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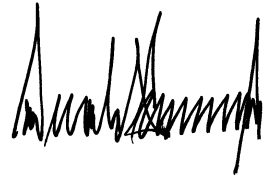
The President

## Delegation of Authority Under Section 614(a)(2) of the Foreign Assistance Act of 1961

### Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of Title 3, United States Code, I hereby delegate to the Secretary of State, subject to fulfilling the requirement of section 614(a)(3) of the Foreign Assistance Act of 1961 (FAA), the authority under section 614(a)(2) of the FAA to determine whether it is vital to the national security interests of the United States to make up to \$6.8 million in sales of cluster munitions technology under the Arms Export Control Act to the Republic of Korea, without regard to any other provision of law within the purview of section 614(a)(2) of the FAA.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,  
Washington, January 13, 2021

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## Presidential Documents

Presidential Determination No. 2021–03 of January 14, 2021

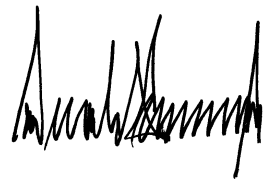
**Presidential Determination on the Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for FY 2012**

**Memorandum for the Secretary of State[,] the Secretary of the Treasury[, and] the Secretary of Energy**

By the authority vested in me as President by the Constitution and the laws of the United States, after carefully considering the reports submitted to the Congress by the Energy Information Administration including the report submitted in October 2020, and other relevant factors, including global economic conditions, increased oil production by certain countries, the level of spare capacity, and the availability of strategic reserves, I determine, pursuant to section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81, and consistent with prior determinations, that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions.

I will continue to monitor this situation closely.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register*.



THE WHITE HOUSE,  
Washington, January 14, 2021



MEMORANDUM OF JUSTIFICATION FOR  
THE PURSUANT TO SECTION 1245 (D) (4) (B) AND (C) OF THE  
NATIONAL DEFENSE AUTHORIZATION ACT FOR 2012

The Energy Information Administration's (EIA) October 2020 Short-Term Energy Outlook (STEO) report, indicates that oil markets remain stable with ample inventories. September–August prices were down about 27 percent compared to 1 year prior. The EIA estimates that Organization for Economic Cooperation and Development (OECD) commercial crude oil and other liquid fuels inventories were 3.09 billion barrels in September 2020, and remained sufficient for approximately 1 month of consumption. Oil production from countries other than Iran was 86.1 million barrels per day in September. While this is well below the 2017–2019 average of 93.3 million barrels per day, it reflects significant negotiated productions cuts by the OPEC+ group, continued conflict-induced limits on production in Libya, and voluntary production reductions in response to a substantial COVID–19–induced reduction in demand and prices since the previous report.

The EIA estimates OPEC's surplus crude production capacity in September 2020, to be 7.6 million barrels per day. According to EIA, world inventory declined by an average of 3.0 million barrels per day from August to September but average OECD inventories of 3,107 million barrels still exceed the 2017–2019 average of 2,910 million barrels. The October STEO forecasts benchmark North Sea Brent and West Texas Intermediate (WTI) crude oil prices to average \$41.19 per barrel and \$38.76 per barrel, respectively, in 2020. These figures are approximately \$23 and \$18 per barrel, respectively, less than prices at the end of 2019 and around \$84/\$71 per barrel less than prices in March 2012, when President Obama made the first determination under this statute. The EIA report projects that high inventory levels and surplus crude oil production capacity will limit upward

pressure on oil prices through the end of 2020 and into 2021.

Since the EIA October STEO, increased Covid-19 case numbers in Europe and the United States, as well as corresponding lockdown measures in several European countries, are expected to delay full economic recovery and resumption of oil demand. With resumption of Libyan oil exports, more than 1 million barrels/day were brought back online between September 18 and the second week in November. In January 2021, OPEC+ production is scheduled to increase as the group moves to phase three of its May production agreement, but there is considerable discussions about keeping production cuts due to growing COVID numbers. In view of the ETA's findings and forecasts and the quantity of reserves at hand, the global supply of petroleum and petroleum products is sufficient for the President to make a positive determination.

This Presidential Determination is being provided consistent with the requirement in section 1245 (d) (4) (B) and (C) of the National Defense Authorization Act for Fiscal Year 2012.

## Presidential Documents

Executive Order 14009 of January 28, 2021

### Strengthening Medicaid and the Affordable Care Act

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1. *Policy.*** In the 10 years since its enactment, the Affordable Care Act (ACA) has reduced the number of uninsured Americans by more than 20 million, extended critical consumer protections to more than 100 million people, and strengthened and improved the Nation's healthcare system. At the same time, millions of people who are potentially eligible for coverage under the ACA or other laws remain uninsured, and obtaining insurance benefits is more difficult than necessary. For these reasons, it is the policy of my Administration to protect and strengthen Medicaid and the ACA and to make high-quality healthcare accessible and affordable for every American.

**Sec. 2. *Special Enrollment Period.*** The coronavirus disease 2019 (COVID-19) pandemic has triggered a historic public health and economic crisis. In January of 2020, as the COVID-19 pandemic was spreading, the Secretary of Health and Human Services declared a public health emergency. In March of 2020, the President declared a national emergency. Although almost a year has passed, the emergency continues—over 5 million Americans have contracted the disease in January 2021, and thousands are dying every week. Over 30 million Americans remain uninsured, preventing many from obtaining necessary health services and treatment. Black, Latino, and Native American persons are more likely to be uninsured, and communities of color have been especially hard hit by both the COVID-19 pandemic and the economic downturn. In light of the exceptional circumstances caused by the ongoing COVID-19 pandemic, the Secretary of Health and Human Services shall consider establishing a Special Enrollment Period for uninsured and under-insured Americans to seek coverage through the Federally Facilitated Marketplace, pursuant to existing authorities, including sections 18031 and 18041 of title 42, United States Code, and section 155.420(d)(9) of title 45, Code of Federal Regulations, and consistent with applicable law.

**Sec. 3. *Immediate Review of Agency Actions.*** (a) The Secretary of the Treasury, the Secretary of Labor, the Secretary of Health and Human Services, and the heads of all other executive departments and agencies with authorities and responsibilities related to Medicaid and the ACA (collectively, heads of agencies) shall, as soon as practicable, review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) to determine whether such agency actions are inconsistent with the policy set forth in section 1 of this order. As part of this review, the heads of agencies shall examine the following:

- (i) policies or practices that may undermine protections for people with pre-existing conditions, including complications related to COVID-19, under the ACA;
- (ii) demonstrations and waivers, as well as demonstration and waiver policies, that may reduce coverage under or otherwise undermine Medicaid or the ACA;
- (iii) policies or practices that may undermine the Health Insurance Marketplace or the individual, small group, or large group markets for health insurance in the United States;

(iv) policies or practices that may present unnecessary barriers to individuals and families attempting to access Medicaid or ACA coverage, including for mid-year enrollment; and

(v) policies or practices that may reduce the affordability of coverage or financial assistance for coverage, including for dependents.

(b) Heads of agencies shall, as soon as practicable and as appropriate and consistent with applicable law, consider whether to suspend, revise, or rescind—and, as applicable, publish for notice and comment proposed rules suspending, revising, or rescinding—those agency actions identified as inconsistent with the policy set forth in section 1 of this order.

(c) Heads of agencies shall, as soon as practicable and as appropriate and consistent with applicable law, consider whether to take any additional agency actions to more fully enforce the policy set forth in section 1 of this order.

**Sec. 4. *Revocation of Certain Presidential Actions and Review of Associated Agency Actions.*** (a) Executive Order 13765 of January 20, 2017 (Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal), and Executive Order 13813 of October 12, 2017 (Promoting Healthcare Choice and Competition Across the United States), are revoked.

(b) As part of the review required under section 3 of this order, heads of agencies shall identify existing agency actions related to or arising from Executive Orders 13765 and 13813. Heads of agencies shall, as soon as practicable, consider whether to suspend, revise, or rescind—and, as applicable, publish for notice and comment proposed rules suspending, revising, or rescinding—any such agency actions, as appropriate and consistent with applicable law and the policy set forth in section 1 of this order.

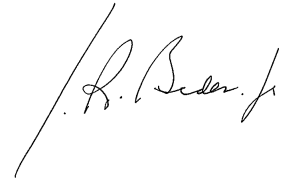
**Sec. 5. *General Provisions.*** (a) Nothing in this order shall be construed to impair or otherwise affect:

(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.

A handwritten signature in black ink, appearing to read "Joe Biden", is written over a diagonal line that extends from the bottom left towards the top right.

THE WHITE HOUSE,  
*January 28, 2021.*

[FR Doc. 2021-02252

2-1-21; 8:45 am]

Billing code 3295-F1-P

# Rules and Regulations

Federal Register

Vol. 86, No. 20

Tuesday, February 2, 2021

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

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## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

#### Civil Monetary Penalty Inflation Adjustment

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts the level of civil monetary penalties (CMPs) in regulations maintained and enforced by the Merit Systems Protection Board (MSPB) with an annual adjustment under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) and Office of Management and Budget (OMB) guidance.

**DATES:** This final rule is effective on February 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Everling, Acting Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419; Phone: (202) 653-7200; Fax: (202) 653-7130; or email: [mspb@mspb.gov](mailto:mspb@mspb.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), Public Law 101-410, provides for the regular evaluation of CMPs by Federal agencies. Periodic inflationary adjustments of CMPs ensure that the consequences of statutory violations adequately reflect the gravity of such offenses and that CMPs are properly accounted for and collected by the Federal Government. In April 1996, the 1990 Act was amended by the Debt Collection Improvement Act of 1996 (the 1996 Act), Public Law 104-134, requiring Federal agencies to adjust their CMPs at least once every four years. However, because inflationary adjustments to CMPs were statutorily capped at ten percent of the maximum

penalty amount, but only required to be calculated every four years, CMPs in many cases did not correspond with the true measure of inflation over the preceding four-year period, leading to a decline in the real value of the penalty. To remedy this decline, the 2015 Act (section 701 of Pub. L. 114-74) requires agencies to adjust CMP amounts with annual inflationary adjustments through a rulemaking using a methodology mandated by the legislation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties.

A civil monetary penalty is “any penalty, fine, or other sanction” that: (1) “is for a specific amount” or “has a maximum amount” under Federal law; and (2) a Federal agency assesses or enforces “pursuant to an administrative proceeding or a civil action in the Federal courts.” 28 U.S.C. 2461 note.

The MSPB is authorized to assess CMPs pursuant to 5 U.S.C. 1215(a)(3) and 5 U.S.C. 7326 in disciplinary actions brought by the Special Counsel. The corresponding MSPB regulation for both CMPs is 5 CFR 1201.126(a). As required by the 2015 Act, and pursuant to guidance issued by the OMB, the MSPB is now making an annual adjustment for 2021, according to the prescribed formulas.

##### II. Calculation of Adjustment

The CMP listed in 5 U.S.C. 1215(a)(3) was established in 1978 with the enactment of the Civil Service Reform Act of 1978 (CSRA), Public Law 95-454, section 202(a), 92 Stat. 1121-30 (Oct. 13, 1978), and originally codified at 5 U.S.C. 1207(b). That CMP was last amended by section 106 of the Whistleblower Protection Enhancement Act of 2012, Public Law 112-199, 12 Stat. 1468 (Nov. 27, 2012), now codified at 5 U.S.C. 1215(a)(3), which provided for a CMP “not to exceed \$1,000.” The CMP authorized in 5 U.S.C. 7326 was established in 2012 by section 4 of the Hatch Act Modernization Act of 2012 (Hatch Act), Public Law 112-230, 126 Stat. 1617 (Dec. 28, 2012), which provided for a CMP “not to exceed \$1,000.” On March 4, 2020, the MSPB issued a final rule which increased the maximum CMP allowed under both 5 U.S.C. 1215(a)(3) and 5 U.S.C. 7326 to \$1,112 for the year 2020. *See* 85 FR 12723 (Mar. 4, 2020). This increase

reflected the annual increase for the year 2020 mandated by the 2015 Act.

On December 23, 2020, OMB issued guidance on calculating the annual inflationary adjustment for 2021. *See* Memorandum from Russell T. Vought, Dir., OMB, to Heads of Executive Departments and Agencies re: Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-21-10 (Dec. 23, 2020). Therein, OMB notified agencies that the annual adjustment multiplier for 2021, based on the Consumer Price Index for All Urban Consumers (CPI-U), is 1.01182 and that the 2021 annual adjustment amount is obtained by multiplying the 2020 penalty amount by the 2021 annual adjustment multiplier, and rounding to the nearest dollar. Therefore, the new maximum penalty under the CSRA and the Hatch Act is  $\$1,112 \times 1.01182 = \$1,125.14$ , which rounds to \$1,125.

##### III. Effective Date of Penalties

The revised CMP amounts will go into effect on February 2, 2021. All violations for which CMPs are assessed after the effective date of this rule will be assessed at the adjusted penalty level regardless of whether the violation occurred before the effective date.

##### IV. Procedural Requirements

###### A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), the MSPB has determined that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because Congress has specifically exempted agencies from these requirements when implementing the 2015 Act. The 2015 Act explicitly requires the agency to make subsequent annual adjustments notwithstanding 5 U.S.C. 553, the section of the Administrative Procedure Act that normally requires agencies to engage in notice and comment. It is also in the public interest that the adjusted rates for CMPs under the CSRA and the Hatch Act become effective as soon as possible to maintain their effective deterrent effect.

*B. Regulatory Impact Analysis: E.O. 12866*

The MSPB has determined that this is not a significant regulatory action under E.O. 12866. Therefore, no regulatory impact analysis is required.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). As discussed above, the 2015 Act does not require agencies to first publish a proposed rule when adjusting CMPs within their jurisdiction. Thus, the RFA does not apply to this final rule.

*D. Paperwork Reduction Act*

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

*E. Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 5 CFR Part 1201**

Administrative practice and procedure, Civil rights, Government employees.

For the reasons set forth above, 5 CFR part 1201 is amended as follows:

**PART 1201—PRACTICES AND PROCEDURES**

■ 1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

**§ 1201.126 [Amended]**

■ 2. Section 1201.126 is amended in paragraph (a) by removing “\$1,112” and adding in its place “\$1,125”.

**Jennifer Everling,**

*Acting Clerk of the Board.*

**Editorial Note:** This document was received for publication by the Office of the Federal Register on January 12, 2021.

[FR Doc. 2021–00932 Filed 2–1–21; 8:45 am]

**BILLING CODE 7400–01–P**

**DEPARTMENT OF ENERGY**

**10 CFR Part 431**

**[EERE–2017–BT–TP–0047]**

**RIN 1904–AE18**

**Energy Conservation Program: Test Procedures for Small Electric Motors and Electric Motors**

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

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** This document delays the effective date of a recently published final rule amending the test procedures for small electric motors and electric motors. DOE also seeks comment on any further delay of the effective date, including the impacts of such delay, as well comment on the legal, factual, or policy issues raised by the rule.

**DATES:** The effective dates of the final rule published January 4, 2021, at 86 FR 4, and the accompanying correction published January 15, 2021, at 86 FR 3747, are delayed to March 21, 2021. Written comments and information will be accepted on or before March 4, 2021.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Domm, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Ave. SW, Washington, DC 20585–0121. Phone: (202) 586–8145. Email: [Michael.Kido@hq.doe.gov](mailto:Michael.Kido@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** On January 20, 2021, the Assistant to the President and Chief of Staff (“Chief of Staff”) issued a memorandum outlining the President’s plan for managing the Federal regulatory process at the outset of the new Administration. In implementation of one of the measures directed by that memorandum, the United States Department of Energy (“DOE”) hereby temporarily postpones the effective date of its final rule amending the test procedures for small electric motors and electric motors published in the **Federal Register** on January 4, 2021 (86 FR 4) and an accompanying correction document published in the **Federal Register** on January 15, 2021 (86 FR 3747). The

January 4, 2021 rule amends the test procedures for measuring the energy efficiency of small electric motors and electric motors. Consistent with the memorandum, DOE is temporarily postponing the effective date of the final rule by 60 days, starting from January 20, 2021. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff’s memorandum of January 20, 2021.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE’s implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing for 60 days the effective date of this regulation pursuant to the previously-noted memorandum of the Chief of Staff and is exercising no discretion in implementing this specific provision of the memorandum. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. For these same reasons, DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d). DOE is, however, seeking comment on any further delay of the effective date, including the impacts of such delay, as well comment on the legal, factual, or policy issues raised by the rule.

**Signing Authority**

This document of the Department of Energy was signed on January 26, 2021, by John T. Lucas, Acting General Counsel, Office of the General Counsel, pursuant to delegated authority from the Acting 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 January 27, 2021.

**Treena V. Garrett,**

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

[FR Doc. 2021-02035 Filed 2-1-21; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 1061

**RIN 1990-AA50**

#### Procedures for the Issuance of Guidance Documents

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

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** This document delays the effective date of a recently published final rule establishing procedures for the issuance of Department of Energy guidance documents. DOE also seeks comment on any further delay of the effective date, including the impacts of such delay, as well comment on the legal, factual, or policy issues raised by the rule.

**DATES:** The effective date of the final rule published January 6, 2021, at 86 FR 451, is delayed to March 21, 2021. Written comments and information will be accepted on or before March 4, 2021.

**FOR FURTHER INFORMATION CONTACT:** Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC-33, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-2555, Email: [Guidance@hq.doe.gov](mailto:Guidance@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** On January 20, 2021, the Assistant to the President and Chief of Staff ("Chief of Staff") issued a memorandum outlining the President's plan for managing the Federal regulatory process at the outset of the new Administration. In implementation of one of the measures directed by that memorandum, the United States Department of Energy ("DOE") hereby temporarily postpones the effective date of its final rule establishing procedures for the issuance of DOE guidance documents published in the **Federal Register** on January 6, 2021 (86 FR 451). The January 6, 2021 rule implemented Executive Order 13891, "Promoting the Rule of Law Through Improved Agency Guidance Documents" (84 FR 55235), which,

among other things, required agencies to provide more transparency for their guidance documents by creating a searchable online database for current guidance documents, and by establishing procedures to allow the public to comment on significant guidance documents and to petition the agency to withdraw or modify guidance documents. Consistent with the memorandum, DOE is temporarily postponing the effective date of the final rule by 60 days, starting from January 20, 2021. The temporary 60-day delay in the effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff's memorandum of January 20, 2021.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing for 60 days the effective date of this regulation pursuant to the previously-noted memorandum of the Chief of Staff and is exercising no discretion in implementing this specific provision of the memorandum. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. For these same reasons, DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d). DOE is, however, seeking comment on any further delay of the effective date, including the impacts of such delay, as well comment on the legal, factual, or policy issues raised by the rule.

#### Signing Authority

This document of the Department of Energy was signed on January 26, 2021, by John T. Lucas, Acting General Counsel, Office of the General Counsel, pursuant to delegated authority from the Acting 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 January 27, 2021.

**Treena V. Garrett,**

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

[FR Doc. 2021-02036 Filed 2-1-21; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA-2020-0476; Special Conditions No. 25-780-SC]

#### Special Conditions: TC Inter-Informatics A.S., Airbus Model A330-243 Airplane; Single-Occupant, Oblique (Side-Facing) Seats With Inflatable Lapbelts

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Airbus Model A330-243 series airplane. This airplane, as modified by TC Inter-Informatics A.S. (TC Inter-Informatics), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is single-occupant, oblique B/E Aerospace Super Diamond seats, equipped with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** This action is effective on TC Inter-Informatics on February 2, 2021. Send comments on or before March 19, 2021.

**ADDRESSES:** Send comments identified by Docket No. FAA-2020-0476 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov/> and follow



the online instructions for sending your comments electronically.

- **Mail:** Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations at 202–493–2251.

- **Privacy:** Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received without change, to <http://www.regulations.gov/>, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposal.

- **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 Notice 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 Notice, 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 the indicated comments will not be placed in the public docket of this Notice. Send submissions containing CBI to the person indicated in the Contact section below. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for this rulemaking.

- **Docket:** Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**  
Alan Sinclair, Airframe and Cabin

Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3215; email [alan.sinclair@faa.gov](mailto:alan.sinclair@faa.gov).

**SUPPLEMENTARY INFORMATION:** The substance of these special conditions previously has been published in the **Federal Register** for public comment. These special conditions have been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

#### Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

#### Background

On March 21, 2017, TC Inter-Informatics applied for a supplemental type certificate to install B/E Aerospace Super Diamond specific Model 1031301 seats, equipped with inflatable restraint systems, at oblique angles of 27.25 and 30 degrees to the longitudinal centerline on Airbus Model A330–243 airplanes. The Airbus Model A330–243 airplane, which is a derivative of the Airbus Model A330 airplane currently approved under Type Certificate No. A46NM, is a twin-engine, transport-category airplane with a maximum takeoff weight of 507,063 pounds and seating for 375 passengers.

#### Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, TC Inter-Informatics must show that the Airbus Model A330–243 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A46NM or the applicable regulations in effect on the date of application for the change,

except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (e.g., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A330–243 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A330–243 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

#### Novel or Unusual Design Features

The Airbus Model A330–243 airplane, as modified by TC Inter-Informatics, will incorporate the following novel or unusual design feature:

Single-occupant, oblique seats equipped with inflatable lapbelts.

#### Discussion

Amendment 25–15 to part 25, dated October 24, 1967, introduced the subject of side-facing seats, and a requirement that each occupant in a side-facing seat must be protected from head injury by a safety belt and a cushioned rest that will support the arms, shoulders, head, and spine.

Subsequently, amendment 25–20, dated April 23, 1969, clarified the definition of side-facing seats to require that each occupant of a seat, positioned at more than an 18-degree angle to the vertical plane of the airplane longitudinal centerline, must be protected from head injury by a safety belt and an energy-absorbing rest that will support the arms, shoulders, head, and spine; or by a safety belt and shoulder harness that will prevent the head from contacting any injurious object. The FAA concluded that an 18-degree angle would provide an adequate level of safety based on tests that were performed at that time, and thus adopted that standard.

Part 25 was amended June 16, 1988, by amendment 25–64, to revise the emergency-landing conditions that must be considered in the design of the airplane. Amendment 25–64 revised the static-load conditions in 14 CFR 25.561, and added the new § 25.562 that requires dynamic testing for all seats approved for occupancy during takeoff and landing. The intent of amendment 25–64 is to provide an improved level of safety for occupants on transport-category airplanes. Because most seating is forward-facing on transport-category airplanes, the pass/fail criteria developed in amendment 25–64 focused primarily on these seats. As a result, the FAA issued Policy Memorandums ANM–03–115–30 and PS–ANM–100–2000–00123 to provide the additional guidance necessary to demonstrate the level of safety required by the regulations for side-facing seats.

To reflect current research findings, the FAA issued PS–ANM–25–03–R1, “Technical Criteria for Approving Side-Facing Seats,” November 5, 2012, which updates injury criteria for fully side-facing seats. This policy statement was issued to define revised injury criteria associated with neck and leg injuries.

The proposed Airbus Model A330–243 airplane, with an oblique seating configuration by TC Inter-Informatics, is novel such that the Airbus Model A330–243 airplane certification basis does not adequately address protection of the occupant’s neck and spine for seat configurations that are positioned at an angle greater than 18 degrees from the airplane centerline. Therefore, the TC Inter-Informatics proposed configuration requires new special conditions.

