CFC2 is decreased by $5x (the amount of the reduction, pursuant to § 1.245A–7(c)(1) and by reason of the RGI account, to US1's extraordinary disposition account with respect to CFC1) and, therefore, following such reduction, the balance of the RGI account is $5x ($10x − $5x), *see* § 1.245A–7(c)(4)(ii).

(4) *Example 4. Reduction to extraordinary disposition accounts limited by § 1.245A–8(c)(6)*—(i) *Facts.* The facts are the same as in paragraph (c)(3)(iii) of this section (*Example 3,* alternative facts in which the reduction is limited by earnings and profits) (and the results are the same as in paragraph (c)(1)(ii)(A) of this section), except that US1 also owns 100% of the stock of US2, which owns 100% of the stock of CFC3, and on November 30, 2018, in a transaction that was an extraordinary disposition, CFC3 sold an item of specified property (''Item 3'') to CFC2 in exchange for $200x of cash. Item 3 had a basis of $0 in the hands of CFC3 immediately before the sale and, therefore, CFC3 recognized $200x of gain as a result of the sale ($200x − $0), Item 3 has $200x of disqualified basis under § 1.951A–2(c)(5), and US2 has an extraordinary disposition account with respect to CFC3 with an initial balance of $200x under § 1.245A–5(c)(3)(i)(A). Moreover, during CFC2's taxable year beginning December 1, 2018, and ending November 30, 2019, the disqualified basis of Item 3 gives rise to a $20x amortization deduction, which is allocated and apportioned to residual CFC gross income of CFC2 solely by reason of § 1.951A–2(c)(5) (though, but for § 1.951A–2(c)(5), would have been allocated and apportioned to gross tested income of CFC2). Further, as of the end of US1's 2018 taxable year, the balance of US1's basis benefit account with respect to its extraordinary disposition account with respect to CFC1 is $0; similarly, as of the end of US2's 2018 taxable year, the balance of US2's basis benefit account with respect to its extraordinary disposition account with respect to CFC2 is $0. Because CFC2 holds items of specified property that correspond to more than one extraordinary disposition account (that is, Item 1 and Item 2 correspond to US1's extraordinary disposition account with respect to CFC2, and Item 3 corresponds to US2's extraordinary disposition account with respect to CFC2), the condition of § 1.245A–6(b)(2) is not satisfied. *See* § 1.245A–6(b)(2)(ii)(C)(*3*). US1 and US2 therefore apply § 1.245A–8 (rules for complex cases) for their 2018 taxable years.

(ii) *Analysis.* Pursuant to § 1.245A–8(c)(1), US1's extraordinary disposition account with respect to CFC1 is, subject to the limitation in § 1.245A–8(c)(6), reduced by the lesser of the amount described in § 1.245A–8(c)(1)(i) with respect to US1, and the RGI account of US1 with respect to CFC2 that relates to its extraordinary disposition account with respect to CFC1. *See* § 1.245A–8(c)(1). Similarly, US2's extraordinary disposition account with respect to CFC3 is, subject to the limitation in § 1.245A–8(c)(6), reduced by the lesser of the amount described in § 1.245A–8(c)(1)(i) with respect to US2, and the RGI account of US2 with respect to CFC2 that relates to its extraordinary disposition account with respect to CFC3. *See* § 1.245A–8(c)(1). Paragraphs (c)(4)(ii)(A) through (F) of this section describe the determinations pursuant to § 1.245A–8(c)(1).

(A) *Ownership requirement.* Each of US1 and US2 satisfy the ownership requirement of § 1.245A–8(c)(5) for CFC2's taxable year ending November 30, 2019, because on the last day of that taxable year each is a United States shareholder with respect to CFC2. *See* § 1.245A–8(c)(5).

(B) *Computation of adjusted earnings of CFC2, and amount described in § 1.245A–8(c)(1)(i) with respect to US1 and US2.* The adjusted earnings of CFC2 for its taxable year ending November 30, 2019, is $25x, computed as −$5x (CFC2's deficit in earnings and profits as of November 30, 2019), plus $30x (the sum of the $6x, $4x, and $20x amortization deductions of CFC2). *See* § 1.245A–8(c)(3). For CFC2's taxable year ending November 30, 2019, the amount described in § 1.245A–8(c)(1)(i) with respect to US1 is $25x, computed as the excess of the

product of $25x (the adjusted earnings) and 100% (the percentage of the stock of CFC2 that US1 and its domestic affiliate, US2, own), over $0 (the sum of the balance of certain previously taxed earnings and profits accounts and hybrid deduction accounts). *See* § 1.245A–8(c)(1)(i). Similarly, for CFC2's taxable year ending November 30, 2019, the amount described in § 1.245A–8(c)(1)(i) with respect to US2 is $25x, computed as the excess of the product of $25x (the adjusted earnings) and 100% (the percentage of the stock of CFC2 that US2 and its domestic affiliate, US1, own), over $0 (the sum of the balance of certain previously taxed earnings and profits accounts and hybrid deduction accounts). *See* § 1.245A–8(c)(1)(i).

(C) *Increase to balance of RGI account.* As described in paragraph (c)(3)(ii)(B) of this section, US1 has an RGI account with respect to CFC2 that relates to its extraordinary disposition account with respect to CFC1, and the balance of the RGI account is $10x on November 30, 2019 (the last day of CFC2's taxable year). Similarly, US2 has an RGI account with respect to CFC2 that relates to its extraordinary disposition account with respect to CFC3, and the balance of the RGI account is $20x on November 30, 2019 (reflecting a $20x increase to the balance of the account for the $20x amortization deduction of CFC2 for its taxable year ending November 30, 2019). *See* § 1.245A–8(c)(4)(i).

(D) *Reduction in balance of extraordinary disposition accounts but for § 1.245A–8(c)(6).* But for the application of § 1.245A–8(c)(6), US1's extraordinary disposition account with respect to CFC2 would be reduced by $10x, which is the lesser of $25x, the amount described in § 1.245A–8(c)(1)(i) with respect to US1 for CFC2's taxable year ending November 30, 2019, and $10x, the balance of the RGI account of US1 with respect to CFC2 that relates to its extraordinary disposition account with respect to CFC1 (determined as of November 30, 2019, but without regard to the application of § 1.245A–8(c)(4)(i)(B) for the taxable year of CFC2 ending on that date). *See* § 1.245A–8(c)(1)(i) and (ii). Similarly, but for the application of § 1.245A–8(c)(6), US2's extraordinary disposition account with respect to CFC3 would be reduced by $20x, which is the lesser of $25x, the amount described in § 1.245A–8(c)(1)(i) with respect to US2 for CFC2's taxable year ending November 30, 2019, and $20x, the balance of the RGI account of US2 with respect to CFC2 that relates to its extraordinary disposition account with respect to CFC3 (determined as of November 30, 2019, but without regard to the application of § 1.245A–8(c)(4)(i)(B) for the taxable year of CFC2 ending on that date). *See* § 1.245A–8(c)(1)(i) and (ii).