These special conditions will provide head-injury criteria, neck-injury criteria, spine-injury criteria, and body-to-wall contact criteria. They contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

### Applicability

These special conditions are applicable to Airbus Model A330–243 airplanes with B/E Aerospace Super Diamond business class seats installed, per TC Inter-Informatics project-specific certification plan JD–45AC01–1. Should TC Inter-Informatics apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A46NM to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

### Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability, and affects only the applicant who applied to the FAA for approval of this feature on the airplane.

### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

### Authority Citation

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A330–243 airplanes as modified by TC Inter-Informatics.

#### *Single-Occupant, Oblique (Side-Facing) Seats Special Conditions*

##### 1. Existing Criteria

All injury protection criteria of § 25.562(c)(1) through (c)(6) apply to the occupant of an oblique (side-facing) seat. Head-injury criterion (HIC) assessments are only required for head contact with the seat and adjacent structures. If the ATD has no apparent contact with a seat or structure, but does have contact with an inflatable restraint, the HIC15 score for that contact must be less than 700.

##### 2. Body-to-Wall/Furnishing Contact Criteria

If an oblique seat is installed aft of structure (e.g., an interior wall or furnishing) that does not provide a homogenous contact surface for the expected range of occupants and yaw angles, then additional analysis or tests may be required to demonstrate that the injury criteria are met for the area which an occupant could contact. For example, if different yaw angles could result in different inflatable-restraint performance, then additional analysis or separate tests may be necessary to evaluate performance.

##### 3. Neck-Injury Criteria

The seating system must protect the occupant from experiencing serious neck injury. The assessment of neck injury must be conducted with the inflatable restraint activated, unless there is reason to also consider that the neck-injury potential would be higher

below the inflatable restraint threshold. If so, additional tests may be required.

a. The  $N_{ij}$  (calculated in accordance with 49 CFR 571.208) must be below 1.0, where  $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$ , and  $N_{ij}$  intercepts limited to:

- i.  $F_{zc} = 1530$  lb. for tension
- ii.  $F_{zc} = 1385$  lb. for compression
- iii.  $M_{yc} = 229$  lb-ft in flexion
- iv.  $M_{yc} = 100$  lb-ft in extension

b. In addition, peak  $F_z$  must be below 937 lb. in tension and 899 lb. in compression.

c. Rotation of the head about its vertical axis relative to the torso is limited to 105 degrees in either direction from forward-facing.

d. The neck must not impact any surface.

#### 4. Spine and Torso Injury Criteria

a. The shoulders must remain aligned with the hips throughout the impact sequence, or support for the upper torso must be provided to prevent forward or lateral flailing beyond 45 degrees from the vertical during significant spinal loading.

b. Significant concentrated loading on the occupant’s spine, in the area between the pelvis and shoulders during impact, including rebound, is not acceptable.

c. Occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

#### 5. Longitudinal Tests

These must be performed, as necessary, with the Hybrid III ATD, undeformed floor, most critical yaw cases for injury, and with all lateral structural supports (armrests and walls) installed. For the pass/fail injury assessments, see the criteria listed in special conditions 1 through 4, above.

**Note:** TC Inter-Informatics A.S. must demonstrate that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in FAA Policy Memorandum PS–ANM–100–2000–00123, dated February 2, 2000, titled “Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets,” is acceptable to the FAA.

#### *Inflatable Lapbelt Conditions*

If inflatable lapbelts are installed on single-place side-facing seats, the inflatable lapbelts must meet the requirements of Special Conditions No. 25–395–SC.

Issued in Des Moines, Washington, on January 27, 2021.

**Suzanne Masterson,**

*Manager, Transport Airplane Strategic Policy Section, Policy and Innovation Division, Aircraft Certification Service.*

[FR Doc. 2021-02139 Filed 2-1-21; 8:45 am]

**BILLING CODE 4910-13-P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 143

**RIN 3038-AE97**

### Annual Adjustment of Civil Monetary Penalties To Reflect Inflation—2021

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is amending its rule that governs the maximum amount of civil monetary penalties imposed under the Commodity Exchange Act (CEA), to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties (CMPs) assessable for violations of the CEA and Commission rules, regulations and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

**DATES:** This rule is effective on February 2, 2021 and is applicable to penalties assessed after January 15, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Edward J. Riccobene, Associate Chief Counsel, Division of Enforcement, at (202) 418-5327 or [ericcobene@cftc.gov](mailto:ericcobene@cftc.gov), Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA)<sup>1</sup> requires the head of each Federal agency to periodically adjust for inflation the minimum and maximum amount of CMPs provided by law within the jurisdiction of that agency.<sup>2</sup> A 2015 amendment to the FCPIAA<sup>3</sup> required agencies to make an initial “catch-up” adjustment to its civil monetary penalties effective no later than August 1, 2016.<sup>4</sup> For every year thereafter effective not later than January 15th, the FCPIAA, as amended, requires agencies to make annual adjustments for inflation, with guidance from the Director of the Office of Management and Budget.<sup>5</sup>

## II. Commodity Exchange Act Civil Monetary Penalties

The following sections of the CEA provide for CMPs that meet the FCPIAA definition<sup>6</sup> and these CMPs are,

<sup>1</sup> The FCPIAA, Public Law 101-410 (1990), as amended, is codified at 28 U.S.C. 2461 note. The FCPIAA states that the purpose of the FCPIAA is to establish a mechanism that shall (1) allow for regular adjustment for inflation of civil monetary penalties; (2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and (3) improve the collection by the Federal Government of civil monetary penalties.

<sup>2</sup> For the relevant CMPs within the Commission’s jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the rules, regulations and orders promulgated thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

<sup>3</sup> Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, 129 Stat. 584 (2015) (2015 Act), title VII, Section 701.

<sup>4</sup> FCPIAA Sections 4 and 5. See also, Adjustment of Civil Monetary Penalties for Inflation, 81 FR 41435 (June 27, 2016).

<sup>5</sup> FCPIAA Sections 4 and 5. See also, Executive Office of the President, Office of Management and Budget Memorandum, M-21-10, Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 23, 2020) (2020 OMB Guidance) (<https://www.whitehouse.gov/wp-content/uploads/2020/12/M-21-10.pdf>).

<sup>6</sup> FCPIAA Section 3(2).

therefore, subject to the inflation adjustment: Sections 6(c), 6b, and 6c of the CEA.<sup>7</sup>

## III. Annual Inflation Adjustment for Commodity Exchange Act Civil Monetary Penalties

### A. Methodology

The FCPIAA annual inflation adjustment, in the context of the CFTC’s CMPs, is determined by increasing the maximum penalty by a “cost-of-living adjustment” rounded to the nearest multiple of one dollar.<sup>8</sup> Annual inflation adjustments are based on the percent change between the October Consumer Price Index for all Urban Consumers (CPI-U) preceding the date of the adjustment, and the prior year’s October CPI-U.<sup>9</sup> In this case, the October 2020 CPI-U (260.388)/October 2019 CPI-U (257.346) = 1.01182.<sup>10</sup> In order to complete the 2021 annual adjustment, the CFTC must multiply each of its most recent CMP amounts by the multiplier, 1.01182, and round to the nearest dollar.<sup>11</sup>

### B. Civil Monetary Penalty Adjustments

Applying the FCPIAA annual inflation adjustment methodology results in the following amended CMPs:

<sup>7</sup> 7 U.S.C. 9, 13a-1, 13b. Criminal authorities may also seek fines for criminal violations of the CEA (see 7 U.S.C. 13, 13(c), 13(d), 13(e), and 13b). The FCPIAA does not affect the amounts of these criminal penalties.

<sup>8</sup> FCPIAA Sections 4 and 5.

<sup>9</sup> FCPIAA Section 5(b)(1).

<sup>10</sup> The CPI-U is published by the Department of Labor. Interested parties may find the relevant Consumer Price Index on the internet. To access this information, go to the Consumer Price Index Home Page at: <http://www.bls.gov/cpi/>. Click the “CPI Data/Databases” heading, and select “All Urban Consumers (Current Series)”, “Top Picks.” Then check the box for “U.S. city average, All items—CUUR0000SA0”, and click the “Retrieve data” button.

<sup>11</sup> FCPIAA Section 5(a). See also, 2020 OMB Guidance at 3.

<sup>12</sup> Annual Adjustment of Civil Monetary Penalties to Reflect Inflation—2020, 85 FR 1747 (Jan. 13, 2020).

U.S. Code citation	Civil monetary penalty description		Violations occurring on or after 11/02/2015		
			Penalty amount in 2020 final rule <sup>12</sup>	CPI–U multiplier	New adjusted penalty amount
Civil Monetary Penalty Imposed by the Commission in an Administrative Action					
7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act).	For any person other than a registered entity <sup>1</sup> .	Non-Manipulation or At-tempted Manipulation.	\$168,142	1.01182	\$170,129
	For any person other than a registered entity <sup>1</sup> .	Manipulation or Attempted Manipulation.	1,212,866	1.01182	1,227,202
7 U.S.C. 13a (Section 6b of the Commodity Exchange Act).	For a registered entity <sup>1</sup> or any of its di-rectors, officers or employees.	Non-Manipulation or At-tempted Manipulation.	926,213	1.01182	937,161
	For a registered entity <sup>1</sup> or any of its di-rectors, officers or employees.	Manipulation or Attempted Manipulation.	1,212,866	1.01182	1,227,202
Civil Monetary Penalty Imposed by a Federal District Court in a Civil Injunctive Action					
7 U.S.C. 13a–1 (Section 6c of the Commodity Exchange Act).	Any Person .....	Non-Manipulation or At-tempted Manipulation.	185,242	1.01182	187,432
	Any Person .....	Manipulation or Attempted Manipulation.	1,212,866	1.01182	1,227,202

<sup>1</sup> The term "Registered Entity" is defined in 7 U.S.C. 1a (Section 1a of the Commodity Exchange Act).

The FCPIAA provides that any increase under the FCPIAA in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.<sup>13</sup> Thus, the new CMP amounts established by this rulemaking shall apply to penalties assessed after January 15, 2021, for violations that occurred on or after November 2, 2015, the effective date of the FCPIAA amendment requiring annual adjustments, the 2015 Act.

#### IV. Administrative Compliance

##### A. Notice Requirement

The FCPIAA specifically exempted from the Administrative Procedure Act (APA) the rulemakings required to implement annual inflation adjustments.<sup>14</sup> This means that the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.<sup>15</sup> The Commission further notes that the notice and comment procedures of the APA do not apply to this rulemaking because the Commission is acting herein pursuant to statutory language that mandates that the Commission act in a nondiscretionary matter.<sup>16</sup>

##### B. Regulatory Flexibility Act

The Regulatory Flexibility Act <sup>17</sup> requires agencies with rulemaking authority to consider the impact of certain of their rules on small businesses. A regulatory flexibility analysis is only required for rules for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) or any other law.<sup>18</sup> Because, as discussed above, the Commission is not obligated by section 553(b) or any other law to publish a general notice of proposed rulemaking with respect to the revisions being made to Rule § 143.8, the Commission additionally is not obligated to conduct a regulatory flexibility analysis.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA),<sup>19</sup> which imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. This rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

##### D. Consideration of Costs and Benefits

Section 15(a) of the CEA <sup>20</sup> requires the Commission to consider the costs and benefits of its action before issuing

a new regulation. Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The Commission believes that benefits of this rulemaking greatly outweigh the costs, if any. As the Commission understands, the statutory provisions by which it is making cost-of-living adjustments to the CMPs in Rule § 143.8 were enacted to ensure that CMPs do not lose their deterrence value because of inflation. An analysis of the costs and benefits of these adjustments were made before enactment of the statutory provisions under which the Commission is operating, and limit the discretion of the Commission to the extent that there are no regulatory choices the Commission could make that would supersede the pre-enactment analysis with respect to the five factors enumerated in Section 15(a) of the CEA, or any other factors.

##### List of Subjects in 17 CFR Part 143

Civil monetary penalties, Claims.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission amends part 143 of chapter I of title 17 of the Code of Federal Regulations as follows:

<sup>13</sup> FCPIAA Section 6.

<sup>14</sup> FCPIAA Section 4(b)(2).

<sup>15</sup> 2020 OMB Guidance at 3.

<sup>16</sup> *Lake Carriers' Ass'n v. E.P.A.*, 652 F.3d 1, 10 (D.C. Cir. 2011).

<sup>17</sup> 5 U.S.C. 601–612.

<sup>18</sup> 5 U.S.C. 603(a).

<sup>19</sup> 44 U.S.C. 3507(d).

<sup>20</sup> 7 U.S.C. 19(a).

**PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION**

■ 1. The authority citation for part 143 continues to read as follows:

Authority: 7 U.S.C. 9, 15, 9a, 12a(5), 13a, 13a–1(d), 13(a), 13b; 31 U.S.C. 3701–3720E; 28 U.S.C. 2461 note.

■ 2. Revise § 143.8(b) to read as follows:

**§ 143.8 Inflation-adjusted civil monetary penalties.**

\* \* \* \* \*

(b) *2021 Inflation adjustment.* The maximum amount of each civil monetary penalty in the following charts applies to penalties assessed after January 15, 2021:

(1) For non-manipulation or attempted manipulation violations:

TABLE 1 TO PARAGRAPH (b)(1)

U.S. Code citation	Civil monetary penalty description	Date of violation and corresponding penalty			
		10/23/2004 through 10/22/2008	10/23/2008 through 10/22/2012	10/23/2012 through 11/01/2015	11/02/2015 to present
Civil Monetary Penalty Imposed By The Commission In An Administrative Action					
7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act).	For any person other than a registered entity <sup>1</sup> .	\$130,000	\$130,000	\$140,000	\$170,129
7 U.S.C. 13a (Section 6b of the Commodity Exchange Act).	For a registered entity <sup>1</sup> or any of its directors, officers or employees.	625,000	675,000	700,000	937,161
Civil Monetary Penalty Imposed By A Federal District Court In A Civil Injunctive Action					
7 U.S.C. 13a–1 (Section 6c of the Commodity Exchange Act).	Any Person .....	130,000	140,000	140,000	187,432

<sup>1</sup>The term “Registered Entity” is defined in 7 U.S.C. 1a (Section 1a of the Commodity Exchange Act).

(2) For manipulation or attempted manipulation violations:

TABLE 2 TO PARAGRAPH (b)(2)

U.S. Code citation	Civil monetary penalty description	Date of violation and corresponding penalty			
		10/23/2004 through 05/21/2008	05/22/2008 through 08/14/2011	08/15/2011 through 11/01/2015	11/02/2015 to present
Civil Monetary Penalty Imposed By The Commission In An Administrative Action					
7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act).	For any person other than a registered entity <sup>1</sup> .	\$130,000	\$1,000,000	\$1,025,000	\$1,227,202
7 U.S.C. 13a (Section 6b of the Commodity Exchange Act).	For a registered entity <sup>1</sup> or any of its directors, officers or employees.	625,000	1,000,000	1,025,000	1,227,202
Civil Monetary Penalty Imposed By A Federal District Court In A Civil Injunctive Action					
7 U.S.C. 13a–1 (Section 6c of the Commodity Exchange Act).	Any Person .....	130,000	1,000,000	1,025,000	1,227,202

<sup>1</sup>The term “Registered Entity” is defined in 7 U.S.C. 1a (Section 1a of the Commodity Exchange Act).

Issued in Washington, DC, on January 12, 2021, by the Commission.

**Robert Sidman,**

*Deputy Secretary of the Commission,  
Commodity Futures Trading Commission.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

**Appendix to Adjustment of Civil Monetary Penalties for Inflation—2021—Commission Voting Summary**

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump,

and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2021–00897 Filed 2–1–21; 8:45 am]

**BILLING CODE 6351–01–P**

**DEPARTMENT OF STATE**

**22 CFR Parts 35, 103, 127, and 138**

[Public Notice 11298]

**RIN 1400–AF16**

**Department of State 2021 Civil Monetary Penalties Inflationary Adjustment**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This final rule is issued to adjust the civil monetary penalties (CMP) for regulatory provisions maintained and enforced by the Department of State. The revised CMP adjusts the amount of civil monetary penalties assessed by the Department of State based on the December 2020 guidance from the Office of Management and Budget. The new amounts will apply only to those penalties assessed on or after the effective date of this rule, regardless of the date on which the underlying facts or violations occurred.

**DATES:** This final rule is effective on February 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Alice Kottmyer, Attorney-Adviser, Office of Management, [kottmyeram@state.gov](mailto:kottmyeram@state.gov). ATTN: Regulatory Change, CMP Adjustments, (202) 647–2318.

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, required the head of each agency to adjust its CMPs for inflation no later than October 23, 1996 and required agencies to make adjustments at least once every four years thereafter. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Section 701 of Public Law 114–74 (the 2015 Act) further amended the 1990 Act by requiring agencies to adjust CMPs, if necessary, pursuant to a “catch-up” adjustment methodology prescribed by the 2015 Act, which mandated that the catch-up adjustment take effect no later than August 1, 2016. Additionally, the 2015 Act required agencies to make annual adjustments to their respective CMPs in accordance with guidance issued by the Office of Management and Budget (OMB).

Based on these statutes, the Department of State (the Department) published a final rule in June 2016<sup>1</sup> to implement the “catch-up” provisions; and annual updates to its CMPs in January 2017,<sup>2</sup> January 2018,<sup>3</sup> March 2019 (delayed due to the Government shutdown),<sup>4</sup> and January 2020.<sup>5</sup>

On December 29, 2020, OMB notified agencies that the annual cost-of-living adjustment multiplier for 2021, based on the Consumer Price Index, is 1.01182. Additional information may be found in OMB Memorandum M–21–10, at: <https://www.whitehouse.gov/wp-content/uploads/2020/12/M-21-10.pdf>. This final rule amends Department CMPs for fiscal year 2021.

## Overview of the Areas Affected by This Rule

Within the Department of State (title 22, Code of Federal Regulations), this rule affects four areas:

- (1) Part 35, which implements the Program Fraud Civil Remedies Act of 1986 (PFCRA), codified at 31 U.S.C. 3801–3812;
- (2) Part 103, which implements the Chemical Weapons Convention Implementation Act of 1998 (CWC Act);
- (3) Part 127, which implements the penalty provisions of sections 38(e), 39A(c), and 40(k) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(e), 2779a(c), and 2780(k)); and
- (4) Part 138, which implements Section 319 of Public Law 101–121, codified at 31 U.S.C. 1352, prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract.

## Specific Changes to 22 CFR Made by This Rule

### I. Part 35

The PFCRA, enacted in 1986, authorizes agencies, with approval from the Department of Justice, to pursue individuals or firms for false claims. Applying the 2021 multiplier, the new maximum liabilities are as follows: \$11,803 up to \$348,035.

### II. Part 103

The CWC Act provided domestic implementation of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction. The penalty provisions of the CWC Act are codified at 22 U.S.C. 6761. Applying the 2021 multiplier, the new maximum amounts are as follows: *Prohibited acts related to inspections*, \$39,693; for *Recordkeeping violations*, \$7,939.

### III. Part 127

The Assistant Secretary of State for Political-Military Affairs is responsible for the imposition of CMPs under the International Traffic in Arms Regulations (ITAR), which is administered by the Directorate of Defense Trade Controls (DDTC).

#### (1) AECA Section 38(e)

Applying the 2021 multiplier, the new maximum penalty under 22 U.S.C. 2778 (22 CFR 127.10(a)(1)(i)) is \$1,197,728.

#### (2) AECA Section 39A(c)

Applying the multiplier, the new maximum penalty under 22 U.S.C. 2779a (22 CFR 127.10(a)(1)(ii)) is \$870,856, or five times the amount of the prohibited payment, whichever is greater.

#### (3) AECA Section 40(k)

Applying the multiplier, the new maximum penalty under 22 U.S.C. 2780 (22 CFR 127.10(a)(1)(iii)) is \$1,036,566.

### IV. Part 138

Section 319 of Public Law 101–121, codified at 31 U.S.C. 1352, provides penalties for recipients of Federal contracts, grants, and loans who use appropriated funds to lobby the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Any person who violates that prohibition is subject to a civil penalty. The statute also requires each person who requests or receives a Federal contract, grant, cooperative agreement, loan, or a Federal commitment to insure or guarantee a loan, to disclose any lobbying; there is a penalty for failure to disclose.

Applying the 2021 multiplier, the maximum penalties for both improper expenditures and failure to disclose, is: For first offenders, \$20,396; for others, not less than \$20,731, and not more than \$207,314.

## Summary

Citation in 22 CFR	2020 Max penalties	New (FY 21) max penalties
§ 35.3 .....	\$11,665 up to \$343,969 .....	\$11,803 up to \$348,035.
§ 103.6(a)(1) .....	\$39,229 .....	\$39,693.
<i>Prohibited Acts</i> .....		
§ 103.6(a)(2) .....	\$7,846 .....	\$7,939.
<i>Recordkeeping Violations</i> .....		
§ 127.10(a)(1)(i) .....	\$1,183,736 .....	\$1,197,728.
§ 127.10(a)(1)(ii) .....	\$860,683 .....	\$870,856.
	or 5 times the amount of the prohibited payment, whichever is greater.	or 5 times the amount of the prohibited payment, whichever is greater.
§ 127.10(a)(1)(iii) .....	\$1,024,457 .....	\$1,036,566.

<sup>1</sup> 81 FR 36771 (Jun. 8, 2016).

<sup>2</sup> 82 FR 3168 (Jan. 11, 2017).

<sup>3</sup> 83 FR 234 (Jan. 3, 2018).

<sup>4</sup> 84 FR 9957 (Mar. 19, 2019).

<sup>5</sup> 85 FR 2020 (Jan. 14, 2020).

Citation in 22 CFR	2020 Max penalties	New (FY 21) max penalties
§ 138.400 ..... <i>First Offenders</i> .....	\$20,158 .....	\$20,396.
§ 138.400 .....	\$20,489 up to \$204,892 .....	\$20,731 up to \$207,314.

### Effective Date of Penalties

The revised CMP amounts will go into effect on the date this rule is published. All violations for which CMPs are assessed on or after the effective date of this rule, regardless of whether the violation occurred before the effective date, will be assessed at the adjusted penalty level.

### Future Adjustments and Reporting

The 2015 Act directed agencies to undertake an annual review of CMPs using a formula prescribed by the statute. Annual adjustments to CMPs are made in accordance with the guidance issued by OMB. As in this rulemaking, the Department of State will publish notification of annual inflation adjustments to CMPs in the **Federal Register** no later than January 15 of each year, with the adjusted amount taking effect immediately upon publication.

### Regulatory Analysis and Notices

#### *Administrative Procedure Act*

The Department of State is publishing this rule using the “good cause” exception to the Administrative Procedure Act (5 U.S.C. 553(b)), as the Department has determined that public comment on this rulemaking would be impractical, unnecessary, or contrary to the public interest. This rulemaking is mandatory and entirely without agency discretion; it implements Public Law 114–74. *See* 5 U.S.C. 553(d)(3).

#### *Regulatory Flexibility Act*

Because this rulemaking is exempt from 5 U.S.C. 553, a Regulatory Flexibility Analysis is not required.

#### *Unfunded Mandates Reform Act of 1995*

This rule does not involve a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

### *Executive Orders 12372 and 13132*

This amendment 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, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

### *Executive Orders 12866 and 13563*

The Department believes that benefits of the rulemaking outweigh any costs, and there are no feasible alternatives to this rulemaking. Pursuant to M–20–05, OIRA has determined that agency regulations that (1) exclusively implement the annual adjustment, (2) are consistent with this guidance, and (3) have an annual impact of less than \$100 million, are generally not significant regulatory actions under E.O. 12866. Therefore, agencies are generally not required to submit regulations satisfying those criteria to OIRA for review. This regulation satisfies all of those criteria.

### *Executive Order 12988*

The Department of State has reviewed the proposed amendment in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

### *Executive Order 13175*

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not preempt Tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

### *Paperwork Reduction Act*

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

### List of Subjects

#### *22 CFR Part 35*

Administrative practice and procedure, Claims, Fraud, Penalties.

### *22 CFR Part 103*

Administrative practice and procedure, Chemicals, Classified information, Foreign relations, Freedom of information, International organization, Investigations, Penalties, Reporting and recordkeeping requirements.

### *22 CFR Part 127*

Arms and munitions, Exports.

### *22 CFR Part 138*

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth above, 22 CFR parts 35, 103, 127, and 138 are amended as follows:

### PART 35—PROGRAM FRAUD CIVIL REMEDIES

■ 1. The authority citation for part 35 continues to read as follows:

**Authority:** 22 U.S.C. 2651a; 31 U.S.C. 3801 *et seq.*; Pub. L. 114–74, 129 Stat. 584.

#### § 35.3 [Amended]

■ 2. In § 35.3:

■ a. Remove “\$11,665” and add in its place “\$11,803”, wherever it occurs.

■ b. In paragraph (f), remove “\$343,969” and add in its place “\$348,035”.

### PART 103—REGULATIONS FOR IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION AND THE CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1998 ON THE TAKING OF SAMPLES AND ON ENFORCEMENT OF REQUIREMENTS CONCERNING RECORDKEEPING AND INSPECTIONS

■ 3. The authority citation for part 103 continues to read as follows:

**Authority:** 22 U.S.C. 2651a; 22 U.S.C. 6701 *et seq.*; Pub. L. 114–74, 129 Stat. 584.

#### § 103.6 [Amended]

■ 4. In § 103.6:

■ a. In paragraph (a)(1), remove “\$39,229” and add in its place “\$39,693”; and

■ b. In paragraph (a)(2), remove “\$7,846” and add in its place “\$7,939”.

## PART 127—VIOLATIONS AND PENALTIES

■ 5. The authority citation for part 127 continues to read as follows:

**Authority:** Sections 2, 38, and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129; Pub. L. 114–74, 129 Stat. 584.

### § 127.10 [Amended]

■ 6. In § 127.10:

■ a. In paragraph (a)(1)(i), remove “\$1,183,736” and add in its place “\$1,197,728”;

■ b. In paragraph (a)(1)(ii), remove “\$860,683” and add in its place “\$870,856”; and

■ c. In paragraph (a)(1)(iii), remove “\$1,024,457” and add in its place “\$1,036,566”.

## PART 138—RESTRICTIONS ON LOBBYING

■ 7. The authority citation for part 138 continues to read as follows:

**Authority:** 22 U.S.C. 2651a; 31 U.S.C. 1352; Pub. L. 114–74, 129 Stat. 584.

### § 138.400 [Amended]

■ 8. In § 138.400:

■ a. Remove “\$20,489” and “\$204,892” and add in their place “\$20,731” and “\$207,314”, respectively, wherever they occur.

■ b. In paragraph (e), remove “\$20,158” and add in its place “\$20,396”.

**Zachary A. Parker,**

*Director, Office of Directives Management.*

**Editorial note:** This document was received for publication by the Office of the Federal Register on January 11, 2021. [FR Doc. 2021–00668 Filed 2–1–21; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF LABOR

### Office of the Secretary of Labor

#### 29 CFR Part 22

### Occupational Safety and Health Administration

#### 29 CFR Part 1986

RIN 1290–AA28

### Rules of Practice and Procedure Concerning Filing and Service and Amended Rules Concerning Filing and Service; Correction

**AGENCY:** Employment and Training Administration, Office of Workers’ Compensation Programs, Office of the

Secretary, Office of Labor-Management Standards, Wage and Hour Division, Occupational Safety and Health Administration, Office of Federal Contract Compliance Programs.

**ACTION:** Direct final rule; correction.

**SUMMARY:** The Department of Labor (Department or DOL) is correcting a direct final rule that appeared in the **Federal Register** on January 11, 2021, “Rules of Practice and Procedure Concerning Filing and Service and Amended Rules Concerning Filing and Service.” The companion proposed rule to the final rule was published in the same issue of the **Federal Register**. The final rule required electronic filing (e-filing) and made acceptance of electronic service (e-service) automatic for attorneys and non-attorney representatives representing parties in proceedings before the Administrative Review Board, unless the Board authorized non-electronic filing and service for good cause. Among other changes, the final rule was intended to revise several sections of the Code of Federal Regulations. However, the final rule as published inadvertently omitted amendatory instructions to revise two section headings, despite providing revised language for those headings. This document provides the omitted amendatory instructions to ensure that these two section headings are revised as written in the final rule.

**DATES:** This correction is effective on February 25, 2021, unless the Department receives a significant adverse comment to the underlying direct final rule or its companion proposed rule by February 10, 2021 that explains why the rule is inappropriate.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Shepherd, Clerk of the Appellate Boards, at 202–693–6319 or *Shepherd.Thomas@dol.gov*.

**SUPPLEMENTARY INFORMATION:** DOL is making the following corrections to the final rule, as published in the **Federal Register** on Monday, January 11, 2021 (86 FR 1772).

DOL is adding amendatory instructions to change the section headings of two sections of the Code of Federal Regulations.

At 86 FR 1781, third column, 29 CFR part 22, amendatory instruction 43 revised § 22.39, paragraphs (a), (b)(3), (c), (f), and (h) through (l). The text of § 22.39 as written in the final rule also included a revised section heading; however, amendatory instruction 43 did not specify that the section heading should be revised in addition to the text of the above-listed paragraphs. In this action, amendatory instruction 43 is

corrected to clarify that the section heading of § 22.39 should be revised as well. Amendatory instruction 43 is corrected to read: “43. In § 22.39, revise the section heading and paragraphs (a), (b)(3), (c), (f), and (h) through (l) to read as follows:”. The section heading is being revised to read “Appeal to ARB” instead of “Appeal to authority head.” This change is in keeping with the Department’s clearly expressed intent in the preamble of the final rule to revise references in the regulations to an “authority head” to references to the “ARB” in order to clarify the responsibilities of the Administrative Review Board.

At 86 FR 1793, third column, 29 CFR part 1986, amendatory instruction 133 revised § 1986.110, paragraph (c). The text of § 1986.110 as written in the final rule also included a revised section heading; however, amendatory instruction 133 did not specify that the section heading should be revised in addition to the text of paragraph (c). In this action, amendatory instruction 133 is corrected to clarify that the section heading of § 1986.110 should be revised, as well. Amendatory instruction 133 is corrected to read: “133. In § 1986.110, revise the section heading and paragraph (c) to read as follows:”. The section heading is being revised to read “Decision and orders of the Administrative Review Board” instead of “Decisions and order of the Administrative Review Board.” The change to § 1986.110 is intended to make the section heading consistent with other similar section headings in the chapter of Title 29 that are titled “Decision and orders of the Administrative Review Board.”

### Federal Register Correction

In FR Rule Doc. No. 2020–28055, published in the issue of January 11, 2021, beginning on page 1772, the following corrections are made:

## PART 22—PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

### § 22.39 [Corrected]

■ 1. On page 1781, in the third column, correct amendatory instruction 43 to read: “43. In § 22.39, revise the section heading and paragraphs (a), (b)(3), (c), (f), and (h) through (l) to read as follows:”.



**PART 1986—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE SEAMAN'S PROTECTION ACT (SPA), AS AMENDED**

**§ 1986.110 [Corrected]**

■ 2. On page 1793, in the third column, correct amendatory instruction 133 to read: “133. In § 1986.110, revise the section heading and paragraph (c) to read as follows:”.

**Stephanie Swirsky,**  
Deputy Assistant Secretary of Labor for Policy.

[FR Doc. 2021-02169 Filed 2-1-21; 8:45 am]

BILLING CODE 4510-HW-P

**DEPARTMENT OF THE INTERIOR**

**Office of Natural Resources Revenue**

**30 CFR Part 1241**

[Docket No. ONRR-2020-0002; DS63644000 DRT000000.CH7000 212D1113RT]

RIN 1012-AA29

**Inflation Adjustments to Civil Monetary Penalty Rates for Calendar Year 2021**

**AGENCY:** Office of the Secretary, Office of Natural Resources Revenue, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Office of Natural Resources Revenue (ONRR) publishes this final rule to increase its maximum civil monetary penalty (CMP) rates to

account for inflation occurring between October 2019 and October 2020.

**DATES:** This rule is effective on February 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** For questions on procedural issues, contact Luis Aguilar, Regulatory Specialist, by telephone at (303) 231-3418 or email to [Luis.Aguilar@onrr.gov](mailto:Luis.Aguilar@onrr.gov). For questions on technical issues, contact Michael Marchetti, Program Manager for Enforcement and Litigation Support, by telephone at (303) 231-3125 or email to [Michael.Marchetti@onrr.gov](mailto:Michael.Marchetti@onrr.gov). You may obtain a paper copy of this rule by contacting Mr. Aguilar by phone or email.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Inflation-Adjusted Maximum Rates
- III. Procedural Requirements
  - A. Regulatory Planning and Review (E.O. 12866)
  - B. Regulatory Flexibility Act
  - C. Small Business Regulatory Enforcement Fairness Act
  - D. Unfunded Mandates Reform Act
  - E. Takings (E.O. 12630)
  - F. Federalism (E.O. 13132)
  - G. Civil Justice Reform (E.O. 12988)
  - H. Consultation With Indian Tribes (E.O. 13175)
  - I. Paperwork Reduction Act
  - J. National Environmental Policy Act
  - K. Effects on the Energy Supply (E.O. 13211)
  - L. Clarity of This Regulation
  - M. Administrative Procedure Act

**I. Background**

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation

Adjustment Act Improvements Act of 2015 (collectively, “the Act”), codified at 28 U.S.C. 2461, requires Federal agencies to adjust their civil monetary penalty (CMP) rates for inflation every year.

In accordance with sections 4 and 5 of the Act, the annual CMP inflation adjustment for 2021 is based on the percent change in the Consumer Price Index for all Urban Consumers (CPI-U) between October 2019 and October 2020. The CPI-U for October 2019 was 257.346, and for October 2020 was 260.388, for an increase of 1.01182%. In accordance with section 5(a) of the Act, the new maximum CMP rates must be rounded to the nearest whole dollar. In accordance with section 6 of the Act, the new maximum penalty rates will apply only to CMPs, including those that are associated with violations predating the increase, that ONRR assesses after the date the increase takes effect.

ONRR assesses CMPs under the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1719, and its regulations at 30 CFR part 1241. ONRR calculates and assesses CMPs per violation, at the applicable rate, for each day such violation continues.

**II. Inflation-Adjusted Maximum Rates**

This final rule increases the maximum CMP rates for each of the four violation categories identified in 30 U.S.C. 1719(a) through (d) and 30 CFR part 1241. The following list identifies the existing ONRR regulations containing CMP rates and shows those rates before and after this increase.

30 CFR citation	Current penalty rate	2021 inflation adjustment multiplier	2021 adjusted penalty rate
1241.52(a)(2) .....	\$1,273	1.01182	\$1,288
1241.52(b) .....	12,740	1.01182	12,891
1241.60(b)(1) .....	25,479	1.01182	25,780
1241.60(b)(2) .....	63,699	1.01182	64,452

**IV. Procedural Requirements**

**A. Regulatory Planning and Review**  
(Executive Orders 12866 and 13563)

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

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the United States' regulatory system to promote

predictability, to reduce uncertainty, and to use the most innovative and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. ONRR

developed this rule in a manner consistent with these requirements.

**B. Regulatory Flexibility Act**

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, because the rule only makes adjustments for inflation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties with an annual inflation adjustment. Therefore,

the RFA does not apply to this rulemaking.

#### *C. Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more;
- b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, local government agencies; or geographic regions; and
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

#### *D. Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, ONRR is not required to provide a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) requires because this rule is not an unfunded mandate.

#### *E. Takings (E.O. 12630)*

This rule does not result in a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, this rule does not require a takings implication assessment.

#### *F. Federalism (E.O. 13132)*

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### *G. Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- a. Meets the criteria of section 3(a), which requires that ONRR review all regulations to eliminate errors and ambiguity and to write them to minimize litigation; and
- b. Meets the criteria of section 3(b)(2), which requires that ONRR write all regulations in clear language, using clear legal standards.

#### *H. Consultation With Indian Tribal Governments (E.O. 13175)*

The Department of the Interior (DOI) strives to strengthen its government-to-

government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. Under the DOI's consultation policy and the criteria in E.O. 13175, ONRR evaluated this rule and determined that it will have no substantial, direct effects on federally recognized Indian Tribes and does not require consultation.

#### *I. Paperwork Reduction Act*

This rule:

- (a) Does not contain any new information collection requirements; and
- (b) Does not require a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). See 5 CFR 1320.4(a)(2).

#### *J. National Environmental Policy Act of 1969 (NEPA)*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. ONRR is not required to provide a detailed statement under NEPA because this rule qualifies for categorical exclusion under 43 CFR 46.210(i) in that this rule is “. . . of an administrative, financial, legal, technical, or procedural nature. . . .” ONRR also has determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

#### *K. Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in E.O. 13211 and, therefore, does not require a Statement of Energy Effects.

#### *L. Clarity of This Regulation*

ONRR is required by E.O. 12866 (section 1(b)(12)), E.O. 12988 (section 3(b)(1)(B)), and E.O. 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule ONRR publishes must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences;
- (e) Use lists and tables wherever possible;

If you feel that ONRR has not met these requirements, send your comments to [Luis.Aguilar@onrr.gov](mailto:Luis.Aguilar@onrr.gov). Your comments should be as specific as possible. For example, you should

identify the number of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### *M. Administrative Procedure Act (APA)*

The Act requires agencies to publish annual inflation adjustments by no later than January 15 of each year, notwithstanding section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). OMB has interpreted this direction to mean that the usual APA public procedure for rulemaking—which includes public notice of a proposed rule, an opportunity for public comment, and a delay in the effective date of a final rule—is not required when agencies issue regulations to implement the annual adjustments to civil penalties that the Act requires. Accordingly, ONRR is issuing the 2021 annual adjustments as a final rule without prior notice or an opportunity for comment and with an effective date immediately upon publication in the **Federal Register**.

Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that “notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest,” the agency may issue a rule without providing notice and an opportunity for prior public comment. Under section 553(b), ONRR finds that there is good cause to promulgate this rule without first providing for public comment. ONRR is promulgating this final rule to implement the statutory directive in the Act, which requires agencies to publish a final rule and to update the civil penalty amounts by applying a specified formula. ONRR has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for public comment on this rule prior to promulgation. Thus, providing for notice and public comment is unnecessary.

Furthermore, ONRR finds under section 553(d)(3) of the APA that good cause exists to make this direct final rule effective immediately upon publication in the **Federal Register**. In the Act, Congress expressly required Federal agencies to publish annual inflation adjustments to civil penalties in the **Federal Register** no later than January 15 of every year, notwithstanding section 553 of the APA. Under the statutory framework and OMB guidance, the new penalty levels are to take effect immediately upon publication. Moreover, an effective date

after January 15 would delay application of the new penalty levels, contrary to Congress's intent.

#### List of Subjects in 30 CFR Part 1241

Administrative practice and procedure, Civil penalties, Coal, Geothermal, Inflation, Mineral resources, Natural gas, Notices of non-compliance, Oil.

**Kimbra G. Davis,**

*Director for Office of Natural Resources Revenue.*

**Editorial note:** This document was received for publication by the Office of the Federal Register on January 19, 2021.

#### Authority and Issuance

For the reasons discussed in the preamble, ONRR amends 30 CFR part 1241 as set forth below:

#### PART 1241—PENALTIES

■ 1. The authority citation for part 1241 continues to read as follows:

**Authority:** 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

#### § 1241.52 [Amended]

■ 2. Amend § 1241.52 by:

■ a. In paragraph (a)(2), removing “\$1,273” and adding in its place “\$1,288”.

■ b. In paragraph (b) introductory text, removing “\$12,740” and adding in its place “\$12,891”.

#### § 1241.60 [Amended]

■ 3. Amend § 1241.60 by:

■ a. In paragraph (b)(1) introductory text, removing “\$25,479” and adding in its place “\$25,780”.

■ b. In paragraph (b)(2), removing “\$63,699” and adding in its place “\$64,452”.

[FR Doc. 2021-01502 Filed 2-1-21; 8:45 am]

BILLING CODE 4335-30-P

#### DEPARTMENT OF THE TREASURY

#### Financial Crimes Enforcement Network

#### 31 CFR Part 1010

#### Financial Crimes Enforcement Network; Inflation Adjustment of Civil Monetary Penalties

#### Correction

In Rule document 2021-01919, appearing on pages 7348-7349, in the issue of Thursday, January 28, 2021, make the following correction:

#### § 1010.821 Penalty adjustment and table [Corrected].

■ On page 7349, in the table titled “Table 1”, in the fourth column, the entry “[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]” should read “January 28, 2021”.

[FR Doc. C1-2021-01919 Filed 2-1-21; 8:45 am]

BILLING CODE 1301-00-P

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2020-0556]

RIN 1625-AA11

#### Regulated Navigation Area; Sparkman Channel, Tampa, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is removing an existing regulated navigation area in Sparkman Channel, located in Tampa, FL. The regulated navigation area is no longer needed to protect vessels navigating in the area. This action removes the existing regulations related to restricting vessel draft in the channel due to an underwater pipeline that is no longer a navigational concern.

**DATES:** This rule is effective March 4, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0556 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 Clark Sanford, Sector St. Petersburg, Coast Guard; telephone (813) 228-2191 x8105, email [Clark.W.Sanford@uscg.mil](mailto:Clark.W.Sanford@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

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

#### II. Background Information and Regulatory History

On January 25, 1991, the Coast Guard established a regulated navigation area

in Sparkman Channel. The regulated navigation area is described in 33 CFR 165.752. The regulated navigation area was created to restrict navigation in the area to vessels with a draft of less than 34.5 feet. A recent survey places the sewer line at or below the permitted depth of 42 feet. The navigation hazard is properly marked on the water surface as well as on navigation charts. With the advancement in technologies and mechanical innovations coupled with the expertise of the pilots that guide vessels in and around Port Tampa Bay, the current restricted navigation area along Sparkman Channel has become outdated. In response, on November 27, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled, “Regulated Navigation Area; Sparkman Channel, Tampa, FL” (85 FR 75996). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended December 28, 2020, we received three comments.

#### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Commander, Seventh Coast Guard District has determined the current restricted navigation area along Sparkman Channel has become outdated and is no longer needed for Sparkman Channel. The purpose of this rule is to remove unnecessary restrictions to navigation in Sparkman Channel in Tampa, FL.

#### IV. Discussion of Comments, Changes, and the Rule

The Coast Guard received three submissions from private citizens in response to the proposed rule. One commenter endorsed the Coast Guard's proposal. The other two comments were not relevant to the scope of this rulemaking. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule removes the existing regulated navigation area established in 33 CFR 165.752. This regulation placed restrictions on vessel navigation in Sparkman Channel in Tampa, Florida based on vessel drafts.

#### 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 rule not adding any new navigational restrictions, rather the rule will remove existing navigational restrictions to Sparkman Channel.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit Sparkman Channel 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 removing existing regulations established in 33 CFR 165.752. It is categorically excluded from further review under paragraph L60(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record 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; 33 CFR 1.01–1, 6.04–1, and 160.5; Department of Homeland Security Delegation No. 01070.1

### § 165.752 [Removed]

■ 2. Remove § 165.752

Dated: January 21, 2021.

**Eric C. Jones,**

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

[FR Doc. 2021–02103 Filed 2–1–21; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 36 and 42

**RIN 2900–AR08**

### Federal Civil Penalties Inflation Adjustment Act Amendments

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is providing public notice of inflationary adjustments to the maximum civil monetary penalties assessed or enforced by VA, as implemented by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, for calendar year 2021. VA may impose civil monetary penalties for false loan guaranty certifications. Also, VA may impose civil monetary penalties for fraudulent claims or written statements made in connection with VA programs generally. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, sets forth a formula that increases the maximum statutory amounts for civil monetary penalties and directs VA to give public notice of the new maximum amounts by regulation.

**DATES:** This rule is effective February 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Li, Chief, Regulations Team, Loan Guaranty Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632-8862. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) (Pub. L. 114-74, sec. 701, 129 Stat. 599), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act was codified in a note following 28 U.S.C. 2461. The 2015 Act requires agencies to publish annual adjustments for inflation, based on the percent change between the Consumer Price Index (defined in the Act as the Consumer Price Index for all-urban consumers (CPI-U) published by the Department of Labor) for the month of October preceding the date of the adjustment and the prior year's October CPI-U. 28 U.S.C. 2461 note, secs. 4(a) and (b) and 5(b)(1). This rule implements the 2021 calendar year inflation adjustment amounts.

Under 38 U.S.C. 3710(g)(4)(B), VA is authorized to levy civil monetary penalties against private lenders that originate VA-guaranteed loans if a lender falsely certifies that they have complied with certain credit information and loan processing standards, as set forth by chapter 37,

title 38 U.S.C. and part 36, title 38 CFR. Under section 3710(g)(4)(B), any lender who knowingly and willfully makes such a false certification shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed \$10,000, whichever is greater. VA implemented the penalty amount in 38 CFR 36.4340(k)(1)(i) and (k)(3). On December 23, 2020, OMB issued Circular M-21-10. This circular reflects that the October 2019 CPI-U was 257.346 and the October 2020 CPI-U was 260.388, resulting in an inflation adjustment multiplier of 1.01182. Accordingly, the calendar year 2021 inflation revision imposes an adjustment from \$23,331 to \$23,607.

Under 31 U.S.C. 3802, VA can impose monetary penalties against any person who makes, presents, or submits a claim or written statement to VA that the person knows or has reason to know is false, fictitious, or fraudulent, or who engages in other covered conduct. The statute permits, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,000 for each claim. 31 U.S.C. 3802(a)(1) and (2). VA implemented the penalty amount in 38 CFR 42.3(a)(1) and (b)(1). As previously noted, Circular M-21-10 reflects an inflation adjustment multiplier of 1.01182. Therefore, the calendar year 2021 inflation revision imposes an adjustment from \$11,665 to \$11,803.

Accordingly, VA is revising 38 CFR 36.4340(k)(1)(i) and (3) and 38 CFR 42.3(a)(1) and (b)(1) to reflect the 2021 inflationary adjustments for civil monetary penalties assessed or enforced by VA.

#### *Administrative Procedure Act*

The Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to dispense with the opportunity for prior notice and public comment and to publish this rule with an immediate effective date. The 2015 Act requires agencies to make annual adjustments for inflation to the allowed amounts of civil monetary penalties "notwithstanding section 553 of title 5, United States Code." 28 U.S.C. 2461 note, sec. 4(a) and (b). The penalty adjustments, and the methodology used to determine the adjustments, are set by the terms of the 2015 Act. VA has no discretion to make changes in those areas. Therefore, an opportunity for prior notice and public comment and a delayed effective date is unnecessary.