(E) *Application of limitation of § 1.245A–8(c)(6).* As described in paragraph (c)(4)(ii)(D) of this section, but for the application of § 1.245A–8(c)(6), there would be a total of $30x of reductions to US1's extraordinary disposition account with respect to CFC1, and US2's extraordinary disposition account with respect to CFC3, by reason of the application of § 1.245A–8(c)(1) with respect to CFC2's taxable year ending November 30, 2019. Because that $30x exceeds the amount described in § 1.245A–8(c)(1)(i) with respect to US1 and US2 ($25x)—

(*1*) US1's extraordinary disposition account with respect to CFC1 is reduced by $7.86x, computed as $10x (the reduction that would occur but for § 1.245A–8(c)(6)) less the product of $5x (the excess amount, computed as $30x, the total reductions that would occur but for the application of § 1.245A–8(c)(6), less $25x, the amount described in § 1.245A–8(c)(1)(i)) and a fraction, the numerator of which is $150x (the balance of US1's extraordinary disposition account with respect to CFC1) and the denominator of which is $350x ($150x, the balance of US1's extraordinary disposition account with respect to CFC1, plus $200x, the balance of US2's extraordinary disposition account with respect to CFC3), *see* § 1.245A–8(c)(6); and

(*2*) US2's extraordinary disposition account with respect to CFC3 is reduced by $17.14x, computed as $20x (the reduction that would occur but for § 1.245A–8(c)(6)) less the product of $5x (the excess amount, computed as $30x, the total reductions that would occur but for the application of § 1.245A–8(c)(6), less $25x, the amount described in § 1.245A–8(c)(1)(i)) and a fraction, the numerator of which is $200x (the balance of US2's extraordinary disposition account with respect to CFC3) and the denominator of which is $350x ($150x, the balance of US1's extraordinary disposition account with respect to CFC1, plus $200x, the balance of US2's extraordinary disposition account with respect to CFC3), *see* § 1.245A–8(c)(6) of this section.

(F) *Reduction in balance of RGI accounts.* On November 30, 2019 (the last day of CFC2's taxable year)—

(*1*) The balance of US1's RGI account with respect to CFC2 that relates to its extraordinary disposition account with respect to CFC1 is decreased by $7.86x (the amount of the reduction, pursuant to § 1.245A–8(c)(1) and by reason of the RGI account, to US1's extraordinary disposition account with respect to CFC1) and, thus, following that reduction, the balance of the RGI account is $2.14x ($10x − $7.86x), *see* § 1.245A–8(c)(4)(i)(B); and

(*2*) The balance of US2's RGI account with respect to CFC2 that relates to its extraordinary disposition account with respect to CFC3 is decreased by $17.14x (the amount of the reduction, pursuant to § 1.245A–8(c)(1) and by reason of the RGI account, to US2's extraordinary disposition account with respect to CFC3) and, thus, following that reduction, the balance of the RGI account is $2.86x ($20x − $17.14x), *see* § 1.245A–8(c)(4)(i)(B).

(5) *Example 5. Computation of duplicate DQB*—(i) *Facts.* The facts are the same as in paragraph (c)(1)(i) of this section (*Example 1*) (and the results are the same as in paragraph (c)(1)(ii)(A) of this section), except that CFC1 does not make any distribution to US1, and on November 30, 2018, immediately after the Disqualified Transfer, CFC2 transfers Item 1 to newly-formed CFC3 solely in exchange for the sole share of stock of CFC3 (the contribution, ''Contribution 1,'' and the share of stock of CFC3, the ''CFC3 Share'') and, immediately after Contribution 1, CFC3 transfers Item 1 to newly-formed CFC4 solely in exchange for the sole share of stock of CFC4 (the contribution, ''Contribution 2,'' and the share of stock of CFC4, the ''CFC4 Share''). Pursuant to section 358(a)(1), CFC2's basis in its share of stock of CFC3 is $90x, and CFC3's basis in its share of stock of CFC4 is $90x basis. As a result of Contribution 1, the condition of § 1.245A–6(b)(2) is not satisfied, because on at least one day of CFC2's taxable year ending on November 30, 2018 (which ends within US1's 2018 taxable year), CFC2 does not hold Item 1. *See* § 1.245A–6(b)(2)(ii)(C)(*1*). US1 therefore applies § 1.245A–8 (rules for complex cases) for its 2018 taxable year. *See* § 1.245A–6(b).

(ii) *Analysis*—(A) *Application of exchanged basis rule under section 951A to Contribution 1 and Contribution 2.* As a result of Contribution 1, pursuant to § 1.951A–3(h)(2)(ii)(B)(*2*)(*ii*), the disqualified basis of CFC3 Share includes the disqualified basis of Item 1 ($90x), and therefore the disqualified basis of CFC3 Share is $90x. Similarly, as a result of Contribution 2, pursuant to § 1.951A–3(h)(2)(ii)(B)(*2*)(*ii*), the disqualified basis of CFC4 Share also includes the disqualified basis of Item 1 ($90x), and therefore the disqualified basis of CFC4 Share is $90x.

(B) *Determination of duplicate DQB of CFC3 Share as a result of Contribution 1.* Because the disqualified basis of CFC3 Share includes the disqualified basis of Item 1, CFC3 Share is an item of exchanged basis property that relates to Item 1. *See* § 1.245A–8(d)(2)(ii). In addition, because CFC3 Share is an item of exchanged basis property that relates to Item 1 (which corresponds to US1's extraordinary disposition account with respect to CFC1), CFC3 Share is, for purposes of § 1.245A–8, treated as an item of specified property that corresponds to US1's extraordinary disposition account with respect to CFC1. *See* § 1.245A–8(d)(2)(i). Further, the duplicate DQB of CFC3 Share as to Item 1 is $90x, the portion of the disqualified basis of CFC3 Share that includes Item 1's disqualified basis of $90x. *See* § 1.245A–8(d)(2)(iii)(A).

(C) *Determination of duplicate DQB of CFC4 Share as a result of Contribution 2.* For reasons similar to those described in paragraph (c)(5)(ii)(B) of this section, CFC4 Share is an item of exchanged basis property that relates to Item 1, CFC4 is treated for purposes of § 1.245A–8 as an item of specified property that corresponds to US1's extraordinary disposition account with respect to CFC1, and the duplicate DQB of CFC4 Share as to Item 1 is $90x.

(D) *Determination of duplicate DQB of CFC3 Share as a result of Contribution 2.* Because the disqualified basis of CFC3 Share and the disqualified basis of CFC4 Share each includes $90x of the disqualified basis of Item 1 and CFC3 receives the CFC4 Share in Contribution 2, the $90x of disqualified basis of CFC3 Share is attributable to the $90x of disqualified basis of CFC4 Share, and CFC3 Share is an item of exchanged basis property that relates to CFC4 Share. *See* § 1.245A–8(d)(2)(i) and (d)(2)(iii)(C). In addition, the duplicate DQB of CFC3 Share as to CFC4 Share is $90x. *See* § 1.245A–8(d)(2)(iii)(A).

(E) *Application of duplicate basis rules in § 1.245A–8(b)(5).* For purposes of computing the fraction described in § 1.245A–8(b)(1)(ii), if US1's extraordinary disposition account

with respect to CFC1 were to give rise to an extraordinary disposition amount or a tiered extraordinary disposition amount during US1's 2018 taxable year, then the duplicate DQB of CFC3 Share and the duplicate DQB of CFC4 Share would not be taken into account, because the disqualified basis of Item 1 (an item of specified property that corresponds to US1's extraordinary disposition account and as to which each of CFC3 Share and CFC4 share relates) would be taken into account. *See* § 1.245A–8(b)(1)(ii) and (b)(5)(i)(A). Accordingly, in such a case, for US1's 2018 taxable year, the numerator of the fraction described in § 1.245A–8(b)(1)(ii) would reflect only the disqualified basis of Item 1 or Item 2, as applicable, and the denominator would reflect only the sum of the disqualified basis of each of Item 1 and Item 2. *See* § 1.245A–8(b)(1)(ii) and (b)(5)(i)(A). Furthermore, to the extent there were to be a reduction under § 1.245A–8(b)(1) to the disqualified basis of Item 1, then the duplicate DQB of CFC4 Share would be reduced (but not below zero) by the product of the reduction to the disqualified basis of Item 1 and a fraction, the numerator of which would be $90x (the duplicate DQB of CFC4 Share), and the denominator of which would also be $90x (the duplicate DQB of CFC4 Share). *See* § 1.245A–8(b)(5)(i)(B). The $90x of duplicate DQB of CFC3 Share would be excluded from the denominator of the fraction described in the previous sentence because it is attributable to the $90x of duplicate DQB of CFC4 Share. *See* § 1.245A–8(b)(5)(i)(B)(*2*) (last sentence). For reasons similar to those described in this paragraph (c)(4)(ii)(E) with respect to the application of § 1.245A–8(b)(5)(i)(B) to CFC4 Share, the duplicate DQB of CFC3 Share would be reduced (but not below zero) by the product of the reduction to the disqualified basis of Item 1 and a fraction, the numerator of which would be $90x, and the denominator of which would also be $90x.

§ 1.245A–11 Applicability dates.

(a) *In general.* Sections 1.245A–6 through 1.245A–11 apply to taxable years of a foreign corporation beginning on or after [date a Treasury decision adopting these rules as final regulations is published in the **Federal Register**] and to taxable years of section 245A shareholders in which or with which such taxable years end.

(b) *Exception.* Notwithstanding paragraph (a) of this section, a taxpayer may choose to apply §§ 1.245A–6 through 1.245A–11 for taxable years of a foreign corporation beginning before [date a Treasury decision adopting these rules as final regulations is published in the **Federal Register**] and to taxable years of section 245A shareholders in which or with which such taxable years end, provided that the taxpayer and all persons bearing a relationship to the taxpayer described in section 267(b) or 707(b) apply §§ 1.245A–6 through 1.245A–11, in their entirety, and § 1.6038–2(f)(18) for all such taxable years.

■ **Par. 4.** Section 1.951A–2, as proposed to be amended at 85 FR 19858 (April 8, 2020), is further amended by:

■ 1. Redesignating paragraph (c)(5)(iv) as paragraph (c)(5)(v).

■ 2. Adding new paragraph (c)(5)(iv).

■ 3. In newly redesignated paragraph (c)(5)(v)(B)(*1*), removing the language ''(c)(5)(iv)(A)(*1*)'' and adding the language ''(c)(5)(v)(A)(*1*)'' in its place.

■ 4. In newly redesignated paragraph (c)(5)(v)(C)(*1*), removing the language ''(c)(5)(iv)(B)(*1*)'' and adding the language ''(c)(5)(v)(B)(*1*)'' in its place.

■ 5. Redesignating paragraph (c)(6)(iv) as paragraph (c)(6)(v).

■ 6. Adding new paragraph (c)(6)(iv).

■ 7. In newly redesignated paragraph (c)(6)(v)(B)(*1*), removing the language ''(c)(6)(iv)(A)(*1*) and adding the language ''(c)(6)(v)(A)(*1*)'' in its place.

The additions read as follows:

§ 1.951A–2 Tested income and tested loss.

* * * * *

(c) * * *

(5) * * *

(iv) *Reductions to disqualified basis pursuant to coordination rules.* See § 1.245A–7(b) or § 1.245A–8(b), as applicable, for reductions to disqualified basis resulting from the application of § 1.245A–5.

* * * * *

(6) * * *

(iv) *Reductions to disqualified payments pursuant to coordination rules.* See § 1.245A–5(j)(8) and § 1.245A–7(b) or § 1.245A–8(b), as applicable, for reductions to disqualified payments resulting from the application of § 1.245A–5.

* * * * *

■ **Par. 5.** Section 1.6038–2, as proposed to be amended at 85 FR 44650 (July 23, 2020), is further amended by adding paragraphs (f)(17) and(18) and (m)(5) to read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations.

* * * * *

(f) * * *

(17) *Reporting of disqualified basis and disqualified payments.* If for the annual accounting period of a corporation it holds an item of property having disqualified basis within the meaning of § 1.951A–3(h)(2)(ii) or § 1.951A–2(c)(5), or incurs an item of deduction or loss related to a disqualified payment (within the meaning of § 1.951A–2(c)(6)(ii)(A)), then Form 5471 (or successor form) must contain such information about the disqualified basis, or such information relating to the disqualified payment, 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.

(18) *Adjustments to extraordinary disposition accounts and disqualified basis* If for the annual accounting period a section 245A shareholder of the corporation reduces its extraordinary disposition account pursuant to § 1.245A–7(c) or § 1.245A–8(c), as applicable, or the corporation reduces the disqualified basis in an item of specified property pursuant to § 1.245A–7(b) or § 1.245A–8(b), as applicable, then Form 5471 (or a successor form) must contain such information about the reduction to the extraordinary disposition account or disqualified basis, as applicable, 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) *Special rule for paragraphs (f)(17) and (18) of this section.* Paragraphs (f)(17) and (18) of this section apply with respect to information for annual accounting periods beginning after [date a Treasury decision adopting these rules as final regulations is published in the **Federal Register**]. In addition, as provided in § 1.245A–11(b), paragraph (f)(18) of this section applies with respect to information for an annual accounting period that includes a taxable year for which a taxpayer has chosen to apply §§ 1.245A–6 through 1.245A–11 pursuant to § 1.245A–11(b).

* * * * *

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020–18544 Filed 8–21–20; 4:15 pm]

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Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1, et al.

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2020–0051, Sequence No. 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–09; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of an interim rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2020–09. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective date see the separate document, which follows.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAC 2020–09, FAR case 2019–009.

RULE LISTED IN FAC 2020–09

Subject	FAR case
Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment	2019–009

ADDRESSES: The FAC, including the SECG, is available via the internet at *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific subject set forth in the document following this summary. FAC 2020–09 amends the FAR as follows:

Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2019–009)

This second interim rule amends the Federal Acquisition Regulation to implement section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). The first interim rule was published July 14, 2020.