#### *Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

#### *Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and Tribal governments, or on the private sector.

#### *Paperwork Reduction Act*

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). This final rule is exempt from the notice and comment requirements of the APA because the 2015 Act directed the Department to issue the annual adjustments without regard to section 553 of the APA. Therefore, the requirements of the RFA applicable to notice and comment rulemaking do not apply to this rule.

Accordingly, the Department is not required either to certify that the final rule would not have a significant economic impact on a substantial number of small entities or to conduct a regulatory flexibility analysis.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing Guaranteed and Insured Loans.

#### *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

#### **List of Subjects**

##### *38 CFR Part 36*

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

##### *38 CFR Part 42*

Administrative practice and procedure, Claims, Fraud, Penalties.

#### *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, Assistant Secretary for Congressional and Legislative Affairs, Performing the Delegable Duties of the Chief of Staff, Department of Veterans Affairs, approved this document on January 14, 2021, for publication.

#### **Luvenia Potts,**

*Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

**Editorial note:** This document was received for publication by the Office of the Federal Register on January 15, 2021.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR parts 36 and 42 as set forth below:

#### **PART 36—LOAN GUARANTY**

■ 1. The authority citation for part 36 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 3720.

#### **§ 36.4340 [Amended]**

■ 2. In § 36.4340, amend paragraphs (k)(1)(i) introductory text and (k)(3) by removing “\$23,331” and adding in its place “\$23,607”.

#### **PART 42—STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT**

■ 3. The authority citation for part 42 continues to read as follows:

**Authority:** Pub. L. 99–509, secs. 6101–6104, 100 Stat. 1874, codified at 31 U.S.C. 3801–3812.

#### **§ 42.3 [Amended]**

■ 4. In § 42.3, amend paragraphs (a)(1)(iv) and (b)(1)(ii) by removing “\$11,665” and adding in its place “\$11,803”.

[FR Doc. 2021–01335 Filed 2–1–21; 8:45 am]

**BILLING CODE 8320–01–P**

#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

#### **Centers for Medicare & Medicaid Services**

#### **42 CFR Part 423**

[CMS–4189–F2]

**RIN 0938–AT94**

#### **Medicare Program; Secure Electronic Prior Authorization for Medicare Part D Program; Delay in Effective Date**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Final rule; delay in effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2021 from the Assistant to the President and the Chief of Staff, entitled “Regulatory Review,” this action temporarily delays for 60 days the effective date of the December 31, 2020 final rule entitled, “Medicare Program; Secure Electronic Prior Authorization For Medicare Part D”, which published on December 31, 2020.

**DATES:** The effective date of the final rule amending 42 CFR part 423 published at 85 FR 86824 on December 31, 2020, is delayed from February 1, 2021, to March 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Joella Roland, (410) 786–7638.

**SUPPLEMENTARY INFORMATION:**

#### **Background and Provisions of the Final Rule**

The January 20, 2021 memorandum from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” instructed Federal agencies to delay the effective date of rules published in the **Federal Register**, but which have not yet taken effect, for a period of 60 days from the date of the memorandum.

The purpose of the final rule is to adopt a new standard for certain transactions concerning Part D-covered drugs prescribed to Part D-eligible individuals under the Part D e-prescribing program. Under this final rule, Part D plan sponsors will be required to support version 2017071 of the National Council for Prescription Drug Programs (NCPDP) SCRIPT standard for four electronic Prior Authorization (ePA) transactions, and prescribers will be required to use that standard when performing ePA transactions for Part D-covered drugs they wish to prescribe to Part D-eligible individuals. Part D plans, as defined in 42 CFR 423.4, include Prescription Drug Plans (PDPs) and Medicare Advantage Prescription Drug Plans (MA-PDs); Part D sponsor, as defined in 42 CFR 423.4, means the entity sponsoring a Part D plan, MA organization offering a MA-PD plan, a Programs of All-Inclusive Care for the Elderly (PACE) organization sponsoring a PACE plan offering qualified prescription drug coverage, and a cost plan offering qualified prescription drug coverage. The ePA transaction standard will provide for the electronic transmission of information between the prescribing health care professional and Part D plan sponsor to inform the sponsor's determination as to whether or not a prior authorization (PA) should be granted. The NCPDP SCRIPT standard version 2017071 was adopted as a Part D e-prescribing program standard for certain defined transactions in the April 16, 2018 final rule (83 FR 16440) titled Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program that became effective June 15, 2018.

The effective date of that rule, which would have been February 1, 2021, is now effective on March 30, 2021.

The temporary delay in the effective date of this final rule is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the memorandum of

January 20, 2021, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review.”

Norris Cochran,

*Acting Secretary, Department of Health and Human Services.*

[FR Doc. 2021-02181 Filed 1-29-21; 11:15 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 486

[CMS-3380-F2]

RIN 0938-AU02

#### Medicare and Medicaid Programs; Organ Procurement Organizations Conditions for Coverage: Revisions to the Outcome Measure Requirements for Organ Procurement Organizations; Public Comment Period; Delay of Effective Date

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

**ACTION:** Final rule; public comment period; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” this action temporarily delays for 60 days the effective date of part of the final rule entitled, “Medicare and Medicaid Programs; Organ Procurement Organizations Conditions for Coverage: Revisions to the Outcome Measure Requirements for Organ Procurement Organizations; Final rule” published in the **Federal Register** on December 2, 2020. We are also providing an additional 30-day public comment period.

**DATES:** The February 1, 2021, effective date of the rule amending 42 CFR part 486, published at 85 FR 77898 on December 2, 2020, is delayed to March 30, 2021.

**Comment date:** To be assured consideration, comments must be received at one of the addresses provided below, by March 4, 2021.

**ADDRESSES:** In commenting, please refer to file code CMS-3380-F2.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation

to <http://www.regulations.gov>. Follow the “Submit a comment” instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3380-F2, P.O. Box 8010, Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3380-F2, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

#### FOR FURTHER INFORMATION CONTACT:

Diane Corning, (410) 786-8486; Jesse Roach, (410) 786-1000; Kristin Shifflett, (410) 786-4133; CAPT James Cowher, (410) 786-1948; or Alpha-Banu Wilson, (410) 786-8687.

#### SUPPLEMENTARY INFORMATION:

**Inspection of Public Comments:** All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

#### I. Background

The January 20, 2021 memorandum from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” instructed Federal agencies to delay the effective date of rules published in the **Federal Register**, but which have not yet taken effect, for a period of 60 days. On December 2, 2020, we published a final rule in the **Federal Register** entitled “Medicare and Medicaid Programs;

Organ Procurement Organizations Conditions for Coverage: Revisions to the Outcome Measure Requirements for Organ Procurement Organizations; Final rule” (85 FR 77898). The December 2020 final rule revises the Organ Procurement Organizations Conditions for Coverage to increase donation rates and organ transplantation rates by replacing the current outcome measures with new transparent, reliable, and objective outcome measures and increasing competition for open donation service areas. The effective date of that rule, except for amendment number 3, which would have been February 1, 2021, is now March 30, 2021. We are also providing a 30-day public comment period. The 60-day delay in effective date is necessary to give Department officials the opportunity for further review of the issues of fact, law, and policy raised by this rule. In addition, this action provides a comment period on the policies set out in the December 2, 2020 final rule to allow interested parties to provide comments about issues of fact, law and policy raised by the rule.

#### II. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Norris Cochran,

*Acting Secretary, Department of Health and Human Services.*

[FR Doc. 2021-02180 Filed 1-29-21; 11:15 am]

BILLING CODE 4120-01-P



**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Office of Inspector General****42 CFR Part 1001**

RIN 0936-AA08

**Fraud and Abuse; Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection for Certain Point-of-Sale Reductions in Price on Prescription Pharmaceuticals and Certain Pharmacy Benefit Manager Service Fees****AGENCY:** Office of Inspector General (OIG), Health and Human Services (HHS).**ACTION:** Final rule; delay of effective date; correction.

**SUMMARY:** In accordance with the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” and given the pendency of litigation, *Pharmaceutical Care Management Association v. U.S. Department of Health and Human Services, et al.*, Civil Action No. 21–95 (JDB) (D.D.C.), challenging the final rule, this action temporarily delays for 60 days from the date of the memorandum the effective date of certain amendments as promulgated by the final rule titled “Fraud and Abuse; Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection for Certain Point-of-Sale Reductions in Price on Prescription Pharmaceuticals and Certain Pharmacy Benefit Manager Service Fees,” published in the November 30, 2020, **Federal Register**. This document announces that the effective date for the certain provisions of the final rule is delayed until March 22, 2021, the first business day after 60 days from the date of the memorandum. This document also corrects a technical error in the amendatory instructions.

**DATES:** As of January 29, 2021, the effective date of the amendments to 42 CFR 1001.952 (h)(6) through (9), (cc), and (dd) published at 85 FR 76666, November 30, 2020, is delayed until March 22, 2021.

This correction is effective as of March 22, 2021. The amendatory instructions in FR 2020–25841 (85 FR 76666), published on November 30, 2020 is corrected.

**FOR FURTHER INFORMATION CONTACT:** Aaron Zajic, (202) 619–0335.

**SUPPLEMENTARY INFORMATION:** The January 20, 2021 memorandum from the

Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” instructed Federal agencies to consider delaying the effective date of rules published in the **Federal Register**, but which have not yet taken effect, for a period of 60 days from the date of the memorandum to permit review of the rule. This action is consistent with that memorandum insofar as the Department has decided to review the rule at issue, and needs time to determine what additional action, if any, is appropriate.

The Department also has good cause to delay this rule’s effective date without advance notice and comment under 5 U.S.C. 553(b)(B) because of the pendency of litigation challenging the final rule, and the Department’s interest in evaluating its position in that litigation. The litigation includes both procedural and substantive challenges to the rule and its effective date. Though the provisions of the rule being delayed by this notice do not fully overlap with the provisions at issue in the pending litigation, the intersections between the rule’s various provisions and the overall regulatory framework are complex. HHS intends to evaluate those interactions as part of its regulatory review process, but needs additional time to do so beyond the current effective date of January 29, 2021.

Accordingly, this final rule delays the effective date of certain portions of the safe harbor regulation concerning discounts for prescription pharmaceutical products at 42 CFR 1001.952. The effective date of new paragraphs (h)(6) through (9), (cc), and (dd) of that rule, which would have been January 29, 2021, is now March 22, 2021. The temporary delay in the effective date of this final rule is necessary to give Department officials the opportunity for further review and consideration of the revisions to paragraphs (h)(5)(vi) and (viii), as well as the addition of new paragraphs (h)(5)(iii), (6) through (9), (cc), and (dd) of 42 CFR 1001.952, consistent with the memorandum of January 20, 2021.

Separately, November 2020 final rule contained a technical error in the amendatory instructions that would have prevented the Office of the Federal Register from properly incorporating the amendments to § 1001.952 into the CFR. This document also corrects that error.

■ In FR 2020–25841 (85 FR 76666), published on November 30, 2020, the following corrections are made:

**§ 1001.952 [Corrected]**

■ 1. On page 76730, third column, instruction 2 (including a. and b.) is corrected to read as follows:

■ 2. Section 1001.952 is amended by adding paragraphs (h)(6) through (9), (cc), and (dd) to read as follows:

**§ 1001.952 [Corrected]**

■ 2. On page 76731, first column, § 1001.952 is corrected by removing “(5) \* \* \*”, and the text of paragraphs (vi) through (viii).

**§ 1001.952 [Corrected]**

■ 3. On page 76731, third column, add amendatory instruction 3 to read as follows:

3. Effective January 1, 2022, § 1001.952 is amended by revising paragraphs (h)(5)(vi) and (vii) and adding paragraph (h)(5)(viii) to read as follows:

**§ 1001.952 Exceptions.**

\* \* \* \* \*

(h) \* \* \*

(5) \* \* \*

(vi) Services provided in accordance with a personal or management services contract;

(vii) Other remuneration, in cash or in kind, not explicitly described in this paragraph (h)(5); or

(viii) A reduction in price or other remuneration in connection with the sale or purchase of a prescription pharmaceutical product from a manufacturer to a plan sponsor under Medicare Part D either directly to the plan sponsor under Medicare Part D, or indirectly through a pharmacy benefit manager acting under contract with a plan sponsor under Medicare Part D, unless it is a price reduction or rebate that is required by law.

\* \* \* \* \*

Norris Cochran,

Acting Secretary.

[FR Doc. 2021–02132 Filed 1–29–21; 8:45 am]

BILLING CODE 4152–01–P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 160426363–7275–02; RTID 0648–XA837]

**Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2020–2021 Closure of Commercial Run-Around Gillnet for King Mackerel**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.



**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements an accountability measure (AM) through this temporary rule for commercial harvest of king mackerel in the southern zone of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) using run-around gillnet gear. NMFS has determined that the commercial annual catch limit (ACL) for king mackerel using run-around gillnet gear in the southern zone of the Gulf EEZ has been reached. Therefore, NMFS closes the southern zone to commercial king mackerel fishing using run-around gillnet gear in the Gulf EEZ on January 28, 2021. This closure is necessary to protect the Gulf king mackerel resource.

**DATES:** The closure is effective from 12 p.m. local time on January 28, 2021, until 6 a.m. local time on January 18, 2022.

**FOR FURTHER INFORMATION CONTACT:**

Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727-824-5305, email: [kelli.odonnell@noaa.gov](mailto:kelli.odonnell@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish in the Gulf includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights for Gulf migratory group king mackerel (Gulf king mackerel) apply as either round or gutted weight.

The commercial fishery for Gulf king mackerel is divided into western, northern, and southern zones. The southern zone for Gulf king mackerel encompasses an area of the Gulf EEZ off Collier and Monroe Counties in south Florida, which is the EEZ south of a line extending due west from the boundary of Lee and Collier Counties on the Florida west coast, and south of a line extending due east from the boundary of Monroe and Miami-Dade Counties on the Florida east coast (50 CFR 622.369(a)(1)(iii)).

The commercial ACL for Gulf king mackerel is divided into separate ACLs for hook-and-line and run-around gillnet gear. The use of run-around gillnets for king mackerel is restricted to the Gulf southern zone. The commercial gillnet quota (equivalent to the commercial gillnet ACL) for Gulf king

mackerel is 575,400 lb (260,997 kg) during the fishing year from July 1, 2020, through June 30, 2021 (50 CFR 622.384(b)(1)(iii)(B)).

Regulations at 50 CFR 622.388(a)(1) require NMFS to close any component of the king mackerel commercial sector when its applicable quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that for the 2020–2021 fishing year, the commercial quota for Gulf king mackerel on vessels using run-around gillnet gear in the southern zone has been reached. Accordingly, commercial fishing using such gear in the southern zone is closed at 12 p.m. local time on January 28, 2021, until 6 a.m. local time on January 18, 2022, the beginning of the next fishing season, *i.e.*, the day after the 2022 Martin Luther King, Jr. Federal holiday. Vessel operators that have been issued a Federal commercial permit to harvest Gulf king mackerel using run-around gillnet gear in the southern zone must have landed ashore and bartered, traded, or sold such king mackerel prior to 12 p.m. local time on January 28, 2021.

Persons aboard a vessel using hook-and-line gear in the southern zone for which a Federal commercial permit for Gulf king mackerel has been issued, except persons aboard such a vessel also issued a Federal commercial permit to harvest Gulf king mackerel using run-around gillnet gear, may fish for or retain Gulf king mackerel unless the southern zone commercial quota for hook-and-line gear has been met and the hook-and-line component of the commercial sector has been closed. In addition, as long as the recreational sector for Gulf king mackerel is open (50 CFR 622.384(e)(1)), a person aboard a vessel that has a valid Federal commercial gillnet permit for king mackerel may continue to retain king mackerel under the recreational bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2).

During the commercial closure, Gulf king mackerel harvested using run-around gillnet gear in the southern zone may not be purchased or sold. This prohibition does not apply to Gulf king mackerel harvested using run-around gillnet gear in the southern zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(2)).

**Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR

622.388(a)(1), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the commercial quota and associated AM for Gulf king mackerel have already been subject to notice and public comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment on this action is contrary to the public interest because of the need to immediately implement the closure to protect the Gulf king mackerel resource. The capacity of the fishing fleet allows for rapid harvest of the commercial quota, and any delay in the closure could result in the commercial quota being exceeded. Prior notice and opportunity for public comment would require time and would potentially result in a harvest that exceeds the commercial quota.

For the aforementioned reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of this action.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: January 27, 2021.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021-02134 Filed 1-28-21; 4:15 pm]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 200221-0062; RTID 0648-XA780]

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Central Regulatory Area of the Gulf of Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action

is necessary to prevent exceeding the A season allowance of the 2021 total allowable catch (TAC) of Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA.

**DATES:** This inseason action became applicable at 1200 hours, Alaska local time (A.l.t.), January 22, 2021, and remains in effect through 1200 hours, A.l.t., June 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2021 Pacific cod TAC apportioned to vessels using pot gear in the Central Regulatory Area of the GOA is 1,808 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish in the GOA (85 FR 13802, March 10, 2020) and inseason adjustment (85 FR 83834, December 23, 2020).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2021 Pacific cod TAC apportioned to vessels using pot gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,800 mt and is setting aside the remaining 8 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and

an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 19, 2021.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: January 27, 2021.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021-02121 Filed 1-28-21; 4:15 pm]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 200227-0066; RTID 0648-XA771]

### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal to 60 Feet Length Overall Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2021 Pacific cod total allowable catch (TAC) allocated to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI.

**DATES:** This inseason action became applicable at 1200 hours, Alaska local time (A.l.t.), January 21, 2021, and remains in effect through 1200 hours, A.l.t., September 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Krista Milani, 907-581-2062.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management

Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2021 Pacific cod TAC allocated to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI is 4,761 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) and inseason adjustment (85 FR 83473, December 22, 2020).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2021 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 19, 2021.

**Authority:** 16 U.S.C. 1901 *et seq.*

Dated: January 27, 2021.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021-02127 Filed 1-29-21; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 200227-0066; RTID 0648-XA783]

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 Feet (18.3 Meters) Length Overall Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2021 Pacific cod total allowable catch (TAC) allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

**DATES:** This inseason action became applicable at 1200 hours, Alaska local time (A.l.t.), January 26, 2021, and remains in effect through 1200 hours, A.l.t., December 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** Krista Milani, 907-581-2062.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2021 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 3,122 metric tons as established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020), inseason adjustment (85 FR 83473, December 22, 2020), and reallocation (86 FR 1301, January 8, 2021).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2021 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific

cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### **Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 25, 2021.

**Authority:** 16 U.S.C. 1901 *et seq.*

Dated: January 27, 2021.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021-02133 Filed 1-29-21; 8:45 am]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 86, No. 20

Tuesday, February 2, 2021

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 Parts 30 and 32

[Docket No. NRC-2015-0017]

RIN 3150-AJ54

### Items Containing Byproduct Material Incidental to Production

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Regulatory basis; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is requesting comment on a regulatory basis to support developing a rulemaking that would amend its regulations by adding a new class exemption from licensing and associated distribution requirements. This new class exemption would create a path for licensing current and future products that contain byproduct material incidental to their production. The rulemaking would resolve a petition for rulemaking (PRM), PRM-30-65, submitted by GE Osmonics, Inc. on April 18, 2011, requesting changes to the regulations to allow commercial distribution and redistribution of polycarbonate track etched membranes.

**DATES:** Submit comments by April 5, 2021. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking Website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2015-0017. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: [Dawn.Forder@nrc.gov](mailto:Dawn.Forder@nrc.gov). For technical questions, contact the individual(s) listed in the **FOR FURTHER**

**INFORMATION CONTACT** section of this document.

- *Email comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

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:

Alexa Sieracki, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-7509; email: [Alexa.Sieracki@nrc.gov](mailto:Alexa.Sieracki@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Obtaining Information and Submitting Comments

###### A. Obtaining Information

Please refer to Docket ID NRC-2015-0017 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-2015-0017.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto: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.

- *Attention:* The Public Document Room (PDR), where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

##### B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking Website (<https://www.regulations.gov>). Please include Docket ID NRC-2015-0017 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

To facilitate early stakeholder engagement on the rulemaking process, the NRC is requesting comment on a regulatory basis to support a rulemaking that would amend (1) part 30 of title 10 of the *Code of Federal Regulations* (10 CFR), "Rules of General Applicability to Domestic Licensing of Byproduct Material," by adding a new class exemption from licensing requirements for items containing byproduct material incidental to their production, and (2) 10 CFR part 32, "Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material," licensing requirements for distribution of those items.

The regulatory basis is developed as a precursor to a proposed rule and describes the NRC's preferred approach for resolving PRM-30-65. The rulemaking would close the regulatory gap for these irradiated products, create appropriate criteria for evaluating public health and safety impacts of these products, reduce burden on existing licensees, and provide consistency for regulating products within this class.

The NRC will consider any comments received on the regulatory basis in the development of the proposed and final rule and will provide responses to comments on the regulatory basis in the associated **Federal Register** notification publishing the proposed rule for public comment.

### III. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,”

published June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

### IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./web link/ Federal Register citation
Regulatory Basis for Items Containing Byproduct Material Incidental to Production, January 13, 2021.	ML20339A400.
Petition for Rulemaking Submitted by Annette User on Behalf of GE Osmonics (Consideration in the Rulemaking Process), September 14, 2012.	77 FR 56793.
GE Osmonics, Inc., Polymer Track Etch Membrane 10 CFR 32.14—Manufacturer and Distribution Product Safety Information, March 20, 2012.	ML120800277.
GE Osmonics, Inc., Environmental Report—Polymer Track Etch Membrane—10 CFR 30.15, March 20, 2012.	ML120800264.
NRC Consumer Product Policy Statement, January 16, 2014 .....	79 FR 2907.
Petition for Rulemaking Submitted by Annette User on Behalf of GE Osmonics, April 18, 2011.	ML120250133.
SECY–87–186A, Distribution of Radioactive Gems Irradiated in Reactors to Unlicensed Persons (Follow-up to SECY–87–186), October 5, 1987.	ML092400170.
Petition for Rulemaking Submitted by Annette User on Behalf of GE Osmonics (Receipt and Request for Comment), June 22, 2011.	76 FR 36386.
Comment (1) of Benjamin Kerensa Opposing Petition for Rulemaking (PRM–30–65) Regarding the NRC Amend Its Regulations Regarding the Commercial Distribution of Byproduct Material, June 24, 2011.	ML11178A021.
Agreement State Program Policy Statement; Correction, October 18, 2017 .....	82 FR 48535.
Management Directive 5.3, Agreement State Participation in NRC Working Groups, June 22, 2016.	ML18073A142.
NUREG–1556, Volume 8, Revision 1, Consolidated Guidance about Materials Licenses: Program-Specific Guidance About Exempt Distribution Licenses, June 2018.	ML18158A165.
Strategic Plan: Fiscal Years 2018–2022, NUREG–1614, Volume 7, February 2018 .....	ML18032A561.
International Atomic Energy Agency, OECD Nuclear Energy Agency, Radiation Safety for Consumer Products, IAEA Safety Standards Series No. SSG–36, January 2016.	<a href="https://www.iaea.org/publications/10716/radiation-safety-for-consumer-products">https://www.iaea.org/publications/10716/radiation-safety-for-consumer-products</a> .
International Atomic Energy Agency, IAEA Safety Standards Series, Radiation Protection and Safety of Radiation Sources: International Basic Safety Standards—General Safety Requirements Part 3 No. GSR Part 3, July 2014.	<a href="https://www.iaea.org/publications/8930/radiation-protection-and-safety-of-radiation-sources-international-basic-safety-standards">https://www.iaea.org/publications/8930/radiation-protection-and-safety-of-radiation-sources-international-basic-safety-standards</a> .