This rule reduces the information collection burden imposed on the public by making updates to the System for Award Management (SAM) to allow an offeror to represent annually, after conducting a reasonable inquiry, whether it uses covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services. The burden to the public is reduced by allowing an offeror that responds ''does not'' in the annual representation at 52.204–26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(ii) of 52.212–3, Offeror Representations and Certifications—Commercial Items, to skip the offer-by-offer representation for paragraph (d)(2) within the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. The provision at 52.204–26 requires that offerors review SAM prior to completing their required representations.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2020–09 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2020–09 is effective August 27, 2020 except for FAR Case 2019–009, which is effective October 26, 2020.

Kim Herrington,

Acting Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets, II,

Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2020–18771 Filed 8–26–20; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4 and 52

[FAC 2020–09; FAR Case 2019–009; Docket No. FAR–2019–0009, Sequence No. 2]

RIN 9000–AN92

Federal Acquisition Regulation: Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing a second interim rule amending the Federal Acquisition Regulation (FAR) to require an offeror to represent annually, after conducting a reasonable inquiry, whether it uses covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services. The new annual representation in the provision implements a section of the John S. McCain National Defense Authorization Act for Fiscal Year 2019.

DATES: *Effective:* October 26, 2020.

Applicability: Contracting officers shall include the provision at FAR 52.204–26, Covered Telecommunications Equipment or Services-Representation—

- In solicitations issued on or after the effective date; and
- In solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before October 26, 2020 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2019–009 via the Federal eRulemaking portal at *Regulations.gov* by searching for ''FAR Case 2019–009''. Select the link ''Comment Now'' that corresponds with FAR Case 2019–009. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2019–009'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR Case 2019–009'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting.

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referencing the specific legal authority claimed, and provide a non-confidential version of the submission.

Any business confidential information should be in an uploaded file that has a file name beginning with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. The corresponding non-confidential version of those comments must be clearly marked ''PUBLIC.'' The file name of the non-confidential version should begin with the character ''P.'' The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or rebuttal comments. All filers should name their files using the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a ''BC'' or ''P'' will be assumed to be public and will be made publicly available through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAR Case 2019–009.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Acquisition Regulations System codifies and publishes uniform policies and procedures for acquisitions by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations, which implement or supplement the FAR.

In order to combat the national security and intellectual property threats that face the United States, section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) prohibits executive agencies from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The statute goes into effect August 13, 2020.

''Covered telecommunications equipment or services,'' as defined in the statute, means—

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- Telecommunications or video surveillance services provided by such entities or using such equipment; or
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

To implement section 889(a)(1)(B) of the NDAA for FY 2019, DoD, GSA, and NASA published the first interim rule at 85 FR 42665 on July 14, 2020. The first interim rule added a representation to the provision at FAR 52.204–24(d)(2), Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, which required offerors to represent on an offer-by-offer basis if the offeror ''does'' or ''does not'' use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services, and if it does, require the offeror to provide additional disclosures.

This second interim rule further implements section 889(a)(1)(B). It reduces burden on the public by allowing an offeror that represents ''does not'' in a new annual representation at FAR 52.204–26(c)(2), Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(ii) of FAR 52.212–3, Offeror Representations and Certifications-Commercial Items, to skip the offer-by-offer representation within the provision at FAR 52.204–24(d)(2), Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. Updates to the System for Award Management (SAM) were necessary to add this new annual representation and require offerors to represent annually, after conducting a reasonable inquiry, whether it uses covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services. These updates to SAM to

reduce the burden of the first interim rule were not available by the effective date of the first interim rule; therefore, these updates are being made in this interim rule.

SAM is used by anyone interested in the business of the Federal Government, including—

- Entities (contractors, Federal assistance recipients, and other potential award recipients) who need to register to do business with the Government, look for opportunities or assistance programs, or report subcontract information;
- Government contracting and grants officials responsible for activities with contracts, grants, past performance reporting and suspension and debarment activities;
- Public users searching for Government business information.

Representations and Certifications are FAR requirements that anyone wishing to apply for Federal contracts must complete. Representations and Certifications require entities to represent or certify to a variety of statements ranging from environmental rules compliance to entity size representation.

Agencies use the SAM entity registration information to verify recipient compliance with requirements. This reduces the duplicative practice of contractors filling out in full all the representations and certifications on an offer-by-offer basis. Instead the representations and certifications may be filled out annually and electronically.

Offerors shall consult SAM to validate whether the equipment or services they are using are from an entity providing equipment or services listed in the definition of ''covered telecommunications equipment or services.'' The offerors will conduct a reasonable inquiry as to whether they use covered telecommunications equipment or services or any equipment, system, or service that uses covered telecommunications equipment or services.

II. Discussion and Analysis

This second interim rule adds an annual representation to the FAR at 52.204–26, Covered Telecommunications Equipment or Services—Representation, paragraph (c)(2), which requires an offeror to represent, after conducting a reasonable inquiry, whether it ''does'' or ''does not'' use covered telecommunications equipment or services, or any equipment, system or service that uses covered telecommunications equipment or services. The commercial item equivalent is at paragraph (v)(2)(ii) of FAR 52.212–3, Offeror Representations and Certifications-Commercial Items. If an offeror represents it ''does not,'' the offer-by-offer representation at FAR 52.204–24(d)(2) is not required. If the offeror represents it ''does,'' or has not made any representation in FAR 52.204–26(c)(2) or 52.212–3(v)(2)(ii), the representation at FAR 52.204–24(d)(2) is required. The FAR 52.204–26 representation is prescribed at FAR 4.2105(c) for use in all solicitations.

The purpose of this change is to limit the requirement to represent at FAR 52.204–24(d)(2) to only offerors that use covered telecommunication equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services.

This interim rule provides procedures at FAR 4.2103 for contracting officers handling offeror representations in the provisions at FAR 52.204–24 and 52.204–26. A contracting officer may generally rely on an offeror's representation in the provisions at FAR 52.204–24 and 52.204–26 that the offeror does not use any covered telecommunication equipment or services, or use any equipment, system or service that uses covered telecommunications equipment or services, unless the contracting officer has a reason to question the representation. In such cases the contracting officer shall follow agency procedures (*e.g.,* consult the requiring activity and legal counsel).

III. Regulatory Impact Analysis Pursuant to Executive Orders 12866 and 13563

The costs and transfer impacts of section 889(a)(1)(B) are discussed in the analysis below. This analysis was developed by the FAR Council in consultation with agency procurement officials and the Office of Management and Budget (OMB). We request public comment on the costs, benefits, and transfers generated by this rule.

A. Benefits

This rule provides significant national security benefits to the general public. According to the White House article ''A New National Security Strategy for a New Era'', the four pillars of the National Security Strategy (NSS) are to protect the homeland, promote American prosperity, preserve peace through strength, and advance American influence.[1] The purpose of this rule is to align with the NSS pillar to protect the homeland, by protecting the homeland from the impact of Federal contractors using covered telecommunications equipment or services that present a national security concern.

The United States faces an expanding array of foreign intelligence threats by adversaries who are using increasingly sophisticated methods to harm the Nation.[2] Threats to the United States posed by foreign intelligence entities are becoming more complex and harmful to U.S. interests.[3] Foreign intelligence actors are employing innovative combinations of traditional spying, economic espionage, and supply chain and cyber operations to gain access to critical infrastructure, and steal sensitive information and industrial secrets.[4] The exploitation of key supply chains by foreign adversaries represents a complex and growing threat to strategically important U.S. economic sectors and critical infrastructure.[5] The increasing reliance on foreign-owned or controlled telecommunications equipment, such as hardware or software, and services, as well as the proliferation of networking technologies may create vulnerabilities in our nation's supply chains.[6] The evolving technology landscape is likely to accelerate these trends, threatening the security and economic well-being of the American people.[7]

Since the People's Republic of China possesses advanced cyber capabilities that it actively uses against the United States, a proactive cyber approach is needed to degrade or deny these threats before they reach our nation's networks, including those of the Federal Government and its contractors. China is increasingly asserting itself by stealing U.S. technology and intellectual property in an effort to erode the United States' economic and military superiority.[8] Chinese companies, including the companies identified in this rule, are legally required to cooperate with their intelligence services.[9] China's reputation for

[1] *https://www.whitehouse.gov/articles/new-national-security-strategy-new-era/.*

[2] National Counterintelligence Strategy of the United States of America 2020–2022.

[3] National Counterintelligence Strategy of the United States of America 2020–2022.

[4] National Counterintelligence Strategy of the United States of America 2020–2022.

[5] National Counterintelligence Strategy of the United States of America 2020–2022.

[6] National Counterintelligence Strategy of the United States of America 2020–2022.

[7] National Counterintelligence Strategy of the United States of America 2020–2022.

[8] National Counterintelligence Strategy of the United States of America 2020–2022.

[9] NATO Cooperative Cyber Defense Center of Excellence Report on Huawei, 5G and China as a Security Threat.

persistent industrial espionage and close collaboration between its government and industry in order to amass technological secrets presents additional threats for U.S. Government contractors.[10] Therefore, there is a risk that Government contractors using 5th generation wireless communications (5G) and other telecommunications technology from the companies covered by this rule could introduce a reliance on equipment that may be controlled by the Chinese intelligence services and the military in both peacetime and crisis.[11]

The 2019 Worldwide Threat Assessment of the Intelligence Community[12] highlights additional threats regarding China's cyber espionage against the U.S. Government, corporations, and allies. The U.S.-China Economic and Security Review Commission Staff Annual Reports[13] provide additional details regarding the United States' national security interests in China's extensive engagement in the U.S. telecommunications sector. In addition, the U.S. Senate Select Committee on Intelligence Open Hearing on Worldwide Threats[14] further elaborates on China's approach to gain access to the United States' sensitive technologies and intellectual property. The U.S. House of Representatives Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE[15] further identifies how the risks associated with Huawei's and ZTE's provision of equipment to U.S. critical infrastructure could undermine core U.S. national security interests.

Currently, Government contractors may not consider broad national security interests of the general public when they make decisions. This rule ensures that Government contractors make decisions in accordance with public national security interests, by ensuring that, pursuant to statute, they do not use covered telecommunications equipment or services that present national security concerns. This rule will also assist contractors in mitigating supply chain risks (*e.g.,* potential theft of trade secrets and intellectual property) due to the use of covered telecommunications equipment or services.

B. Risks to Industry of Not Complying With 889

As a strictly contractual matter, an organization's failure to submit an accurate representation to the Government constitutes a breach of contract that can lead to cancellation, termination, and financial consequences.

Therefore, it is important for contractors to develop a compliance plan that will allow them to submit accurate representations to the Government in the course of their offers.

C. Contractor Actions Needed for Compliance

The interim rule published at 85 FR 42665 on July 14, 2020, provides a 6 step process for compliance. This second interim rule updates the requirements for step 1 (regulatory familiarization) and step 5 (representation) by requiring familiarization with the new representation within the provision at 52.204–26 and submitting this new representation.

D. Public Costs and Savings

During the first year after publication of the rule, contractors will need to learn about the new representation in the provision at 52.204–26 and its requirements. The DOD, GSA, and NASA (collectively referred to here as the Signatory Agencies) estimate this cost by multiplying the time required to review the regulations and guidance implementing the rule by the estimated compensation of a general manager.

To estimate the burden to Federal offerors associated with complying with the rule, the percentage of Federal contractors that will be impacted was pulled from Federal databases. According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM. As of September 2019, about 74% of all SAM entities registered for all awards were awarded to entities with the primary NAICS code as small; therefore, it is assumed that out of the 387,967 unique vendors registered in SAM in February 2020, 287,096 entities are unique small entities.

We estimate that this rule will also affect businesses which become Federal contractors in the future. Based on data in SAM for FY16–FY19, the Signatory Agencies anticipate there will be an average of 79,319[16] new entities registering annually in SAM, of which 74%, 58,696, are anticipated to be small businesses.

1. Time To Review the Rule

Below is a list of compliance activities related to regulatory familiarization that the Signatory Agencies anticipate will occur after issuance of the rule:

Familiarization with paragraph (c)(2) of FAR 52.204–26, Covered Telecommunications Equipment or Services—Representation. The Signatory Agencies assume that it will take all vendors who plan to submit an offer for a Federal award 8[17] hours to familiarize themselves with the representation at FAR 52.204–26, Covered Telecommunications Equipment or Services—Representation. The Signatory Agencies assume that all entities registered in SAM, or 387,967[18] entities will complete the representation as it is required in order have a current, accurate, and complete registration in SAM. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *$294 million* (= 8 hours × $94.76[19] per hour × 387,967). Of the 387,967 entities impacted by this part of the rule, it is assumed that 74%[20] or 287,096 entities are unique small entities.

In subsequent years, it is estimated that these costs will be incurred by 79,319[21] new entrants each year. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *$60 million* (= 8 hours × $94.76 per hour × 79,319) per year in subsequent years.

The total cost estimated to review the amendments to the provision and the clause is estimated to be *$294 million* in the first year after publication. In subsequent years, this cost is estimated to be *$60 million* annually. The FAR Council acknowledges that there is substantial uncertainty underlying these estimates.

2. Time To Complete the Representation

52.204–26

For the annual representation at FAR 52.204–26(c)(2), we assume that all entities registered in SAM will fill out the annual representation in order to

[10] NATO Cooperative Cyber Defense Center of Excellence Report on Huawei, 5G and China as a Security Threat.

[11] NATO Cooperative Cyber Defense Center of Excellence Report on Huawei, 5G and China as a Security Threat.

[12] *https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR—SSCI.pdf.*

[13] *https://www.uscc.gov/annual-reports/archives.*

[14] *https://www.intelligence.senate.gov/sites/default/files/hearings/CHRG-115shrg28947.pdf.*

[15] *https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=96.*

[16] This value is based on data on new registrants in *SAM.gov* on average for FY16, FY17, FY18, and FY19.

[17] The 8 hours are an assumption based on historical familiarization hours and subject matter expert judgment.