The NRC may post documents related to this rulemaking activity to the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC–2015–0017.

The Federal rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2015–0017); (2) click the “Sign up for Email Alerts” link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Dated January 15, 2021.

For the Nuclear Regulatory Commission.

**John R. Tappert,**

*Director, Division of Rulemaking,  
Environmental, and Financial Support, Office  
of Nuclear Material Safety and Safeguards.*

[FR Doc. 2021–02158 Filed 2–1–21; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

[NRC–2017–0025]

RIN 3150–AJ94

### Approval of American Society of Mechanical Engineers’ Code Cases

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate by reference proposed revisions of three regulatory guides, which would approve new, revised, and reaffirmed Code Cases published by the American Society of Mechanical Engineers. The NRC is also incorporating by reference one NRC NUREG associated with a proposed condition on one of the regulatory guides. This proposed action would

allow nuclear power plant licensees, and applicants for construction permits, operating licenses, combined licenses, standard design certifications, standard design approvals and manufacturing licenses, to use the Code Cases listed in these draft regulatory guides as voluntary alternatives to engineering standards for the construction, inservice inspection, and inservice testing of nuclear power plant components. The NRC is requesting comments on this proposed rule and on the draft versions of the three regulatory guides proposed to be incorporated by reference. The NRC is also making available a related draft regulatory guide that lists Code Cases that the NRC has not approved for use. This draft regulatory guide will not be incorporated by reference into the NRC’s regulations.

**DATES:** Submit comments on the proposed rule, documents to be incorporated by reference, and related guidance by April 5, 2021. Submit comments specific to the information

collections aspects of this rule by March 4, 2021. Comments received after these dates will be considered if it is practical to do so, but the NRC is able to ensure consideration only of comments received on or before these dates.

**ADDRESSES:** You may submit comments on the proposed rule, documents to be incorporated by reference, and related guidance by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0025. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: [Dawn.Forder@nrc.gov](mailto:Dawn.Forder@nrc.gov). For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **Email comments to:** [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications 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:** Juan Lopez, Office of Nuclear Material Safety and Safeguards; telephone: 301-415-2338; email: [Juan.Lopez@nrc.gov](mailto:Juan.Lopez@nrc.gov); or Bruce Lin, Office of Nuclear Regulatory Research; telephone: 301-415-2446;

email: [Bruce.Lin@nrc.gov](mailto:Bruce.Lin@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Summary**

###### *A. Need for the Regulatory Action*

The purpose of this regulatory action is to incorporate by reference into the NRC’s regulations the latest revisions of three regulatory guides (RGs) (currently in draft form for comment). This regulatory action is also incorporating by reference one NRC report, NUREG-2228, that is associated with a proposed condition in one of the regulatory guides. NUREG-2228 was published for public comment on September 13, 2018 (83 FR 46524). The three draft RGs identify new, revised, and reaffirmed Code Cases published by the American Society of Mechanical Engineers (ASME), which the NRC has determined are acceptable for use as voluntary alternatives to compliance with certain provisions of the ASME Boiler and Pressure Vessel Code (BPV Code) and the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) currently incorporated by reference into the NRC’s regulations.

###### *B. Major Provisions*

The three draft RGs that the NRC proposes to incorporate by reference are RG 1.84, “Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,” Revision 39 (Draft Regulatory Guide (DG)-1366); RG 1.147, “Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,” Revision 20 (DG-1367); and RG 1.192, “Operation and Maintenance [OM] Code Case Acceptability, ASME

OM Code,” Revision 4 (DG-1368). The NRC also proposes to incorporate by reference NUREG-2228, “Weld Residual Stress Finite Element Analysis Validation: Part II—Proposed Validation Procedure,” which provides the procedure for validating the weld residual stress analysis methodology associated with ASME Code Case N-847. This proposed action would allow nuclear power plant licensees and applicants for construction permits, operating licenses, combined licenses, standard design certifications, standard design approvals, and manufacturing licenses to use the Code Cases newly listed in these revised RGs as voluntary alternatives to engineering standards for the construction, inservice inspections, and inservice testing of nuclear power plant components. The NRC also notes the availability of a proposed version of RG 1.193, “ASME Code Cases Not Approved for Use,” Revision 7 (DG-1369). This document lists Code Cases that the NRC has not approved for generic use and will not be incorporated by reference into the NRC’s regulations.

The NRC prepared a draft regulatory analysis to determine the expected quantitative costs and benefits of this proposed rule, as well as qualitative factors to be considered in the NRC’s rulemaking decision. The analysis concluded that this proposed rule would result in net savings to the industry and the NRC. As shown in Table 1, the estimated total net benefit relative to the regulatory baseline and the quantitative benefits outweigh the costs by a range from approximately \$5.19 million (7-percent net present value) to \$6.20 million (3-percent net present value).

**TABLE 1—COST BENEFIT SUMMARY**

Attribute	Total averted costs (costs)		
	Undiscounted	7% Net present value	3% Net present value
Industry Implementation .....	\$0	\$0	\$0
Industry Operation .....	5,100,000	3,790,000	4,470,000
<i>Total Industry Costs</i> .....	<i>5,100,000</i>	<i>3,790,000</i>	<i>4,470,000</i>
NRC Implementation .....	(430,000)	(420,000)	(420,000)
NRC Operation .....	2,460,000	1,820,000	2,150,000
<i>Total NRC Costs</i> .....	<i>2,030,000</i>	<i>1,400,000</i>	<i>1,730,000</i>
Net .....	7,130,000	5,190,000	6,200,000

The regulatory analysis also considered the following qualitative considerations: (1) Flexibility and decreased uncertainty for licensees

when making modifications or preparing to perform inservice inspection or inservice testing; (2) consistency with the provisions of the

National Technology Transfer and Advancement Act of 1995, which encourages Federal regulatory agencies to consider adopting voluntary

consensus standards as an alternative to *de novo* agency development of standards affecting an industry; (3) consistency with the NRC's policy of evaluating the latest versions of consensus standards in terms of their suitability for endorsement by regulations and regulatory guides; and (4) consistency with the NRC's goal to harmonize with international standards to improve regulatory efficiency for both the NRC and international standards groups.

The draft regulatory analysis concludes that this proposed rule should be adopted because it is justified when integrating the cost-beneficial quantitative results and the positive and supporting nonquantitative considerations in the decision. For more information, please see the regulatory analysis (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20133K152).

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## I. Obtaining Information and Submitting Comments

### A. Obtaining Information

Please refer to Docket ID NRC-2017-0025 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-2017-0025.
- *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 "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto: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.

- *Attention*: The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov) or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

### B. Submitting Comments

Please include Docket ID NRC-2017-0025 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. Background

The ASME develops and publishes the ASME BPV Code, which contains requirements for the design, construction, and inservice inspection examination of nuclear power plant components, and the ASME OM Code,<sup>1</sup> which contains requirements for inservice testing of nuclear power plant components. In response to BPV and OM Code user requests, the ASME

develops Code Cases that provide voluntary alternatives to BPV and OM Code requirements under special circumstances.

The NRC approves the ASME BPV and OM Codes in § 50.55a, "Codes and standards," of title 10 of the *Code of Federal Regulations* (10 CFR) through the process of incorporation by reference. As such, each provision of the ASME Codes incorporated by reference into and mandated by § 50.55a constitutes a legally-binding NRC requirement imposed by rule. As noted previously, the ASME Code Cases, for the most part, represent alternative approaches for complying with provisions of the ASME BPV and OM Codes. Accordingly, the NRC periodically amends § 50.55a to incorporate by reference the NRC's RGs listing approved ASME Code Cases that may be used as voluntary alternatives to the BPV and OM Codes.<sup>2</sup>

This proposed rule is the latest in a series of rules that incorporate by reference new versions of several RGs identifying new, revised, and reaffirmed,<sup>3</sup> and unconditionally or conditionally acceptable ASME Code Cases that the NRC approves for use. In developing these RGs, the NRC reviews the ASME BPV and OM Code Cases, determines the acceptability of each Code Case, and publishes its findings in the RGs. The RGs are revised periodically as new Code Cases are published by the ASME. The NRC incorporates by reference the RGs listing acceptable and conditionally acceptable ASME Code Cases into § 50.55a. The NRC published a final rule dated March 16, 2020 (85 FR 14736) that incorporated by reference into § 50.55a the most recent versions of the RGs, which are: RG 1.84, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III," Revision 38; RG 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," Revision 19; and RG 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code," Revision 3.

<sup>2</sup> See *Federal Register* final rule, "Incorporation by Reference of ASME BPV and OM Code Cases" (68 FR 40469; July 8, 2003).

<sup>3</sup> Code Cases are categorized by the ASME as one of three types: new, revised, or reaffirmed. A new Code Case provides for a new alternative to specific the ASME Code provisions or addresses a new need. The ASME defines a revised Code Case to be a revision (modification) to an existing Code Case to address, for example, technological advancements in examination techniques or to address NRC conditions imposed in one of the RGs that have been incorporated by reference into § 50.55a. The ASME defines "reaffirmed" as an OM Code Case that does not have any change to technical content, but includes editorial changes.

<sup>1</sup> The editions and addenda of the ASME Code for Operation and Maintenance of Nuclear Power Plants have had different titles from 2005 to 2017, and are referred to as the "OM Code" collectively in this rule.

### III. Discussion

This proposed rule would incorporate by reference NUREG–2228 and the latest revisions of the NRC’s RGs that list the ASME BPV and OM Code Cases that the NRC finds to be acceptable, or acceptable with NRC-specified conditions (“conditionally acceptable”). Regulatory Guide 1.84, Revision 39 (DG–1366) would supersede the incorporation by reference of Revision 38; RG 1.147, Revision 20 (DG–1367) would supersede the incorporation by reference of Revision 19; and RG 1.192, Revision 4 (DG–1368) would supersede the incorporation by reference of Revision 3.

The ASME Code Cases that are the subject of this proposed rule are the new and revised Section III and Section XI Code Cases as listed in Supplements 0 through 7 to the 2015 Edition of the ASME BPV Code, Supplements 0 through 7 to the 2017 Edition of the ASME BPV Code, Supplements 0 and 1 to the 2019 Edition of the ASME BPV Code, and the OM Code Cases listed in the 2020 Edition of the ASME OM Code.

The latest editions and addenda of the ASME BPV and OM Codes that the NRC has approved for use are referenced in § 50.55a. The ASME also publishes Code Cases that provide alternatives to existing Code requirements that the ASME developed and approved. This proposed rule would incorporate by reference the most recent revisions of RGs 1.84, 1.147, and 1.192, which allow nuclear power plant licensees, and applicants for combined licenses, standard design certifications, standard design approvals, and manufacturing licenses under the regulations that govern license certifications, to use the Code Cases listed in these RGs as suitable alternatives to the ASME BPV and OM Codes for the construction, inservice inspections, and inservice testing of nuclear power plant components. Because the NRC is proposing to require the use of NUREG–2228, “Weld Residual Stress Finite Element Analysis Validation: Part II—Proposed Validation Procedure,” within a condition on Code Case N–847, the NRC is also incorporating by reference NUREG–2228. The ASME publishes the OM Code Cases and lists the Code Cases in the ASME OM Code edition. In contrast, the ASME publishes BPV Code Cases in a separate document and at a different time than the ASME BPV Code Editions. This proposed rule identifies the Code Cases by the edition of the ASME BPV Code or ASME OM Code under which they were published by the ASME.

The following general guidance applies to the use of the ASME Code Cases approved in the latest versions of the RGs that are incorporated by reference into § 50.55a as part of this proposed rule. Specifically, the use of the Code Cases listed in the latest versions of RGs 1.84, 1.147, and 1.192 are acceptable with the specified conditions when implementing the editions and addenda of the ASME BPV and OM Codes incorporated by reference in § 50.55a.

The approval of a Code Case in the NRC’s RGs constitutes acceptance of its technical position for applications that are not precluded by regulatory or other requirements or by the recommendations in these or other RGs. The applicant or licensee is responsible for ensuring that use of the Code Case does not conflict with regulatory requirements or licensee commitments. The Code Cases listed in the RGs are acceptable for use within the limits specified in the Code Cases. If the RG states an NRC condition on the use of a Code Case, then the NRC condition supplements and does not supersede any condition(s) specified in the Code Case, unless otherwise stated in the NRC condition.

The ASME Code Cases may be revised for many reasons (e.g., to incorporate operational examination and testing experience and to update material requirements based on research results). On occasion, an inaccuracy in an equation is discovered or an examination, as practiced, is found not to be adequate to detect a newly discovered degradation mechanism.

Therefore, when an applicant or a licensee initially implements a Code Case, § 50.55a requires that the applicant or the licensee implement the most recent version of that Code Case, as listed in the RGs incorporated by reference. Code Cases superseded by revision are no longer acceptable for new applications unless otherwise indicated.

Section III of the ASME BPV Code applies to new construction (*i.e.*, the edition and addenda to be used in the construction of a plant are selected based on the date of the construction permit and are not changed thereafter, except voluntarily by the applicant or the licensee). Hence, if a Section III Code Case is implemented by an applicant or a licensee and a later version of the Code Case is incorporated by reference into § 50.55a and listed in the RG, the applicant or licensee may use either version of the Code Case (subject, however, to whatever change requirements apply to its licensing basis (e.g., § 50.59)) until the next mandatory

inservice inspection or inservice testing update.

A licensee’s inservice inspection and inservice testing programs must be updated every 10 years to the latest edition and addenda of the ASME BPV Code, Section XI, and the OM Code, respectively, that were incorporated by reference into § 50.55a and in effect 18 months prior to the start of the next inspection and testing interval. Licensees that were using a Code Case prior to the effective date of its revision may continue to use the previous version for the remainder of the 120-month inservice inspection or inservice testing interval. This relieves licensees of the burden of having to update their inservice inspection or inservice testing program each time a Code Case is revised by the ASME and approved for use by the NRC. Code Cases apply to specific editions and addenda, and Code Cases may be revised if they are no longer accurate or adequate, so licensees choosing to continue using a Code Case during the subsequent inservice inspection or inservice testing interval must implement the latest version incorporated by reference into § 50.55a and listed in the RGs.

The ASME may annul Code Cases that are no longer required, are determined to be inaccurate or inadequate, or have been incorporated into the BPV or OM Codes. A Code Case may be revised, for example, to incorporate user experience. The older or superseded version of the Code Case cannot be applied by the licensee or applicant for the first time.

If an applicant or a licensee applied a Code Case before it was listed as superseded, the applicant or the licensee may continue to use the Code Case until the applicant or the licensee updates its construction Code of Record (in the case of an applicant, updates its application) or until the licensee’s 120-month inservice inspection or inservice testing update interval expires, after which the continued use of the Code Case is prohibited unless NRC authorization is given under § 50.55a(z). If a Code Case is incorporated by reference into § 50.55a and later a revised version is issued by the ASME because experience has shown that the design analysis, construction method, examination method, or testing method is inadequate, the NRC will amend § 50.55a and the relevant RG to remove the approval of the superseded Code Case. Applicants and licensees should not begin to implement such superseded Code Cases in advance of the rulemaking.



*A. Code Cases Proposed To Be Approved for Unconditional Use*

The Code Cases discussed in Table I are new, revised, or reaffirmed Code

Cases in which the NRC is not proposing any conditions. The table identifies the draft regulatory guide

listing the applicable Code Case that the NRC proposes to approve for use.

TABLE I—ACCEPTABLE CODE CASES

Code Case No.	Published with supplement	Title
<b>Boiler and Pressure Vessel Code Section III (addressed in DG-1366, Table 1)</b>		
N-249-17 .....	0 (2019 Edition) .....	Additional Materials for Subsection NF, Classes 1, 2, 3, and MC Supports Fabricated without Welding, Section III, Division 1.
N-539-1 .....	0 (2017 Edition) .....	UNS N08367 in Class 2 and 3 Valves, Section III, Division 1.
N-692-1 .....	6 (2015 Edition) .....	Use of Standard Welding Procedures, Section III, Division 1.
N-721-1 .....	5 (2017 Edition) .....	Alternative Rules for Linear Piping Supports, Section III, Division 1.
N-801-3 .....	1 (2017 Edition) .....	Rules for Repair of N-Stamped Class 1, 2, and 3 Components, Section III, Division 1.
N-822-4 .....	7 (2015 Edition) .....	Application of the ASME Certification Mark, Section III, Divisions 1, 2, 3, and 5.
N-855 .....	2 (2015 Edition) .....	SB-148 C95800 Valves for Class 3 Construction, Section III, Division 1.
N-856 .....	2 (2015 Edition) .....	SA-494 Grade CW-12MW (UNS N30002) Nickel Alloy Castings for Construction of NPS 2½ and Smaller Flanged Valves for Class 3 Construction, Section III, Division 1.
N-859 .....	5 (2015 Edition) .....	Construction of ASME B16.9 Wrought Butt Welding Fittings and ASME B16.11 Forged Fittings Made From SB-366 UNS N04400 Material for Section III, Class 3 Construction, Section III, Division 1.
N-863-1 .....	1 (2017 Edition) .....	Post Weld Heat Treatment (PWHT) of Valve Seal Welds for P4 and P5A Materials, Section III, Division 1.
N-866 .....	0 (2017 Edition) .....	Alternative Materials for Construction of Section III, Class 2 Vessels, Section III, Division 1.
N-870-1 .....	4 (2017 Edition) .....	Rules for the Elimination of External Surface Defects on Class 1, 2, and 3 Piping, Pumps, or Valves After Component Stamping and Prior to Completion of the N-3 Data Report, Section III, Division 1.
N-879 .....	1 (2017 Edition) .....	Use of Micro-Alloyed Carbon Steel Bar in Patented Mechanical Joints and Fittings, Classes 1, 2, and 3, Section III, Division 1.
N-884 .....	0 (2019 Edition) .....	Procedure to Determine Strain Rate for Use with the Environmental Fatigue Design Curve Method and the Environmental Fatigue Correction Factor, $F_{en}$ , Method as Part of an Environmental Fatigue Evaluation for Components Analyzed per the NB-3200 Rules, Section III, Division 1.
N-887 .....	6 (with errata issued in 3/19E) .....	Alternatives to the Requirements of NB-4424.2(a), Figure NB-4250-2, and Figure NB-4250-3, Section III, Division 1.
N-891 .....	0 (2019 Edition) .....	Alternative Requirements to Appendix XXVI, XXVI-2400, XXVI-4130, and XXVI-4131 for Inspection and Repair of Indentations for Polyethylene Pipe and Piping Components, Section III, Division 1.
<b>Boiler and Pressure Vessel Code Section XI (addressed in DG-1367, Table 1)</b>		
N-561-3 .....	0 (2019 Edition) .....	Alternative Requirements for Wall Thickness Restoration of Class 2 and High Energy Class 3 Carbon Steel Piping, Section XI, Division 1.
N-638-10 .....	1 (2019 Edition) .....	Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section XI, Division 1.
N-653-2 .....	2 (2015 Edition) .....	Qualification Requirements for Full Structural Overlaid Wrought Austenitic Piping Welds, Section XI, Division 1.
N-702-1 .....	1 (2019 Edition) .....	Alternative Requirements for Boiling Water Reactor (BWR) Nozzle Inner Radius and Nozzle-to-Shell Welds, Section XI, Division 1.
N-716-2 .....	0 (2017 Edition) .....	Alternative Piping Classification and Examination Requirements, Section XI, Division 1.
N-768 .....	0 (2019 Edition) .....	Alternative Volumetric Coverage Requirements for Ultrasonic Examination of Class 1 and 2 Pressure Vessel Weld Joints Greater Than 2 in. (50 mm) in Thickness, Section XI, Division 1.
N-786-3 .....	1 (2017 Edition) .....	Alternative Requirements for Sleeve Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping, Section XI, Division 1.
N-789-3 .....	1 (2017 Edition) .....	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping for Raw Water Service, Section XI, Division 1.
N-809 .....	2 (2015 Edition) .....	Reference Fatigue Crack Growth Rate Curves for Austenitic Stainless Steels in Pressurized Reactor Water Environments, Section XI, Division 1.
N-845-1 .....	6 (2015 Edition) .....	Qualification Requirements for Bolts and Studs, Section XI, Division 1.
N-848-1 .....	0 (2017 Edition) .....	Alternative Characterization Rules for Quasi-Laminar Flaws, Section XI, Division 1.
N-851 .....	0 (2015 Edition) .....	Alternate Method for Establishing the Reference Temperature for Pressure Retaining Materials, Section XI, Division 1.
N-858 .....	2 (2017 Edition) .....	Alternative Volumetric Coverage Requirements for Ultrasonic Examination of Class 1 Nozzle-to-Vessel Welds, Section XI, Division 1.
N-865 .....	2 (2017 Edition) .....	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Atmospheric Storage Tanks, Section XI, Division 1.
N-867 .....	0 (2017 Edition) .....	Clarification of NDE Practical Examination Requirements, Section XI, Division 1.
N-873 .....	1 (2017 Edition) .....	Examination Requirements for the Core Makeup Tanks, Section XI, Division 1.

TABLE I—ACCEPTABLE CODE CASES—Continued

Code Case No.	Published with supplement	Title
N-874 .....	7 (2017 Edition) .....	Temporary Acceptance of Leakage Through Brazed Joints of Class 3 Copper, Copper-Nickel, and Nickel-Copper Moderate Energy Piping, Section XI, Division 1.
N-877 .....	2 (2017 Edition) .....	Alternative Characterization Rules for Multiple Subsurface Radially Oriented Planar Flaws, Section XI, Division 1.
N-882 .....	6 (2017 Edition) .....	Alternative Requirements for Attaching Nonstructural Electrical Connections to Class 2 and 3 Components, Section XI, Division 1.
N-885 .....	0 (2019 Edition) .....	Alternative Requirements for Table IWB-2500-1, Examination Category B-N-1, Interior of Reactor Vessel, Category B-N-2, Welded Core Support Structures and Interior Attachments to Reactor Vessels, Category B-N-3, Removable Core Support Structures, Section XI, Division 1.
N-892 .....	0 (2019 Edition) .....	Alternative Requirement for Form OAR-1, Owner's Activity Report, Completion Time, Section XI, Division 1.
<b>Operation and Maintenance Code (addressed in DG-1368, Table 1)</b>		
OMN-13, Revision 3 ...	2020 Edition .....	Performance-Based Requirements for Extending Snubber Inservice Visual Examination Interval at LWR Power Plants.
OMN-15, Revision 3 ...	2020 Edition .....	Performance-Based Requirements for Extending the Snubber Operational Readiness Testing Interval at LWR Power Plants.
OMN-17, Revision 1 ...	2020 Edition .....	Alternative Requirements for Testing ASME Class 1 Pressure Relief/Safety Valves.
OMN-22 .....	2020 Edition .....	Smooth Running Pumps.
OMN-23 .....	2020 Edition .....	Alternative Requirements for Testing Pressure Isolation Valves.
OMN-24 .....	2020 Edition .....	Alternative Requirements for Testing ASME Class 2 and 3 Pressure Relief Valves (For Relief Valves in a Group of One).
OMN-25 .....	2020 Edition .....	Alternative Requirements for Testing Appendix I Pressure Relief Valves.
OMN-26 .....	2020 Edition .....	Alternate Risk-Informed and Margin Based Rules for Inservice Testing of Motor Operated Valves.
OMN-27 .....	2020 Edition .....	Alternative Requirements for Testing Category A Valves (Non-PIV/CIV).