[18] According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM.

[19] The rate of $94.76 assumes an FY19 GS 13 Step 5 salary (after applying a 100% adjustment for overhead and benefits to the base rate) based on subject matter judgment.

[20] As of September 2019, about 74% of all SAM entities registered for all awards were awarded to entities with the primary NAICS code as small.

[21] This value is based on data on new registrants in *SAM.gov* on average for FY16, FY17, FY18, and FY19.

maintain a current, accurate, and complete registration in SAM. It is assumed it will take 1 [22] hour to complete the annual representation. Therefore, the Signatory Agencies assumed the cost for this portion of the rule to be *$36.8 million* (= 1 hour × $94.76 [23] per hour × 387,967 [24] entities registered in SAM).

In subsequent years, we assume that all entities that register in SAM will continue to complete the representation to ensure their SAM registration is current, accurate, and complete. Therefore, it is assumed that these costs will be incurred by the 387,967 [25] entities in SAM that are required to represent at least annually. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *$36.8 million* (= 1 [26] hour × $94.76 per hour × (387,967 entities)) per year in subsequent years.

The FAR Council notes that the annual representation will likely reduce the burden on the public in cases where offerors represent ''does not'' in the annual representation at FAR 52.204–26(c)(2), Covered Telecommunications Equipment or Services—Representation or in paragraph (v)(2)(ii) of FAR 52.212–3, Offeror Representations and Certifications-Commercial Items; offerors can skip the offer-by-offer representation within the provision at FAR 52.204–24(d)(2), Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

There is no way for the FAR Council to know how many of the annual representations at FAR 52.204–26(c)(2), Covered Telecommunications Equipment or Services—Representation or in paragraph (v)(2)(ii) of FAR 52.212–3, Offeror Representations and Certifications-Commercial Items, will include a response of ''does not'', which would allow offerors to skip the offer-by-offer representation within the provision at FAR 52.204–24(c)(2), Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

52.204–24

In the first interim rule, this provision was required for 100% of the offers submitted. For this interim rule, the FAR Council assumes that 20% of entities will no longer have to complete the offer-by-offer representation in year 1, this would result in a cost savings of *$2.2 billion* = (3 [27] hours × $94.76 per hour × (20% * 102,792 unique entities × 378 [28] responses per entity).

In subsequent years, it is assumed that more offerors will respond ''does not'' in the annual representation and will be able to skip the offer-by-offer representation, however, the FAR Council lacks data to estimate this. The FAR Council believes that many entities will take advantage of this flexibility in order to reduce costs, and more will take advantage of the flexibility over time. Therefore, in subsequent years we believe that there will be more cost savings generated by having an annual representation. In the first interim rule, the FAR Council estimated 26% of new entrants would need to complete the offer-by-offer representation. We assume that this rule will reduce this fraction by half. This implies that in year 2 and beyond 50% of the burden calculated in the first interim rule ($2.2 billion per year) will be eliminated due to the entities each year responding ''does not'' in the annual representation and skipping the offer-by-offer representations. Therefore, the cost savings is estimated to be *$1.1 billion.*

The total cost savings of the above Public Cost Estimate by adding the annual representation in Year 1 is at least (Savings − Cost: $2,200M − 331M Cost): $1.6 billion.

The total costs of the above Cost Estimate Savings by adding the annual representation in Year 2 is at least (Savings − Cost: $1,100M − $97M): $1,003 million.

The total costs savings estimate per year by adding the annual representation in subsequent years is at least (Savings − Cost $1,100M − $97M): *$1,003 million.*

The following is a summary of the total public cost savings of this rule calculated in perpetuity at a 3 and 7-percent discount rate:

Summary (billions)	Total costs
Present Value (3%)	−$34.3
Annualized Costs (3%)	−1.0
Present Value (7%)	−15.1
Annualized Costs (7%)	−1.1

The FAR Council acknowledges that there is substantial uncertainty underlying these estimates, including elements for which an estimate is unavailable given inadequate information. As more information becomes available, including through comment in response to this notice, the FAR Council will seek to update these estimates which could increase or decrease the estimated net savings.

E. Government Cost and Savings Analysis

The FAR Council anticipates significant impact to the Government as a result of implementation of section 889(a)(1)(B) of the NDAA for FY 2019. This rule seeks to reduce the overall burden.

The primary cost to the Government will be to review the new annual representation (52.204–26(c)(2)) in SAM. However, there are anticipated savings from the reduction in the number of offer-by-offer representations (52.204–24(d)(2)).

52.204–26

For the annual representation at FAR 52.204–26(c)(2), we assume that the Government will need to review the annual representation at 52.204–26(c)(2) when the representation at 52.204–24(d)(2) has not been completed by the offeror. It is estimated 80 percent of offers received will include a completed offer-by-offer representation; therefore, an estimated 20 percent of offers received will rely on the annual representation. The average total number of awards per fiscal year is 38,854,291.[29] The number of offers received for a solicitation that results in an award varies from one to hundreds. A conservative estimate is 3 offers per award. Therefore, the Signatory Agencies estimate the total number of offers the Government receives in a year is 116,562,873. As previously stated, it is estimated that 20 percent of offers received will rely on the annual representation, or 23,312,575 (= 116,562,873*20%). At 5 minutes (.083 hour) per review the total cost for year 1 and all subsequent years is estimated to be $183.4 million (= 38,854,291 × 3 × 20% × .083 × $94.76 [30]).

[22] The hours are an assumption based on subject matter expert judgment.

[23] The rate of $94.76 assumes an FY19 GS 13 Step 5 salary (after applying a 100% adjustment for overhead and benefits to the base rate) based on subject matter judgment.

[24] According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM.

[25] This number assumes that 79,319 both enter and exit as registrants in SAM with the average number of entities registered each year are 387,967.

[26] The hours are an assumption based on subject matter expert judgment.

[27] The hours are an assumption based on subject matter expert judgment for an offer-by-offer representation.

[28] The responses per entity is calculated by dividing the average number of annual awards in FY16–19 by the average number of unique entities awarded a contract (38,854,291 awards/102,792 unique awardees = 378).

[29] Based on FY16–19 FPDS data.

[30] The rate of $95.76 assumes an FY19 GS 13 Step5 salary (after applying a 100% adjustment for

52.204–24

In the first interim rule, this provision was required for 100% of the offers submitted. For this interim rule, the FAR Council assumes that 20% of entities will no longer have to complete the offer-by-offer representation in year 1, this would result in a cost savings of *$2.2 billion* = (20% × 3 [31] hours × $94.76 per hour × 102,792 unique entities × 378 [32] responses per entity) because the Government would have to review less representations for 52.204–24.

In subsequent years, it is assumed that fewer offerors will respond ''does'' in the annual representation and will be required to complete the offer-by-offer representation, however, the FAR Council lacks data to estimate this. The FAR Council believes that many entities will take advantage of this flexibility in order to reduce costs, and more will take advantage of the flexibility over time.

This implies that in year 2 and beyond 50% of the burden calculated in the first interim rule ($2.2 billion per year) will be eliminated due to the entities each year responding ''does not'' in the annual representation and skipping the offer-by-offer representations. Therefore, the cost savings is estimated to be *$1.1 billion.*

The total cost savings of the above Government Cost Estimate by adding the annual representation in Year 1 is at least (Savings − Cost: $2,200M − 183.4M Cost): *$2 billion.*

The total cost savings of the above Government Cost Estimate Savings by adding the annual representation in Year 2 is at least (Savings − Cost: $1,100M − $183.4M): *$0.9 billion.*

The total Government cost savings estimate per year by adding the annual representation in subsequent years is at least (Savings − Cost $1,100M − $183.4M): *$0.9 billion.*

The following is a summary of the estimated Government cost savings calculated in perpetuity at a 3 and 7-percent discount rate:

Summary (billions)	Total costs
Present Value (3%)	−$31.6
Annualized Costs (3%)	−.9
Present Value (7%)	−14.1
Annualized Costs (7%)	−1.0

overhead and benefits to the base rate) based on subject matter judgement.

[31] The hours are an assumption based on subject matter expert judgment for an offer-by-offer representation.

[32] The responses per entity is calculated by dividing the average number of annual awards in FY16–19 by the average number of unique entities awarded a contract (38,854,291 awards/102,792 unique awardees = 378).

F. Analysis of Alternatives

The FAR Council could take no further regulatory action to implement this statute. However, this alternative would not provide the more efficient implementation and enforcement of the important national security measures accomplished by this rule as detailed above in section C. As a result, we reject this alternative.

IV. Specific Questions For Comment

To understand the exact scope of this impact and how this impact could be affected in subsequent rulemaking, DoD, GSA, and NASA welcome input on the following questions regarding anticipated impact on affected parties.

- What additional information or guidance do you view as necessary to effectively comply with this rule?
- What challenges do you anticipate facing in effectively complying with this rule?

V. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

In the first interim rule, the FAR Council determined that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT, commercial item contracts, and contracts for the acquisition of COTS items, from the provision of law. As the second interim rule makes only administrative changes to the process of collecting information, and does not affect the scope of applicability of the prohibition, those determinations remain applicable. This rule adds a representation to the provision at FAR 52.204–26, Covered Telecommunications Equipment or Services—Representation, in order to implement section 889(a)(1)(B) of the NDAA for FY 2019, which prohibits executive agencies from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system on or after August 13, 2020, unless an exception applies or a waiver has been granted.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Finally, 41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from a provision of law unless certain circumstances apply, including if the Administrator for Federal Procurement Policy makes a written determination and finding that would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law.

C. Determinations

In issuing the first interim rule, the FAR Council determined that it is in the best interest of the Government to apply the rule to contracts at or below the SAT and for the acquisition of commercial items, and the Administrator for Federal Procurement Policy determined that it is in the best interest of the Government to apply that rule to contracts for the acquisition of COTS items. The changes made in this rule are administrative changes to the process of collecting required information, and do not alter those determinations.

VI. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' under E.O. 12866. Accordingly, the OMB has reviewed this rule. This second interim rule is a major rule under 5 U.S.C. 804.

VII. Executive Order 13771

This rule is subject to the requirements of E.O. 13771. The final rule designation, as regulatory or deregulatory under E.O. 13771, will be informed by the comments received from this interim rule. Details of estimates of costs or savings can be found in section III of this preamble.

VIII. Regulatory Flexibility Act

For the first interim rule, DoD, GSA, and NASA performed an Initial Regulatory Flexibility Analysis (IRFA).

Although the second interim rule would on aggregate reduce burdens, DoD, GSA, and NASA expect that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

The reason for this second interim rule is to further implement section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) by allowing offerors to represent annually whether they use any covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

The objective of the rule is to provide an information collection mechanism that relies on an annual representation, thereby reducing the burden of providing information, in some cases, that is required to enable agencies to determine and ensure that they are complying with section 889(a)(1)(B). The legal basis for the rule is section 889(a)(1)(B) of the NDAA for FY 2019, which prohibits executive agencies from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, on or after August 13, 2020, unless an exception applies or a waiver has been granted.

To estimate the burden to Federal offerors associated with complying with the rule, the percentage of Federal contractors that will be impacted was pulled from Federal databases. According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM. As of September 2019, about 74 percent of all SAM entities registered for all awards were awarded to entities with the primary NAICS code as small; therefore, it is assumed that out of the 387,967 unique vendors registered in SAM in February 2020, 287,096 entities are unique small entities. We assume that all entities registered in SAM will fill out the annual representation because they are required to fill it out to have a current, accurate, and complete SAM registration.

The solicitation provision at 52.204–26 is prescribed for use in all solicitations. The second interim rule adds a representation at paragraph (c)(2) which requires each vendor to represent, at least annually, that it ''does'' or ''does not'' use covered telecommunications equipment or services, or any equipment, system or service that uses covered telecommunications equipment or services. Offerors shall consult the System for Award Management (SAM) to validate whether the equipment or services they are using are from an entity providing equipment or services listed in the definition of ''covered telecommunications equipment or services.'' The offerors will conduct a reasonable inquiry as to whether they use covered telecommunications equipment or services or any equipment, system, or service that uses covered telecommunications equipment or services.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

It is not possible to establish different compliance or reporting requirements or timetables that take into account the resources available to small entities or to exempt small entities from coverage of the rule, or any part thereof. DoD, GSA, and NASA were unable to identify any alternatives that would reduce the burden on small entities and still meet the objectives of section 889.

The Regulatory Secretariat Division has submitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy may be obtained from the Regulatory Secretariat Division upon request. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2019–009) in correspondence.

IX. Paperwork Reduction Act

As part of the first interim rule, the FAR Council was granted emergency processing of a collection currently approved under OMB control number 9000–0201, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment.

In the first interim rule, the burden consisted of an offer-by-offer representation at FAR 52.204–24(d)(2) to identify whether an offeror does or does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services, and a report of identified covered telecommunications equipment and services during contract performance, as required by FAR 52.204–25. In this second interim rule, the burden consists of a representation at FAR 52.204–26(c)(2) to identify whether an offeror does or does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services, and a representation at FAR 52.204–24(d)(2) to identify whether an offeror uses any equipment, system, or service that uses covered telecommunications equipment or services for each offer, unless the offeror selects ''does not'' in response to the provision at FAR 52.204–26(c)(2) (or its commercial item equivalent at paragraph (v)(2)(ii) of FAR 52.212–3).

With this second interim rule, this existing collection is being revised to reflect a reduction in burden.

With this change in who must complete a representation at FAR 52.204–24(d)(2), the FAR Council has estimated the number of responses required by this provision will drop from 38,854,291 to 31,083,433. With this decrease in responses needed, the burden for 52.204–24(d)(2) is expected to decrease from $11,045,497,845 to $8,836,398,333.

The representation added by this rule at 52.204–26(c)(2) is estimated to average 1 hour (the average of the time for both positive and negative representations) per response to review the prohibitions, conduct a reasonable inquiry, and complete the representation. The representation at FAR 52.204–24(d)(2) is estimated to average 3 hours (the average of the time for both positive and negative representations) per response to review the prohibitions, conduct a reasonably inquiry, and either provide a response of ''does not'' or provide a response of ''does'' and complete the additional detailed disclosure.