### B. Code Cases Approved for Use With Conditions

The NRC has determined that certain Code Cases, as issued by the ASME, are generally acceptable for use, but that the alternative requirements specified in those Code Cases must be supplemented in order to provide an acceptable level of quality and safety. Accordingly, the NRC proposes to impose conditions on the use of these Code Cases to modify,

limit or clarify their requirements. The conditions would specify, for each applicable Code Case, the additional activities that must be performed, the limits on the activities specified in the Code Case, and/or the supplemental information needed to provide clarity. These ASME Code Cases, listed in Table II, are included in Table 2 of DG-1366 (RG 1.84), DG-1367 (RG 1.147), and DG-1368 (RG 1.192). This section provides the NRC's evaluation of the

Code Cases and the reasons for the NRC's conditions. Notations indicate the conditions duplicated from previous versions of the RG.

The NRC requests public comment on these Code Cases and the proposed conditions. It should also be noted that this section only addresses those Code Cases for which the NRC proposes to impose condition(s), which are listed in the RG for the first time.

TABLE II—CONDITIONALLY ACCEPTABLE CODE CASES

Code Case No.	Published with supplement	Title
<b>Boiler and Pressure Vessel Code Section III (addressed in DG-1366, Table 2)</b>		
N-71-20 .....	6 (2015 Edition) .....	Additional Materials for Subsection NF, Class 1, 2, 3, and MC Supports Fabricated by Welding, Section III, Division 1.
N-155-3 .....	5 (2015 Edition) .....	Fiberglass Reinforced Thermosetting Resin Pipe, Section III, Division 1.
N-755-4 .....	1 (2017 Edition) .....	Use of Polyethylene (PE) Class 3 Plastic Pipe, Section III, Division 1.
N-779 .....	9 (2007 Edition) .....	Alternative Rules for Simplified Elastic-Plastic Analysis Class 1, Section III, Division 1.
N-852 .....	0 (2015 Edition) .....	Application of the ASME NPT Stamp, Section III, Divisions 1, 2, 3, and 5.
N-883 .....	5 (2017 Edition) .....	Construction of Items Prior to the Establishment of a Section III, Division 1 Owner, Section III, Division 1.
N-886 .....	6 (2017 Edition) .....	Use of Polyethylene Pipe for Class 3, Section III, Division 1.
<b>Boiler and Pressure Vessel Code Section XI (addressed in DG-1367, Table 2)</b>		
N-513-5 .....	6 (2017 Edition) .....	Evaluation Criteria for Temporary Acceptance of Flaws in Moderate Energy Class 2 or 3 Piping and Gate Valves, Section XI, Division 1.
N-516-5 .....	6 (2015 Edition) .....	Underwater Welding, Section XI, Division 1.

TABLE II—CONDITIONALLY ACCEPTABLE CODE CASES—Continued

Code Case No.	Published with supplement	Title
N-705-1 .....	2 (2017 Edition) .....	Evaluation Criteria for Temporary Acceptance of Degradation in Moderate Energy Class 2 or 3 Vessels and Tanks, Section XI, Division 1.
N-766-3 .....	2 (2017 Edition) .....	Nickel Alloy Reactor Coolant Inlay and Onlay for Mitigation of PWR Full Penetration Circumferential Nickel Alloy Dissimilar Metal Welds in Class 1 Items, Section XI, Division 1.
N-831-1 .....	7 (2017 Edition) .....	Ultrasonic Examination in Lieu of Radiography for Welds in Ferritic or Austenitic Pipe, Section XI, Division 1.
N-847 .....	0 (2017 Edition) .....	Partial Excavation and Deposition of Weld Metal for Mitigation of Class 1 Items, Section XI, Division 1.
N-864 .....	2 (2017 Edition) .....	Reactor Vessel Threads in Flange Examinations, Section XI, Division 1.
N-869 .....	6 (2017 Edition) .....	Evaluation Criteria for Temporary Acceptance of Flaws in Class 2 or 3 Piping, Section XI, Division 1.
N-876 .....	2 (2017 Edition) .....	Austenitic Stainless Steel Cladding and Nickel Base Cladding Using Ambient Temperature Automatic or Machine Dry Underwater Laser Beam Welding (ULBW) Temper Bead Technique, Section XI, Division 1.
N-878 .....	1 (2017 Edition) .....	Alternative to QA Program Requirements of IWA-4142, Section XI, Division 1.
N-880 .....	2 (2017 Edition) .....	Alternative to Procurement Requirements of IWA-4143 for Small Nonstandard Welded Fittings, Section XI, Division 1.
N-889 .....	7 (2017 Edition) .....	Reference Stress Corrosion Crack Growth Rate Curves for Irradiated Austenitic Stainless Steel in Light-Water Reactor Environments, Section XI, Division 1.
N-890 .....	0 (2019 Edition) .....	Materials Exempted From G-2110(b) Requirement, Section XI, Division 1.
<b>Operation and Maintenance Code (addressed in DG-1368, Table 2)</b>		
OMN-1, Revision 2 .....	2020 Edition .....	Alternative Rules for Preservice and Inservice Testing of Active Electric Motor-Operated Valve Assemblies in Light-Water Reactor Power Plants.
OMN-3 .....	2020 Edition .....	Requirements for Safety Significance Categorization of Components Using Risk Insights for Inservice Testing of LWR Power Plants.
OMN-4 .....	2020 Edition .....	Requirements for Risk Insights for Inservice Testing of Check Valves at LWR Power Plants.
OMN-9 .....	2020 Edition .....	Use of a Pump Curve for Testing.
OMN-12 .....	2020 Edition .....	Alternative Requirements for Inservice Testing Using Risk Insights for Pneumatically and Hydraulically Operated Valve Assemblies in Light-Water Reactor Power Plants (OM-Code 1998, Subsection ISTC).
OMN-18 .....	2020 Edition .....	Alternate Testing Requirements for Pumps Tested Quarterly Within $\pm 20\%$ of Design Flow.
OMN-19 .....	2020 Edition .....	Alternative Upper Limit for the Comprehensive Pump Test.
OMN-20 .....	2020 Edition .....	Inservice Test Frequency.

#### 1. ASME BPV Code, Section III Code Cases (DG-1366/RG 1.84)

Code Case N-71-20 [Supplement 6, 2015 Edition]

*Type:* Revised.

*Title:* Additional Materials for Subsection NF, Class 1, 2, 3, and MC Supports Fabricated by Welding, Section III, Division 1.

The proposed conditions on Code Case N-71-20 are the same as the conditions on N-71-19 that were approved by the NRC in Revision 38 of RG 1.84. When the ASME revised N-71, the Code Case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions would be retained in Revision 39 of RG 1.84.

Code Case N-155-3 [Supplement 5, 2015 Edition]

*Type:* Revised.

*Title:* Fiberglass Reinforced Thermosetting Resin Pipe, Section III, Division 1.

The proposed conditions on Code Case N-155-3 are the same as the

conditions on N-155-2 that were approved by the NRC in Revision 38 of RG 1.84. When the ASME revised N-155-2, the Code Case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions would be retained in Revision 39 of RG 1.84.

Code Case N-755-4 [Supplement 1, 2017 Edition]

*Type:* Revised.

*Title:* Use of Polyethylene (PE) Class 3 Plastic Pipe, Section III, Division 1.

This Code Case is applicable only to butt fusion joints and the content was incorporated into Mandatory Appendix XXVI in 2015 Edition of Section III of the ASME Code. The relevant provisions of Code Case N-755-4 are the same as those in Mandatory Appendix XXVI. Therefore, the NRC is applying the same conditions to Code Case N-755-4. The NRC has determined that these conditions are necessary to ensure structural integrity of the polyethylene piping and fusion joints

when the polyethylene piping is used in Class 3 safety-related applications.

Code Case N-779 [Supplement 9, 2007 Edition]

*Type:* New.

*Title:* Alternative Rules for Simplified Elastic-Plastic Analysis Class 1, Section III, Division 1.

The NRC finds the Code Case satisfactory and technically acceptable for use only with code editions Summer 1979 and later. This Code Case, as written, is not acceptable for use with editions of Section III earlier than the Summer 1979 edition, which included the term Delta T1 in NB-3600 Equation 10, because the Code Case is based on equations used in the Summer 1979 edition and later editions of the Code.

Code Case N-852 [Supplement 0, 2015 Edition]

*Type:* New.

*Title:* Application of the ASME NPT Stamp, Section III, Divisions 1, 2, 3, and 5.

The NRC approved this Code Case with conditions in a § 50.55a rulemaking issued in 2017 (82 FR 32934, Sept. 18, 2017), and the supplement was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the NRC is including a condition that this Code Case can only be used for the service life of a component that had the horizontally arranged NPT Code Symbol Stamp applied during the time period from January 1, 2005, through December 31, 2015.

Code Case N-883 [Supplement 5, 2017 Edition]

*Type:* New.

*Title:* Construction of Items Prior to the Establishment of a Section III, Division 1 Owner, Section III, Division 1.

This Code Case allows certificate holders to construct all items prior to the establishment of an Owner. Code Case N-883 was developed to address international stakeholders and identify the ASME as a global standard development organization. The NRC's main concern is that without the designation of an Owner, the NRC would not be able to provide regulatory oversight of the ASME certificate holder manufacturing the items, which is not consistent with appendix B to 10 CFR part 50 and the requirements in § 50.55(a) for a basic component. During discussions with the ASME staff on this Code Case, it was determined that the NRC would condition this Code Case based on regulatory oversight, as would other regulatory bodies depending on each country's specific regulations. This is evident as this Code Case specifies that the "the items have been constructed by [ASME] Certificate Holders who are specifically authorized by the Regulatory Authority having jurisdiction over the Owner's facility to construct items using this Case." The proposed condition, "This Code Case may be used for the construction of items by a holder of a construction permit, operating license, or combined license under 10 CFR part 50 or part 52," provides this specific regulatory authorization thereby ensuring the appropriate regulatory oversight.

Code Case N-886 [Supplement 6, 2017 Edition]

*Type:* New.

*Title:* Use of Polyethylene Pipe for Class 3, Section III, Division 1.

This Code Case is applicable for the use of polyethylene pipe in Section III, Class 3, Division 1 above ground applications. This Code Case refers to Mandatory Appendix XXVI of Section

III of the ASME Code. The 2015 Edition of Appendix XXVI contains requirements for butt fusion joints for buried piping. The 2017 Edition of Appendix XXVI contains requirements for butt fusion and electrofusion joints for buried piping. Therefore, all the conditions as noted in Section III of the 2015-2017 Code Edition rule related to buried piping Mandatory Appendix XXVI apply to this Code Case. The same conditions as buried piping also apply to above ground application. Two additional conditions are needed for above ground applications, one on fire protection and one on carbon black distribution to protect from windows and delamination. A condition on fire protection is needed because polyethylene material is combustible and above ground uses are more susceptible to fire hazards. In addition, a condition requiring homogeneous carbon black distribution is needed because experiments have shown that inhomogeneous carbon black distribution can lead to windows and delamination.

2. ASME BPV Code, Section XI Code Cases (DG-1367/RG 1.147)

Code Case N-513-5 [Supplement 6, 2017 Edition]

*Type:* Revised.

*Title:* Evaluation Criteria for Temporary Acceptance of Flaws in Moderate Energy Class 2 or 3 Piping and Gate Valves, Section XI, Division 1.

Code Case N-513-5 contains provisions to permit temporary acceptance of flaws, in moderate energy Class 2 or 3 piping, including elbows, pipe bends, reducers, expanders, branch tees, and gate valves without performing a repair/replacement activity for a limited period. The Code Case contains provisions regarding the scope, flaw characterization, periodic leakage monitoring, flaw evaluation, and augmented examinations. The NRC finds that the provisions of N-513-5 are acceptable except for the augmented examination provisions in Section 5 of the Code Case.

When a licensee applies N-513-5 to disposition a through-wall leak or wall thinning in a piping system, Section 5 of the Code Case requires augmented examinations for flaws and significant flaws. The augmented examination requirements in N-513-5 are the same as in Code Case, N-513-3.

In 2018, the NRC found an instance where a licensee misinterpreted the provisions in Section 5 of N-513-3 and did not perform the required augmented examinations to disposition a through-wall leak in a service water system pipe.

Other licensees have similarly misinterpreted the augmented examination provisions in Section 5 of N-513-3. The NRC found that the issue stems from the definition of the terms "flaw" and "significant flaw" in Sections 5(b) and 5(c) of N-513-3, respectively. The NRC, therefore, proposes two conditions to define "flaw" and "significant flaw" as those terms are used in Section 5 of N-513-5. Licensees would be required to apply these definitions to Section 5 when using the Code Case.

The first proposed condition defines a "flaw" as a non-through-wall planar or nonplanar flaw with a wall thickness less than 87.5 percent of the nominal wall thickness of the pipe or the design minimum wall thickness. The NRC notes that the pipe wall thickness at the time of the plant construction may deviate from the nominal pipe wall thickness slightly as part of manufacturing process. The generally accepted deviation is 12.5 percent of the nominal pipe wall thickness or the design minimum wall thickness.

The second proposed condition defines "significant flaw" as any pipe location that does not satisfy the provisions of Section 3 of N-513-5 or if any detected flaw that has a depth greater than 75 percent of the pipe wall thickness. The NRC staff notes that the criterion of the 75 percent wall thickness criterion originates from the provisions of IWC/IWD-3643 of the ASME Code, Section XI, which prohibits a flaw that exceeds 75 percent of the pipe wall thickness to remain in service. Under Section 5 of N-513-5, a planar flaw that exceeds 75 percent of the pipe wall thickness may remain in service; however, the licensee must perform an augmented examination.

Code Case N-516-5 [Supplement 6, 2015 Edition]

*Type:* Revised.

*Title:* Underwater Welding, Section XI, Division 1.

In the rulemaking for the 2009 Addenda through 2013 Editions of the ASME Code (82 FR 32934, Sept. 18, 2017), the NRC-specified conditions that should be applied to Section XI, Article IWA-4660 when performing underwater welding on irradiated materials. These conditions provide guidance on what level of neutron irradiation and/or helium content would require review and approval by the NRC because of the impact of neutron fluence on weldability. These conditions provide separate criteria for three generic classes of material: Ferritic material, austenitic material other than P-No. 8 (e.g., nickel-based alloys) and austenitic P-No. 8

material (e.g., stainless steel alloys). These conditions are currently located in § 50.55a(b)(2)(xii)(A) and (B). The conditions located in § 50.55a(b)(2)(xii)(A) and (B) are identical to the conditions that were imposed on Code Case N-516-4 that were approved by the NRC in Revision 19 of RG 1.147. When the ASME revised N-516, the Code Case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions will be retained in Revision 20 of RG 1.147 by stating the provisions of § 50.55a(b)(2)(xii)(A) and (B) must be met when applying this Code Case.

Code Case N-705-1 [Supplement 2, 2017 Edition]

*Type:* Revised.

*Title:* Evaluation Criteria for Temporary Acceptance of Degradation in Moderate Energy Class 2 or 3 Vessels and Tanks, Section XI, Division 1.

The proposed condition on Code Case N-705-1 is identical to the condition on N-705 that was approved by the NRC in Revision 19 of RG 1.147. When the ASME revised N-705, the Code Case was not modified in a way that would make it possible for the NRC to remove the condition. Therefore, the condition would be retained in Revision 20 of RG 1.147.

Code Case N-766-3 [Supplement 2, 2017 Edition]

*Type:* Revised.

*Title:* Nickel Alloy Reactor Coolant Inlay and Onlay for Mitigation of PWR Full Penetration Circumferential Nickel Alloy Dissimilar Metal Welds in Class 1 Items, Section XI, Division 1.

The proposed conditions on Code Case N-766-3 are identical to the conditions on N-766-1 that were approved by the NRC in Revision 19 of RG 1.147. When the ASME revised N-766, the Code Case was not modified in a way that would make it possible for the NRC to remove the conditions. Therefore, the conditions would be retained in Revision 20 of RG 1.147.

Code Case N-831-1 [Supplement 7, 2017 Edition]

*Type:* Revised.

*Title:* Ultrasonic Examination in Lieu of Radiography for Welds in Ferritic or Austenitic Pipe, Section XI, Division 1.

The proposed condition on Code Case N-831-1 is identical to the condition on N-831 that was approved by the NRC in Revision 19 of RG 1.147. When ASME revised N-831, the Code Case was not modified in a way that would make it possible for the NRC to remove the condition. Therefore, the condition

would be retained in Revision 20 of RG 1.147.

Code Case N-847 [Supplement 0, 2017 Edition]

*Type:* New.

*Title:* Partial Excavation and Deposition of Weld Metal for Mitigation of Class 1 Items, Section XI, Division 1.

ASME Code Case N-847 provides guidelines for a repair/mitigation process for welds. The process, excavation and weld repair (EWR), removes susceptible material from the outside diameter of the pipe, and replaces it with more resistant weld material. This technique allows for the potential of two mitigation methods, the use of more crack resistant material and the potential for compressive stresses on the inside surface of the repaired/mitigated weld to arrest or prevent cracking. Finally, the excavation can be done 360-degrees around the weld or only for a partial arc of the weld.

The Code Case would allow for application of this process to both BWR and PWR designs. However, the EWR process, as defined in this code case, has certain challenges addressing the cracking mechanisms in these operating environments and materials. In addition the regulatory requirements or guidelines related to the Code Case vary depending on the design of the reactor. For PWR designs, the inservice inspection rules are provided by § 50.55a(g)(6)(ii)(F), which mandates the implementation of a version of ASME Code Case N-770. For BWR designs, the inservice inspection guidelines are provided by Generic Letter 88-01, "NRC Position on Intergranular Stress Corrosion Cracking (IGSCC) in BWR Austenitic Stainless Steel Piping" or BWRVIP-75-A, "BWR Vessel and Internals Project Technical Basis for Revisions to Generic Letter 88-01 Inspection Schedules." Therefore, the NRC is proposing six conditions to ensure the inservice inspection frequency guidelines of the code case are inline with the previous requirements and guidance, which are based on the effectiveness of the overall design of the repair/mitigation to address the various cracking mechanisms of these operating reactor designs.

The first proposed condition is a continuation of the condition of § 50.55a(g)(6)(ii)(F)(16) which requires that a partial arc EWR, as described in Inspection Item O of ASME Code Case N-770-5, cannot be used without NRC review and approval for PWR designs. The NRC notes that the issues addressed in the final rule incorporating by reference the 2015 and 2017 Editions of

the ASME BPV Code and the 2015 and 2017 Editions of the ASME OM Code remain applicable, and further apply to BWR design application of a partial arc EWR. These concerns are for the effectiveness of the repair through a weld residual stress calculation and flaw growth analysis to confirm design of the mitigation for the required inspection interval, non-destructive examination uncertainty analysis of the as-found flaw remaining in the reactor coolant pressure boundary, and the potential for further crack initiation or growth. Therefore, the NRC requires, through the first condition, that approval of the use of this Code Case is only for the application of the 360-degree EWR.

The second proposed condition is related to Figure 1A and Figure 1B of the Code Case. The NRC has experience with relief request submittals, where the details associated with the configuration of the prep area, where the defect is being removed, have shown sharp bottom edges and steep walls. This geometry can result in welding issues, which could result in unfused material, leading to stress risers, which may promote cracking. Therefore, the NRC requires, through the second condition, that the intersection points at the interface between EWR metal and existing base metal must be rounded to minimize stress concentration.

The third proposed condition is related to Section 2(d)(2) of the Code Case which discusses the flaw evaluations required for the design considerations of the EWR. In recent testing conducted for the NRC measurable stress corrosion cracking (SCC) growth was detected past the interface between the SCC-susceptible and less susceptible material. It was demonstrated that the crack can branch and propagate in a direction normal to the original direction along a SCC-susceptible path. In the Alloy 52M deposited onto Alloy 182 specimens tested, this occurred in the diluted region of the Alloy 52M material as well as the weld metal. Therefore, the NRC requires, through the third condition, that flaw analysis include the potential for crack growth through the dilution zone. As NRC-approved crack growth rates are not available for all material types (e.g., Alloy 690 weld material), the alternative requirements for development of crack growth rates should be consistent with ASME Section XI Appendix C, "Flaw Growth Rate Due to Stress Corrosion Cracking," C-3220(a).

The fourth proposed condition is related to Section 2 of the Code Case. The NRC is requiring the use of

NUREG-2228, "Weld Residual Stress Finite Element Analysis Validation: Part II—Proposed Validation Procedure," because it provides a proven method for validating the weld residual stress analysis methodology. Because the NRC requires the use of NUREG-2228 within this condition on the requirements in the Code Case, the NRC is incorporating by reference NUREG-2228 into § 50.55a(a)(3)(iv).

The fifth condition is related to the longer term volumetric inspection frequencies of Table 1, including notes (1), (3), and (4). These notes provide the BWR design inspection frequency of various EWR types based on Generic Letter 88-01 (1988) as supplemented by Generic Letter 88-01, Supplement 1 (1992), "NRC Position on Intergranular Stress Corrosion Cracking (IGSCC) in BWR Austenitic Stainless Steel Piping" or BWRVIP-75-A, "BWR Vessel and Internals Project Technical Basis for Revisions to Generic Letter 88-01 Inspection Schedules." The NRC has concluded that the inspection requirements for EWRs for BWRs need to be augmented.

The first volumetric examination following application of BWR EWR-2A, EWR-1B, and EWR-2B welds is performed to verify effectiveness of the repair/mitigation before the new weld can be placed in a longer term volumetric inspection frequency. The Code Case allows licensees the option of performing this examination during the first or second refueling outage after installation. However, based on the lower operating temperatures of a BWR (approximately 546 degree F to 558 degree F), and hence the potential slow crack growth rate of the remaining flaw left in service, the NRC has concluded that the examination should occur during the second refueling outage after the EWR application to provide adequate time for any potential measurable flaw growth to occur or in the case of an EWR-2A, for crack initiation and growth to occur.

The long term volumetric inspections for BWRs require modification because: (a) For EWR-1A EWRs, the augmented inspection requirements are consistent with the conditions of the inspection frequencies of Code Case N-770-5. These inspection frequency requirements were previously developed by the NRC based on the capabilities of the EWR process to address stress corrosion cracking while providing significant credit for the use of hydrogen water chemistry/noble metal chemical addition controls; and (b) for EWR-1B EWRs, due to the design which would allow a crack to be left in service, should not be allowed to go

uninspected for the remainder of plant life. Therefore, the NRC requires the long term volumetric inspection of these welds at each 10-year inservice inspection interval. The NRC notes that this condition is consistent with the NRC condition established in § 50.55a for Inspection Item N-1 EWRs (EWR that meets stress criteria; however, a crack is present).

The sixth condition is related to Table 1, Note (1), and the option to use an unspecified alternative to determine examination frequencies and scope expansion criteria. Note (1) specifies the use of NRC Generic Letter 88-01 and includes BWRVIP-75-A as an example of an alternative. The NRC has concluded that NRC Generic Letter 88-01, (1988) as supplemented by Generic Letter 88-01, Supplement 1 (1992), or BWRVIP-75-A, represent sufficient requirements, subject to the fifth condition above, to determine examination frequencies and scope expansion criteria. However, Note (1) would allow the use of other, unknown alternatives and does not provide criteria to ensure alternatives are adequate for this purpose. Therefore, to ensure that licensees use an adequate standard to determine examination frequencies and scope expansion criteria, the sixth condition requires that licensees must not use an alternative other than those specified in Note (1).

Code Case N-864 [Supplement 2, 2017 Edition]

*Type:* New.

*Title:* Reactor Vessel Threads in Flange Examinations, Section XI, Division 1.

Code Case N-864 proposes to eliminate the required ASME Code, Section XI examination for the reactor vessel threads-in-flange for all inservice inspection intervals. The NRC has previously granted alternatives under § 50.55a(z) that eliminate the reactor pressure vessel threads-in-flange examinations (ASME Section XI, Examination Category B-G-1, Item No. B6.40) for up to two inservice inspection intervals through the NRC's alternative request process. For alternatives that requested elimination of the examination for a second consecutive ten-year inservice inspection interval, the NRC has been requesting additional information on activities performed to ensure that the condition of the reactor pressure vessel threads-in-flange receives some level of monitoring. These activities typically have been care and maintenance of the reactor vessel threads-in-flange (and studs) whenever the closure head is removed. The NRC has limited approval

of such requests to two subsequent inservice inspection intervals because the NRC has determined that complete elimination of the examinations does not provide adequate protection against long-term degradation of the threads-in-flange. The NRC is proposing conditions on the use of Code Case N-864 that are consistent with the limits the NRC has placed on similar alternatives requests.

The first proposed condition in Code Case N-864 requires that the reactor pressure vessel threads-in-flange examinations (ASME Section XI, Examination Category B-G-1, Item No. B6.40) must be performed in at least every third 10-year ISI interval. The first proposed condition also limits the application of Code Case N-864 at facilities that have been authorized under 10 CFR 50.55a(z) to use alternatives that eliminate reactor pressure vessel threads-in-flange examinations to ensure that the required examination is performed at least every third 10-year inservice inspection interval.

The second proposed condition in Code Case N-864 ensures that sufficient monitoring and maintenance activities are performed when the Code Case is applied.

Code Case N-869 [Supplement 6, 2017 Edition]

*Type:* New.

*Title:* Evaluation Criteria for Temporary Acceptance of Flaws in Class 2 or 3 Piping, Section XI, Division 1.

Code Case N-869 contains provisions for temporary acceptance of flaws, including through-wall flaws in Class 2 or 3 piping including elbows, pipe bends, reducers, and branch tees, whose maximum operating pressure is greater than 275 psig, and does not exceed 600 psig, without performing a repair/replacement activity. The Code Case contains provisions regarding the scope, flaw characterization, periodic leakage monitoring, flaw evaluation, and augmented examinations. The NRC finds that the Code Case provides reasonable assurance that structural integrity of degraded piping will be maintained until the next scheduled refueling outage. However, the NRC finds that the augmented examination provisions in Section 5 of the Code Case are inadequate and need additional requirements.

When a licensee applies N-869 to disposition a through-wall leak or wall thinning in a piping system, Section 5 of the Code Case requires augmented examinations for flaws and significant flaws. The augmented examination

requirements in N-869 are the same as in Code Case N-513-3.

In 2018, the NRC found an instance where a licensee misinterpreted the provisions in Section 5 of N-513-3 and did not perform the required augmented examinations to disposition a through-wall leak in a service water system pipe. Other licensees have similarly misinterpreted the augmented examination provisions in Section 5 of N-513-3. The NRC found that the issue stems from the definition of the terms “flaw” and “significant flaw” in Sections 5(b) and 5(c) of N-513-3, respectively. The NRC, therefore, proposes two conditions to define “flaw” and “significant flaw” as those terms are used in Section 5 of N-869. Licensees would be required to apply these definitions to Section 5 when using the Code Case.

The first proposed condition defines a “flaw” as a non-through-wall planar or nonplanar flaw with a wall thickness less than 87.5 percent of the nominal wall thickness of the pipe or the design minimum wall thickness. The NRC notes that the pipe wall thickness at the time of the plant construction may deviate from the nominal pipe wall thickness slightly as part of manufacturing process. The generally accepted deviation is 12.5 percent of the nominal pipe wall thickness or the design minimum wall thickness.

The second proposed condition defines “significant flaw” as any pipe location that does not satisfy the provisions of Section 3 of N-869 or if any detected flaw that has a depth greater than 75 percent of the pipe wall thickness. The NRC staff notes that the criterion of the 75 percent wall thickness criterion originates from the provisions of IWC/IWD-3643 of the ASME Code, Section XI, which prohibit a flaw that exceeds 75 percent of the pipe wall thickness to remain in service. Under Section 5 of N-869, a planar flaw that exceeds 75 percent of the pipe wall thickness may remain in service; however, the licensee needs to perform an augmented examination.

Code Case N-876 [Supplement 2, 2017 Edition]

*Type:* New.

*Title:* Austenitic Stainless Steel Cladding and Nickel Base Cladding Using Ambient Temperature Automatic or Machine Dry Underwater Laser Beam Welding (ULBW) Temper Bead Technique, Section XI, Division 1.

Some irradiated stainless steel reactor vessel internal components are susceptible to experiencing irradiation assisted stress corrosion cracking. Code Case N-876 provides guidelines for

repair welding the irradiated stainless steel components inside the reactor vessel. Code Case N-876 provides an alternative to the cladding temper bead repair rules of Section XI, IWA-4400, which requires preheat and postweld heat treatment. This alternative establishes new rules governing ambient temperature temper bead cladding repairs using the ULBW process.

The NRC is proposing two conditions on this Code Case. The first proposed condition that must be applied when performing ULBW on irradiated materials provides guidance on what level of neutron irradiation and/or helium content would require review and approval by the NRC because of the impact of neutron fluence on weldability. The second proposed condition limits the depth of the cladding repair due to concerns with the fracture toughness of the base metal.

The technical basis for imposing conditions on the welding of irradiated materials are that neutrons can generate helium atoms within the metal lattice through transmutation of various isotopes of boron and/or nickel. At high temperatures, such as occurs during welding, these helium atoms rapidly diffuse through the metal lattice, coalescing and forming helium bubbles at the grain boundaries. In sufficient concentration, these helium bubbles can cause grain boundary cracking that occurs in the fusion zones and heat affected zones during the heat-up/cooldown cycle.

The first proposed condition applies conditions already applicable to Code Case N-516-5 “Underwater Welding Section XI, Division 1,” that the provisions of § 50.55a(b)(2)(xii)(A) and (B) must be met. This regulation provides limits on specific levels of neutron irradiation and/or helium content, above which welding is prohibited without prior NRC review and approval. The NRC is proposing to apply the same condition to uses of Code Case N-876.

The second proposed condition is necessary because the Code Case does not require impact testing of the base metal heat affected zone (HAZ) to verify adequate fracture toughness. The Code Case allows the depth of the repair cavity into the ferritic base metal to be up to ¼”. This would allow welding directly to the base metal, thus it will affect the fracture toughness of the base metal in the HAZ. Therefore, the NRC is proposing a condition restricting the use of the Code Case to repairs where at least ⅛” of cladding remains. The basis for the ⅛” limit is that this amount of austenitic material between the ferritic base metal and the first weld layer has

generally been considered to sufficiently limit the heat input to the base metal such that deleterious effects on the fracture toughness will not occur; therefore, impact testing of the base metal is not necessary. The NRC notes that Code Case N-803, which is approved without conditions, allows repair of ferritic base material using nonferritic weld filler material based on welding procedure qualifications performed using tensile tests, side bends, and impact tests, and could be used to perform a cladding repair in which excavation into the base metal is required.

Code Case N-878 [Supplement 1, 2017 Edition]

*Type:* New.

*Title:* Alternative to QA Program Requirements of IWA-4142, Section XI, Division 1.

Code Case N-878 provides alternatives to the quality assurance requirements in IWA-4142 for procurement of Class 1, 2, or 3 non-welded fittings. This Code Case addresses the testing and certification of material used in the manufacture of non-welded fittings, but does not address how the licensee must ensure that the procured non-welded fittings meet the design and testing requirements of the ASME Code, Section III, NB/NC/ND-3671.7 for Class 1, 2, or 3 applications. Verification that the Section III requirements for the design and testing of these non-welded fittings have been met prior to use is essential in ensuring the structural integrity of these Class 1, 2 and 3 systems is maintained. Therefore, the NRC is proposing conditions for the licensee to verify the design and testing activities associated with qualification of non-welded fittings required by Section III, NB/NC/ND-3671.7 that are performed by the fabricator.

Code Case N-880 [Supplement 2, 2017 Edition]

*Type:* New.

*Title:* Alternative to Procurement Requirements of IWA-4143 for Small Nonstandard Welded Fittings, Section XI, Division 1.

Code Case N-880 provides alternatives to the material procurement requirements of IWA-4142 and IWA-4143 for small nonstandard welded fittings. This Code Case does not address how the licensee must ensure the procured welded fittings meet the design and testing requirements of the ASME Code, Section III, NB/NC/ND-3671.7 for Class 1, 2, or 3 applications. Verification that the Section III requirements for the design and testing

of these welded fittings have been met prior to use is essential in ensuring the structural integrity of these Class 1, 2 and 3 systems is maintained. Therefore, the NRC is proposing conditions requiring the licensee to verify the design and testing activities associated with qualification of welded fittings required by Section III, NB/NC/ND-3671.7 that are performed by the fabricator.

Code Case N-889 [Supplement 7, 2017 Edition]

*Type:* New.

*Title:* Reference Stress Corrosion Crack Growth Rate Curves for Irradiated Austenitic Stainless Steel in Light-Water Reactor Environments, Section XI, Division 1.

Code Case N-889 provides a new crack growth rate (CGR) law for irradiation-assisted stress corrosion cracking. The Code Case is applicable to wrought austenitic stainless steels and associated weld metals, as well as cast austenitic stainless steels. The proposed CGR law requires the user to first calculate irradiated yield stress from the dose to the material. There are two yield stress models: One for Molybdenum bearing stainless steels and one for stainless steels without Molybdenum. Once irradiated yield stress has been determined, the user calculates the CGR as a function of applied crack driving force and temperature.

The staff identified three concerns with the technical basis of this Code Case. The first concern relates to the limited CGR data at dose levels greater than 20 displacements per atom (dpa). The proposed CGR law indicates that the irradiated yield stress (and, consequently, the CGR) increases with fluence up to a dose of 20 dpa, at which point the irradiated yield's stress ceases to increase appreciably with further dose accumulation. While the data at dose levels greater than 20 dpa does show a plateau behavior in the CGR, the staff's analyses of that data suggests that areas of high CGR were averaged over the industry calculation of CGR, which increases the uncertainty in the high dose CGRs. Therefore, due to the limited data and the associated high uncertainty at high fluence, the staff's confidence in CGRs at dose levels greater than 20 dpa is low.

The second concern is the effects of uncertainty in the irradiated yield strength value for an individual material-heat. This topic is discussed in Section 4.7 of the technical basis report for Code Case N-889. The NRC also conducted separate analyses. While the results of the NRC's findings are generally consistent with the results in

Section 4.7, the interpretation of their significance is not consistent. For materials with yield strengths greater than 600 MPa (*i.e.*, more highly-irradiated materials), the expected CGR for a material with a yield strength in the 95th percentile is less than two times the CGR predicted by the Code Case, which is not a significant difference. However, for materials with yield strength values less than 250 MPa (*i.e.*, unirradiated or minimally irradiated materials), the expected CGR for a material in the 95th percentile can be more than five times greater than the CGR predicted by the Code Case. Hence, the NRC's concern is that the CGRs for individual low yield strength materials, or materials with low fluence, could be significantly underpredicted by the Code Case.

The final concern is related to the data used in the development of the irradiated yield stress model. The methodology for addressing cold work in this model was developed in MRP-135, Revision 1, while the model itself was developed in MRP-211, Revision 0. The database underlying the model included hundreds of yield strength measurements on initially annealed and cold-worked Types 304, 316, and 347/348 stainless steel materials. However, most of the data were for annealed Type 304 and cold-worked Type 316 stainless steels. Revision 1 of MRP-211 contained additional yield strength data, including significantly more data for cold-worked Types 304 and 347 stainless steel. The authors of the Code Case, as documented in Section 4.5 of the Additional Basis Report dated February 5, 2018, evaluated the Code Case yield stress model with some of this additional data and found agreement between the model and the additional data. However, the Code Case authors excluded new data for cold-worked Type 304 and 347 stainless steel materials. Therefore, the technical basis document for Code Case N-889 does not directly address whether cold-worked Type 304 and 347 (non-Molybdenum bearing) materials are adequately predicted by the irradiated yield strength model in the Code Case. Therefore, the NRC is proposing three conditions on this Code Case.

The first proposed condition states that this Code Case may not be applied for neutron exposures greater than 20 dpa. This condition addresses the NRC concern that there is sparse data with high uncertainty beyond 20 dpa. Given that the predicted CGR saturates at higher fluence, this condition prevents potential underprediction of the CGR in this fluence regime.

The second proposed condition states that at dose levels below 0.75 dpa, the user must use the higher of the Code Case N-889 or the Section XI, Nonmandatory Appendix C, C-8520 CGR predictions. This condition addresses the NRC concern related to possible underprediction of CGR in Code Case N-889 for materials with calculated irradiated yield strength less than 250 MPa.

The final proposed condition states that the irradiated yield stress model for cold-worked Molybdenum bearing materials must be used for cold-worked non-Molybdenum bearing stainless steels (including Type 204 and 247 stainless steels). This condition addresses the NRC concern that data for cold-worked non-Molybdenum bearing steels were not appropriately considered during development of Code Case N-889. The NRC performed its own evaluation of cold-worked Type 304 and 347 stainless steels in the MRP-211 database and found that the yield strength was better predicted by the Code Case's Molybdenum bearing model than with the Code Case's non-Molybdenum bearing model.

Code Case N-890 [Supplement 0, 2019 Edition]

*Type:* New.

*Title:* Materials Exempted From G-2110(b) Requirements, Section XI, Division 1.

Code Case N-890 provides an alternative to Section XI, G-2110(b) which removes the requirement of, "obtaining fracture toughness data for at least three heats," for using the static fracture toughness curve ( $K_{Ic}$ ) curve for specific materials with a minimum specified yield strength at room temperature between 50 kilopound per square inch (ksi) and 90 ksi. Code Case N-890 would allow the toughness of four ferritic steels (SA-508 Grade 2 Class 2, SA-508 Grade 3 Class 2, SA-533 Type A Class 2 and SA-533 Type B Class 2) with specified minimum yield strength greater than 50 ksi to be characterized by Figure G-2110-1 (*i.e.*, the Section XI  $K_{Ic}$  curve).

The NRC identified one technical concern when reviewing the technical basis of this Code Case. The technical basis provided appropriate data to justify use of the  $K_{Ic}$  curve for several materials listed in the Code Case. However, for SA-533 Type B, Class 2 materials, the NRC observed that in the technical basis document, there is no fracture toughness data associated with the weld and heat affected zone to support exclusion of the fracture toughness testing requirements for these materials.



As such, the proposed NRC condition requires the user to comply with the provisions of Section III, NB-2300 and Section III, G-2110(b) to demonstrate the applicability of the ASME  $K_{Ic}$  curve to SA-533 Type B, Class 2 material. These provisions require the user to generate the necessary toughness data to demonstrate that the ASME  $K_{Ic}$  curve is a conservative representation of the actual material toughness.

### 3. ASME Operation and Maintenance Code Cases (DG-1368/RG 1.192)

Code Case OMN-1, Revision 2 [2020 Edition]

*Type:* Reaffirmed.

*Title:* Alternative Rules for Preservice and Inservice Testing of Active Electric Motor-Operated Valve Assemblies in Light-Water Reactor Power Plants.

The proposed conditions on Code Case OMN-1, Revision 2 [2020 Edition] are identical to the conditions on OMN-1, Revision 2 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-1, Revision 2 was reaffirmed by the ASME in the 2020 Edition with no change to the Code Case. Therefore, the conditions would be retained in Revision 4 of RG 1.192.

Code Case OMN-3 [2020 Edition]

*Type:* Reaffirmed.

*Title:* Requirements for Safety Significance Categorization of Components Using Risk Insights for Inservice Testing of LWR Power Plants.

The proposed conditions on Code Case OMN-3 [2020 Edition] are identical to the conditions on OMN-3 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-3 was reaffirmed by the ASME in the 2020 Edition with no change to the Code Case. Therefore, the conditions would be retained in Revision 4 of RG 1.192.

Code Case OMN-4 [2020 Edition]

*Type:* Reaffirmed.

*Title:* Requirements for Risk Insights for Inservice Testing of Check Valves at LWR Power Plants.

The proposed conditions on Code Case OMN-4 [2020 Edition] are identical to the conditions on OMN-4 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-4 was reaffirmed by the ASME in the 2020 Edition with no change to the Code Case. Therefore, the conditions would be retained in Revision 4 of RG 1.192.

Code Case OMN-9 [2020 Edition]

*Type:* Reaffirmed.

*Title:* Use of a Pump Curve for Testing.

The proposed conditions on Code Case OMN-9 [2020 Edition] are identical to the conditions on OMN-9 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-9 was reaffirmed by the ASME in the 2020 Edition with no change to the Code Case. Therefore, the conditions would be retained in Revision 4 of RG 1.192.

Code Case OMN-12 [2020 Edition]

*Type:* Reaffirmed.

*Title:* Alternative Requirements for Inservice Testing Using Risk Insights for Pneumatically and Hydraulically Operated Valve Assemblies in Light-Water Reactor Power Plants (OM-Code 1998, Subsection ISTC).

The proposed conditions on Code Case OMN-12 [2020 Edition] are identical to the conditions on OMN-12 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-12 was reaffirmed by the ASME in the 2020 Edition with no change to the Code Case. Therefore, the conditions would be retained in Revision 4 of RG 1.192.

Code Case OMN-18 [2020 Edition]

*Type:* Reaffirmed.

*Title:* Alternate Testing Requirements for Pumps Tested Quarterly Within  $\pm 20\%$  of Design Flow.

The proposed conditions on Code Case OMN-18 [2020 Edition] are identical to the conditions on OMN-18 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-18 was reaffirmed by the ASME in the 2020 Edition with no change to the Code Case. Therefore, the conditions would be retained in Revision 4 of RG 1.192.

Code Case OMN-19 [2020 Edition]

*Type:* Reaffirmed.

*Title:* Alternative Upper Limit for the Comprehensive Pump Test.

The proposed conditions on Code Case OMN-19 [2020 Edition] are identical to the conditions on OMN-19 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The OMN-19 was reaffirmed by the ASME in the 2020 Edition with no change to the Code Case. Therefore, the conditions would be retained in Revision 4 of RG 1.192.

Code Case OMN-20 [2020 Edition]

*Type:* Reaffirmed.

*Title:* Inservice Test Frequency.

The proposed conditions on Code Case OMN-20 [2020 Edition] are identical to the conditions on OMN-20 [2017 Edition] that were approved by the NRC in Revision 3 of RG 1.192. The

OMN-20 was reaffirmed by the ASME in the 2020 Edition with no change to the Code Case. Therefore, the conditions would be retained in Revision 4 of RG 1.192.

### C. ASME Code Cases Not Approved for Use (DG-1369/RG 1.193)

The ASME Code Cases that are currently issued by the ASME but not approved for generic use by the NRC are listed in RG 1.193, "ASME Code Cases not Approved for Use." In addition to the ASME Code Cases that the NRC has found to be technically or programmatically unacceptable, RG 1.193 includes Code Cases on reactor designs for high-temperature gas-cooled reactors and liquid metal reactors, reactor designs not currently licensed by the NRC, and certain requirements in Section III, Division 2, for submerged spent fuel waste casks, that are not endorsed by the NRC. Regulatory Guide 1.193 complements RGs 1.84, 1.147, and 1.192. It should be noted that the NRC is not proposing to adopt any of the Code Cases listed in RG 1.193.

## IV. Section-by-Section Analysis

The following paragraphs in § 50.55a would be revised as follows:

### Paragraph (a)(3) Introductory Text

This proposed rule would add a reference to NUREG-2228 that is acceptable as specified in the conditions when implementing Code Cases listed in certain NRC regulatory guides.

### Paragraph (a)(3)(i)

This proposed rule would revise the reference to "NRC Regulatory Guide 1.84, Revision 38," by removing "Revision 38" and adding in its place "Revision 39" and change the month and year for the document's revision date.

### Paragraph (a)(3)(ii)

This proposed rule would revise the reference to "NRC Regulatory Guide 1.147, Revision 19" by removing "Revision 19" and adding in its place "Revision 20" and change the month and year for the document's revision date.

### Paragraph (a)(3)(iii)

This proposed rule would revise the reference to "NRC Regulatory Guide 1.192, Revision 3" by removing "Revision 3" and adding in its place "Revision 4" and change the month and year for the document's revision date.

### Paragraph (a)(3)(iv)

This proposed rule would add new paragraph (a)(3)(iv) to reference

NUREG-2228, “Weld Residual Stress Finite Element Analysis Validation: Part II—Proposed Validation Procedure,” dated July 2020, which is referenced in RG 1.147, Revision 20.

*Paragraph (b)(3)(iv), Table II*

This proposed rule would capitalize the word “(Years)” in two of the three column headings.

## V. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

## VI. Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comment on the draft regulatory analysis. The regulatory analysis is available as indicated in the “Availability of Documents” section of this document. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** section of this document.

## VII. Backfitting and Issue Finality

The provisions in this proposed rule would allow licensees and applicants to voluntarily apply NRC-approved Code Cases, sometimes with NRC-specified conditions. The approved Code Cases are listed in three RGs that are proposed to be incorporated by reference into § 50.55a. An applicant’s or a licensee’s voluntary application of an approved Code Case does not constitute backfitting, because there is no imposition of a new requirement or new position.

Similarly, voluntary application of an approved Code Case by a 10 CFR part 52 applicant or licensee does not represent NRC imposition of a requirement or action, and therefore is not inconsistent with any issue finality provision in 10 CFR part 52. For these reasons, the NRC finds that this proposed rule does not involve any provisions requiring the preparation of a backfit analysis or documentation demonstrating that one or more of the

issue finality criteria in 10 CFR part 52 are met.

## VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

## IX. Environmental Assessment and Proposed Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission’s regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment; therefore, an environmental impact statement is not required.

The determination of this environmental assessment is that there will be no significant effect on the quality of the human environment from this action. Interested parties should note, however, that comments on any aspect of this environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** section of this document.

As voluntary alternatives to the ASME Code, NRC-approved Code Cases provide an equivalent level of safety. Therefore, the probability or consequences of accidents is not changed. There are also no significant, non-radiological impacts associated with this action because no changes would be made affecting non-radiological plant effluents and because no changes would be made in activities that would adversely affect the environment. The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action.

## X. Paperwork Reduction Act Statement

This proposed rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule has been submitted to the Office of Management and Budget (OMB) for approval of the information collections.

*Type of submission, new or revision:* Revision.

*The title of the information collection:* Domestic Licensing of Production and Utilization Facilities: Updates to Incorporation by Reference and Regulatory Guides.

*The form number if applicable:* Not applicable.

*How often the collection is required:* On occasion.

*Who will be required or asked to report:* Operating power reactor licensees and applicants for power reactors under construction.