As part of this interim rule, the FAR Council is soliciting comments from the public in order to:

- Evaluate whether the proposed revisions to this collection of information are necessary for the proper performance of the functions of the FAR Council, including whether the information will have practical utility;

• Evaluate the accuracy of the FAR Council's estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond including through the use of appropriate collection techniques.

Organizations and individuals desiring to submit comments on the information collection requirements associated with this rulemaking should submit comments to the Regulatory Secretariat Division (MVCB) not later than October 26, 2020 through *http://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite Information Collection 9000–0201, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting.

X. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that notice and public procedure thereon is unnecessary.

This rule is meant to mitigate risks across the supply chains that provide hardware, software, and services to the U.S. Government and further integrate national security considerations into the acquisition process. Since section 889 of the NDAA for FY 2019 was signed on August 13, 2018, the FAR Council has been working diligently to implement the statute, which has multiple effective dates embedded in section 889. Like many countries, the United States has increasingly relied on a global industrial supply chain. As threats have increased, so has the Government's scrutiny of its contractors and their suppliers. Underlying these efforts is the concern a foreign government will be able to expropriate valuable technologies, engage in espionage with regard to sensitive U.S. Government information, and/or exploit vulnerabilities in products or services. It is worth noting this rule follows a succession of other FAR and DOD rules dealing with supply chain and cybersecurity that were further described within section VI of the first interim rule published on July 14, 2020, at 85 FR 42665.

Changes necessary to the System for Award Management (SAM) to reduce the burden of the first interim rule were not available by the effective date of the rule, so in order to decrease the burden on contractors from the first rule and increase the effectiveness of the rule, the FAR Council is publishing this second interim rule on section 889(a)(1)(B).

Implementing this rule as soon as the SAM representation is available will reduce the burden on the public and the Government to comply with the critical national security regulation. Publication of a proposed rule would delay the reduction of burden and the achievement of the national security benefits that are expected from this second interim rule.

For the foregoing reasons, pursuant to 41 U.S.C. 1707(d), the FAR Council finds that urgent and compelling circumstances make compliance with the notice and comment and delayed effective date requirements of 41 U.S.C. 1707(a) and (b) impracticable, and invokes the exception to those requirements under 1707(d).

While a public comment process will not be completed prior to the rule's effective date, the FAR Council has taken into account feedback solicited through extensive outreach already undertaken, the feedback received through the two rulemakings associated with section 889(a)(1)(A), and the feedback received so far from the first interim rule published on July 14, 2020, at 85 FR 42665. The FAR Council will also consider comments submitted in response to this interim rule in issuing a subsequent rulemaking.

List of Subjects in 48 CFR Parts 1, 4, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 4, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. In section 1.106 amend the table by adding in numerical order FAR segment entry ''52.204–26'' and its OMB control numbers to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
52.204–26	9000–0199 and 9000–0201
* * * * *	

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

■ 3. Amend section 4.2103 by revising paragraph (a)(1) to read as follows:

4.2103 Procedures.

(a) * * *

(1)(i) If the offeror selects ''does not'' in paragraphs (c)(1) and/or (c)(2) of the provision at 52.204–26 or in paragraphs (v)(2)(i) and/or (v)(2)(ii) of the provision at 52.212–3, the contracting officer may rely on the ''does not'' representation(s), unless the contracting officer has reason to question the representation. If the contracting officer has a reason to question the representation, the contracting officer shall follow agency procedures.

(ii) If the offeror selects ''does'' in paragraph (c)(1) of the provision at 52.204–26 or paragraph (v)(2)(i) of the provision at 52.212–3, the offeror will be required to complete the representation in paragraph (d)(1) of the provision at 52.204–24.

(iii) If the offeror selects ''does'' in paragraph (c)(2) of the provision at 52.204–26 or paragraph (v)(2)(ii) of the provision at 52.212–3, the offeror will be required to complete the representation in paragraph (d)(2) of the provision at 52.204–24.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.204–24 by revising the date of provision and the introductory text to read as follows:

52.204–24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

* * * * *

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Oct 2020)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it ''does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument'' in paragraph (c)(1) in the provision at 52.204–26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at 52.212–3, Offeror Representations and Certifications–Commercial Items. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it ''does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services'' in paragraph (c)(2) of the provision at 52.204–26, or in paragraph (v)(2)(ii) of the provision at 52.212–3.

* * * * *

■ 5. Amend section 52.204–26 by—
■ a. Revising the date of the provision;
■ b. In paragraph (a), removing ''has'' and adding ''and ''reasonable inquiry'' have'' in its place; and
■ c. Revising paragraph (c).

The revisions read as follows:

52.204–26 Covered Telecommunications Equipment or Services—Representation.

* * * * *

Covered Telecommunications Equipment or Services—Representation (OCT 2020)

* * * * *

(c) *Representations.* (1) The Offeror represents that it [ ] does, [ ] does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(2) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it [ ] does, [ ] does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

* * * * *

■ 6. Amend section 52.212–3 by—
■ a. Revising the date of the provision;
■ b. In paragraph (a) adding the definition ''Reasonable inquiry'' in alphabetical order;
■ c. Removing from paragraph (v) introductory text ''of Public'' and adding ''and section 889 (a)(1)(B) of Public'' in its place; and
■ d. Revising paragraph (v)(2).

The revisions and addition read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Oct 2020)

* * * * *

(a) * * *

Reasonable inquiry has the meaning provided in the clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

* * * * *

(v) * * *

(2) The Offeror represents that—

(i) It [ ] does, [ ] does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(ii) After conducting a reasonable inquiry for purposes of this representation, that it [ ] does, [ ] does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

* * * * *

[FR Doc. 2020–18772 Filed 8–26–20; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2020–0051, Sequence No. 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–09; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2020–09, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2020–09, which precedes this document. These documents are also available via the internet at *https://www.regulations.gov.*

DATES: August 27, 2020.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAC 2020–09, FAR case 2019–009.

RULE LISTED IN FAC 2020–09

Subject	FAR case
* Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment	2019–009

ADDRESSES: The FAC, including the SECG, is available via the internet at *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific subject set forth in the document following this summary. FAC 2020–09 amends the FAR as follows:

Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2019–009)

This second interim rule amends the Federal Acquisition Regulation to implement section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). The first interim rule was published July 14, 2020.

This rule reduces the information collection burden imposed on the public by making updates to the System for Award Management (SAM) to allow an offeror to represent annually, after conducting a reasonable inquiry, whether it uses covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services. The burden to the public is reduced by allowing an offeror that responds ''does not'' in the annual representation at 52.204–26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(ii) of 52.212–3, Offeror Representations and Certifications—Commercial Items, to skip the offer-by-offer representation for paragraph (d)(2) within the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. The provision at 52.204–26 requires that offerors review SAM prior to completing their required representations.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2020–18773 Filed 8–26–20; 8:45 am]

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