*An estimate of the number of annual responses:* – 28 (reduction).

*The estimated number of annual respondents:* – 28 (reduction).

*An estimate of the total number of hours needed annually to complete the requirement or request:* – 6,720 hours (reduction of reporting and recordkeeping hours).

*Abstract:* This proposed rule is the latest in a series of rulemakings that incorporate by reference the latest versions of several RGs identifying new and revised unconditionally or conditionally acceptable ASME Code Cases that are approved for use. The incorporation by reference of these Code Cases will reduce the number of alternative requests submitted by licensees under § 50.55a(z) by an estimated 28 requests annually.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of the burden of the proposed 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 proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package and proposed rule is available in ADAMS under Accession No. ML20132A240 or can be obtained free of charge by contacting the NRC’s Public Document reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resources@nrc.gov](mailto:pdr.resources@nrc.gov). You may obtain information and comment submissions related to the OMB clearance package by searching on <https://www.regulations.gov> under Docket ID NRC–2017–0025.

You may submit comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the four issues, by the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2017–0025.

- *Mail comments to:* FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0011), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov).

Submit comments on this collection of information by March 4, 2021. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

#### *Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

### **XI. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is continuing to use the ASME BPV and OM Code Cases, which are ASME-approved voluntary alternatives to compliance with various provisions of the ASME BPV and OM Codes. The NRC's approval of the ASME Code Cases is accomplished by amending the NRC's regulations to incorporate by reference the latest revisions of the following, which are the subject of this rulemaking, into § 50.55a: RG 1.84, Revision 39; RG 1.147, Revision 20; RG 1.192, Revision 4; and NUREG–2228. The RGs list the ASME Code Cases that the NRC has approved for use. The ASME Code Cases are national consensus standards as defined in the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119. The ASME Code Cases constitute voluntary consensus standards, in which all interested parties (including the NRC and

licensees of nuclear power plants) participate. The NRC invites comment on the applicability and use of other standards.

### **XII. Incorporation by Reference—Reasonable Availability to Interested Parties**

The NRC proposes to incorporate by reference three NRC RGs that list new and revised the ASME Code Cases that the NRC has approved as voluntary alternatives to certain provisions of NRC-required Editions and Addenda of the ASME BPV Code and the ASME OM Code. The draft regulatory guides, DG–1366, DG–1367, and DG–1368, will correspond to final RG 1.84, Revision 39; RG 1.147, Revision 20; and RG 1.192, Revision 4, respectively. The NRC also proposes to incorporate by reference NUREG–2228, which is referenced in DG–1367 (RG 1.147, Revision 20). As described in this document, this report pertains to a proposed condition on Code Case N–847.

The NRC is required by law to obtain approval for incorporation by reference from the Office of the Federal Register (OFR). The OFR's requirements for incorporation by reference are set forth in 1 CFR part 51. On November 7, 2014, the OFR adopted changes to its regulations governing incorporation by reference (79 FR 66267). The OFR regulations require an agency to include in a proposed rule a discussion of the ways that the materials the agency proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. The discussion in this section complies with the requirement for proposed rules as set forth in 1 CFR 51.5(a)(1).

The NRC considers “interested parties” to include all potential NRC stakeholders, not only the individuals and entities regulated or otherwise subject to the NRC's regulatory oversight. These NRC stakeholders are not a homogenous group, so the considerations for determining “reasonable availability” vary by class of interested parties. The NRC identified six classes of interested parties with regard to the material to be incorporated by reference in an NRC rule:

- Individuals and small entities regulated or otherwise subject to the NRC's regulatory oversight. This class includes applicants and potential applicants for licenses and other NRC regulatory approvals, and who are subject to the material to be incorporated by reference. In this

context, “small entities” has the same meaning as set out in 10 CFR 2.810.

- Large entities otherwise subject to the NRC's regulatory oversight. This class includes applicants and potential applicants for licenses and other NRC regulatory approvals, and who are subject to the material to be incorporated by reference. In this context, a “large entity” is one that does not qualify as a “small entity” under 10 CFR 2.810.

- Non-governmental organizations with institutional interests in the matters regulated by the NRC.

- Other Federal agencies, states, local governmental bodies (within the meaning of 10 CFR 2.315(c)).

- Federally-recognized and State-recognized Indian tribes.

- Members of the general public (*i.e.*, individual, unaffiliated members of the public who are not regulated or otherwise subject to the NRC's regulatory oversight) who need access to the materials that the NRC proposes to incorporate by reference in order to participate in the rulemaking.

The NUREG–2228 and three draft RGs that the NRC proposes to incorporate by reference in this proposed rule are available without cost and can be read online or downloaded online. The NUREG–2228 and draft RGs can be viewed, by appointment, at the NRC Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301–415–7000; email: [Library.Resource@nrc.gov](mailto:Library.Resource@nrc.gov). The final RGs, if approved by the OFR for incorporation by reference, will also be available for inspection at the OFR, as described in 10 CFR 50.55a(a).

Because access to the three draft regulatory guides, and eventually, the final regulatory guides, are available in various forms at no cost, the NRC determines that the three draft regulatory guides, DG–1366, DG–1367, and DG–1368, and final RG 1.84, Revision 39; RG 1.147, Revision 20; and RG 1.192, Revision 4, once approved by the OFR for incorporation by reference, are reasonably available to all interested parties.

### **XIII. Availability of Documents**

The documents identified in the following tables are available to interested persons through one or more of the following methods, as indicated. Throughout the development of this rule, the NRC may post documents related to this rule, including public comments, on the Federal rulemaking website at: <https://www.regulations.gov> under Docket ID NRC–2017–0025. The Federal rulemaking website allows you

to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket

folder (NRC–2017–0025); (2) click the “Sign up for Email Alerts” link; and (3) enter your email address and select how

frequently you would like to receive emails (daily, weekly, or monthly).

TABLE III—RULEMAKING RELATED DOCUMENTS

Document title	ADAMS Accession No. or <b>Federal Register</b> citation, or website
Final Rule — “Incorporation by Reference of ASME BPV and OM Code Cases,” July 8, 2003 .....	68 FR 40469.
Final Rule — “Incorporation by Reference of American Society of Mechanical Engineers Codes and Code Cases,” July 18, 2017.	82 FR 32934.
Zorita Internals Research Project (MRP–440) Testing of Highly-Irradiated Baffle Plate Material 3002016015 Final Report, October 2019.	Available for purchase.
ASME Code, Section III, NB–2330, “Test Requirements and Acceptance Standards,” July 2017 .....	Available for purchase.
BWRVIP–75–A, “BWR Vessel and Internals Project, Technical Basis for Revisions to Generic Letter 88–01 Inspection Schedules,” October 2005.	Available for purchase.
Final Rule — “Approval of American Society of Mechanical Engineers’ Code Cases,” March 16, 2020 .....	85 FR 14736.
RG 1.193, ASME Code Cases Not Approved for Use, Revision 7 (DG–1369) .....	ML20120A627.
Rulemaking—Proposed Rule—Regulatory Analysis for the American Society of Mechanical Engineers Code Cases, RG 1.84, Rev 39; RG 1.147, Rev 20; RG 1.192, Rev 4; and RG 1.193, Rev 7.	ML20133K152.
GL–88–01, Supplement 1, “NRC Position on Intergranular Stress Corrosion Cracking (IGSCC) in BWR Austenitic Stainless Steel Piping (Generic Letter 88–01, Supplement 1),” February 4, 1992.	<a href="https://www.nrc.gov/reading-rm/doc-collections/gen-comm/gen-letters/1988/gl88001s1.html">https://www.nrc.gov/reading-rm/doc-collections/gen-comm/gen-letters/1988/gl88001s1.html</a> .
GL–88–01, “NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping (Generic Letter No. 88–01),” January 25, 1988.	<a href="https://www.nrc.gov/reading-rm/doc-collections/gen-comm/gen-letters/1988/gl88001.html">https://www.nrc.gov/reading-rm/doc-collections/gen-comm/gen-letters/1988/gl88001.html</a> .
Final Rule—“Approval of American Society of Mechanical Engineers 2015–20017 Code Editions, Incorporation by Reference,” May 4, 2020.	85 FR 26540.

#### *Documents Proposed To Be Incorporated by Reference*

The NRC proposes to incorporate by reference three NRC RGs, as set forth in

Table IV, that list new and revised ASME Code Cases that the NRC has approved as voluntary alternatives to certain provisions of NRC-required Editions and Addenda of the ASME

BPV Code and the ASME OM Code. The NRC also proposes to incorporate by reference NUREG–2228, as set forth in Table V, that is referenced within a condition in RG 1.147, Revision 20.

TABLE IV—DRAFT REGULATORY GUIDES PROPOSED TO BE INCORPORATED BY REFERENCE IN 10 CFR 50.55a

Document title	ADAMS Accession No./ <b>Federal Register</b> citation
RG 1.84, Design, Fabrication, and Materials Code Case Acceptability, ASME Section III, Revision 39, (DG–1366)	ML20120A633.
RG 1.147, Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1, Revision 20, (DG–1367)	ML20120A631.
RG 1.192, Operation and Maintenance Code Case Acceptability, ASME OM Code, Revision 4, (DG–1368) .....	ML20120A629.

TABLE V—RELATED DOCUMENTS PROPOSED TO BE INCORPORATED BY REFERENCE IN 10 CFR 50.55a

Document title	ADAMS Accession No.
NUREG–2228, “Weld Residual Stress Finite Element Analysis Validation: Part II—Proposed Validation Procedure,” July 2020.	ML20212L592.

#### *Code Cases for Approval in This Proposed Rule*

The ASME BPV Code Cases that the NRC is proposing to approve as alternatives to certain provisions of the ASME BPV Code, as set forth in Table VI, are being made available by the ASME for read-only access during the public comment period on <https://go.asme.org/NRC-ASME-CC>.

The ASME OM Code Cases that the NRC is proposing to approve as alternatives to certain provisions of the ASME OM Code, as set forth in Table

VI, are being made available for read-only access during the public comment period by the ASME on <https://go.asme.org/NRC-ASME-CC>.

The ASME is making the Code Cases listed in Table VI available for limited, read-only access at the request of the NRC. The NRC believes that stakeholders need to be able to read these Code Cases in order to provide meaningful comment on the three RGs (listed in Table IV) that the NRC is proposing to incorporate by reference into § 50.55a. It is the NRC’s position

that the listed Code Cases, as modified by any conditions contained in the three RGs and thus serving as alternatives to requirements in § 50.55a, are legally-binding regulatory requirements. An applicant or licensee must comply with a listed Code Case and any conditions to be within the scope of the NRC’s approval of the Code Case as a voluntary alternative for use. These requirements cannot be fully understood without knowledge of the Code Case to which the proposed condition applies, and to this end, the NRC has requested that the

ASME provide limited, read-only access to the Code Cases in order to facilitate meaningful public comment.

TABLE VI—ASME CODE CASES PROPOSED FOR NRC APPROVAL

Code Case No.	Supplement	Title
<b>Boiler and Pressure Vessel Code Section III</b>		
N-71-20 .....	6 (2015 Edition) .....	Additional Materials for Subsection NF, Class 1, 2, 3, and MC Supports Fabricated by Welding, Section III, Division 1.
N-155-3 .....	5 (2015 Edition) .....	Fiberglass Reinforced Thermosetting Resin Pipe, Section III, Division 1.
N-249-17 .....	0 (2019 Edition) .....	Additional Materials for Subsection NF, Classes 1, 2, 3, and MC Supports Fabricated without Welding Section III, Division 1.
N-539-1 .....	0 (2017 Edition) .....	UNS N08367 in Class 2 and 3 Valves, Section III, Division 1.
N-692-1 .....	6 (2015 Edition) .....	Use of Standard Welding Procedures, Section III, Division 1.
N-721-1 .....	5 (2017 Edition) .....	Alternative Rules for Linear Piping Supports, Section III, Division 1.
N-755-4 .....	1 (2017 Edition) .....	Use of Polyethylene (PE) Class 3 Plastic Pipe, Section III, Division 1.
N-779 .....	9 (2007 Edition) .....	Alternative Rules for Simplified Elastic-Plastic Analysis Class 1, Section III, Division 1.
N-801-3 .....	1 (2017 Edition) .....	Rules for Repair of N-Stamped Class 1, 2, and 3 Components, Section III, Division 1.
N-822-4 .....	7 (2015 Edition) .....	Application of the ASME Certification Mark, Section III, Divisions 1, 2, 3, and 5.
N-852 .....	0 (2015 Edition) .....	Application of the ASME NPT Stamp, Section III, Divisions 1, 2, 3, and 5.
N-855 .....	2 (2015 Edition) .....	SB-148 C95800 Valves for Class 3 Construction, Section III, Division 1.
N-856 .....	2 (2015 Edition) .....	SA-494 Grade CW-12MW (UNS N30002) Nickel Alloy Castings for Construction of NPS 2½ and Smaller Flanged Valves for Class 3 Construction, Section III, Division 1.
N-859 .....	5 (2015 Edition) .....	Construction of ASME B16.9 Wrought Buttwelding Fittings and ASME B16.11 Forged Fittings Made From SB-366 UNS N04400 Material for Section III, Class 3 Construction, Section III, Division 1.
N-863-1 .....	1 (2017 Edition) .....	Post Weld Heat Treatment (PWHT) of Valve Seal Welds for P4 and P5A Materials, Section III, Division 1.
N-866 .....	0 (2017 Edition) .....	Alternative Materials for Construction of Section III, Class 2 Vessels, Section III, Division 1.
N-870-1 .....	4 (2017 Edition) .....	Rules for the Elimination of External Surface Defects on Class 1, 2, and 3 Piping, Pumps, or Valves After Component Stamping and Prior to Completion of the N-3 Data Report, Section III, Division 1.
N-879 .....	1 (2017 Edition) .....	Use of Micro-Alloyed Carbon Steel Bar in Patented Mechanical Joints and Fittings, Classes 1, 2, and 3, Section III, Division 1.
N-883 .....	5 (2017 Edition) .....	Construction of Items Prior to the Establishment of a Section III, Division 1 Owner, Section III, Division 1.
N-884 .....	0 (2019 Edition) .....	Procedure to Determine Strain Rate for Use with the Environmental Fatigue Design Curve Method and the Environmental Fatigue Correction Factor, $F_{en}$ , Method as Part of an Environmental Fatigue Evaluation for Components Analyzed per the NB-3200 Rules, Section III, Division 1.
N-886 .....	6 (2017 Edition) .....	Use of Polyethylene Pipe for Class 3, Section III, Division 1.
N-887 .....	6 (2017 Edition with errata dated August 30, 2019).	Alternatives to the Requirements of NB-4424.2(a), Figure NB-4250-2, and Figure NB-4250-3 Section III, Division 1.
N-891 .....	0 (2019 Edition) .....	Alternative Requirements to Appendix XXVI, XXVI-2400, XXVI-4130, and XXVI-4131 for Inspection and Repair of Indentations for Polyethylene Pipe and Piping Components, Section III, Division 1.
<b>Boiler and Pressure Vessel Code, Section XI</b>		
N-513-5 .....	6 (2017 Edition) .....	Evaluation Criteria for Temporary Acceptance of Flaws in Moderate Energy Class 2 or 3 Piping and Gate Valves, Section XI, Division 1.
N-516-5 .....	6 (2015 Edition) .....	Underwater Welding, Section XI, Division 1.
N-561-3 .....	0 (2019 Edition) .....	Alternative Requirements for Wall Thickness Restoration of Class 2 and High Energy Class 3 Carbon Steel Piping, Section XI, Division 1.
N-638-10 .....	1 (2019 Edition) .....	Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section XI, Division 1.
N-653-2 .....	1 (2017 Edition) .....	Qualification Requirements for Full Structural Overlaid Wrought Austenitic Piping Welds, Section XI, Division 1.
N-702-1 .....	1 (2019 Edition) .....	Alternative Requirements for Boiling Water Reactor (BWR) Nozzle Inner Radius and Nozzle-to-Shell Welds, Section XI, Division 1.
N-705-1 .....	2 (2017 Edition) .....	Evaluation Criteria for Temporary Acceptance of Degradation in Moderate Energy Class 2 or 3 Vessels and Tanks, Section XI, Division 1.
N-716-2 .....	0 (2017 Edition) .....	Alternative Piping Classification and Examination Requirements, Section XI, Division 1.
N-766-3 .....	2 (2017 Edition) .....	Nickel Alloy Reactor Coolant Inlay and Onlay for Mitigation of PWR Full Penetration Circumferential Nickel Alloy Dissimilar Metal Welds in Class 1 Items, Section XI, Division 1.
N-768 .....	0 (2019 Edition) .....	Alternative Volumetric Coverage Requirements for Ultrasonic Examination of Class 1 and 2 Pressure Vessel Weld Joints Greater Than 2 in. (50 mm) in Thickness, Section XI, Division 1.
N-786-3 .....	1 (2017 Edition) .....	Alternative Requirements for Sleeve Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping, Section XI, Division 1.
N-789-3 .....	1 (2017 Edition) .....	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping for Raw Water Service, Section XI, Division 1.

TABLE VI—ASME CODE CASES PROPOSED FOR NRC APPROVAL—Continued

Code Case No.	Supplement	Title
N-809 .....	2 (2015 Edition) .....	Reference Fatigue Crack Growth Rate Curves for Austenitic Stainless Steels in Pressurized Reactor Water Environments, Section XI, Division 1.
N-831-1 .....	1 (2019 Edition) .....	Ultrasonic Examination in Lieu of Radiography for Welds in Ferritic or Austenitic Pipe, Section XI, Division 1.
N-845-1 .....	6 (2015 Edition) .....	Qualification Requirements for Bolts and Studs, Section XI, Division 1.
N-847 .....	0 (2017 Edition) .....	Partial Excavation and Deposition of Weld Metal for Mitigation of Class 1 Items, Section XI, Division 1.
N-848-1 .....	0 (2017 Edition) .....	Alternative Characterization Rules for Quasi-Laminar Flaws, Section XI, Division 1.
N-851 .....	0 (2015 Edition) .....	Alternate Method for Establishing the Reference Temperature for Pressure Retaining Materials, Section XI, Division 1.
N-858 .....	2 (2017 Edition) .....	Alternative Volumetric Coverage Requirements for Ultrasonic Examination of Class 1 Nozzle-to-Vessel Welds, Section XI, Division 1.
N-864 .....	2 (2017 Edition) .....	Reactor Vessel Threads in Flange Examinations, Section XI, Division 1.
N-865 .....	2 (2017 Edition) .....	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Atmospheric Storage Tanks, Section XI, Division 1.
N-867 .....	0 (2017 Edition) .....	Clarification of NDE Practical Examination Requirements, Section XI, Division 1.
N-869 .....	6 (2017 Edition) .....	Evaluation Criteria for Temporary Acceptance of Flaws in Class 2 or 3 Piping, Section XI, Division 1.
N-873 .....	1 (2017 Edition) .....	Examination Requirements for the Core Makeup Tanks, Section XI, Division 1.
N-874 .....	7 (2017 Edition) .....	Temporary Acceptance of Leakage Through Braze Joints of Class 3 Copper, Copper-Nickel, and Nickel-Copper Moderate Energy Piping, Section XI, Division 1.
N-876 .....	2 (2017 Edition) .....	Austenitic Stainless Steel Cladding and Nickel Base Cladding Using Ambient Temperature Automatic or Machine Dry Underwater Laser Beam Welding (ULBW) Temper Bead Technique, Section XI, Division 1.
N-877 .....	2 (2017 Edition) .....	Alternative Characterization Rules for Multiple Subsurface Radially Oriented Planar Flaws, Section XI, Division 1.
N-878 .....	1 (2017 Edition) .....	Alternative to QA Program Requirements of IWA-4142, Section XI, Division 1.
N-880 .....	2 (2017 Edition) .....	Alternative to Procurement Requirements of IWA-4143 for Small Nonstandard Welded Fittings, Section XI, Division 1.
N-882 .....	6 (2017 Edition) .....	Alternative Requirements for Attaching Nonstructural Electrical Connections to Class 2 and 3 Components, Section XI, Division 1.
N-885 .....	0 (2019 Edition) .....	Alternative Requirements for Table IWB-2500-1, Examination Category B-N-1, Interior of Reactor Vessel, Category B-N-2, Welded Core Support Structures and Interior Attachments to Reactor Vessels, Category B-N-3, Removable Core Support Structures Section XI, Division 1.
N-889 .....	7 (2017 Edition) .....	Reference Stress Corrosion Crack Growth Rate Curves for Irradiated Austenitic Stainless Steel in Light-Water Reactor Environments, Section XI, Division 1.
N-890 .....	0 (2019 Edition) .....	Materials Exempted From G-2110(b) Requirement, Section XI, Division 1.
N-892 .....	0 (2019 Edition) .....	Alternative Requirement for Form OAR-1, Owner's Activity Report, Completion Time, Section XI, Division 1.

**Operation and Maintenance Code**

Code Case No.	Edition <sup>4</sup>	Title
OMN-13, Revision 3 ...	2020 Edition .....	Performance-Based Requirements for Extending Snubber Inservice Visual Examination Interval at LWR Power Plants.
OMN-15, Revision 3 ...	2020 Edition .....	Performance-Based Requirements for Extending the Snubber Operational Readiness Testing Interval at LWR Power Plants.
OMN-17, Revision 1 ...	2020 Edition .....	Alternative Requirements for Testing ASME Class 1 Pressure Relief/Safety Valves.
OMN-22 .....	2020 Edition .....	Smooth Running Pumps.
OMN-23 .....	2020 Edition .....	Alternative Requirements for Testing Pressure Isolation Valves.
OMN-24 .....	2020 Edition .....	Alternative Requirements for Testing ASME Class 2 and 3 Pressure Relief Valves (For Relief Valves in a Group of One).
OMN-25 .....	2020 Edition .....	Alternative Requirements for Testing Appendix I Pressure Relief Valves.
OMN-26 .....	2020 Edition .....	Alternate Risk-Informed and Margin Based Rules for Inservice Testing of Motor Operated Valves.
OMN-27 .....	2020 Edition .....	Alternative Requirements for Testing Category A Valves (Non-PIV/CIV).

**List of Subjects in 10 CFR Part 50**

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation

protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974,

as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50:

**PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES**

■ 1. The authority citation for part 50 continues to read as follows:

<sup>4</sup> The column labelled "Edition" in this table refers to the point in time a Code Case was issued. For example, an entry associated with the 2017

Edition means the Code Case was issued at the same time as the 2017 Edition of the Code.

**Authority:** Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

■ 2. In § 50.55a:

■ a. Revise paragraph (a)(3) introductory text;

■ b. In paragraph (a)(3)(i), remove the phrase “Revision 38” and add in its place the phrase “Revision 39” and remove the phrase “October 2019” and add in its place the phrase “MONTH/YEAR”;

■ c. In paragraph (a)(3)(ii), remove the phrase “Revision 19” and add in its place the phrase “Revision 20” and remove the phrase “October 2019” and add in its place the phrase “MONTH/YEAR”;

■ d. In paragraph (a)(3)(iii), remove the phrase “Revision 3” and add in its place the phrase “Revision 4” and remove the phrase “October 2019” and add in its place the phrase “MONTH/YEAR”;

■ e. Add paragraph (a)(3)(iv); and

■ f. In paragraph (b)(3)(iv), Table II, remove the word “(years)” in the second and third column headings and add in their places the word “(Years)”.

The revision and addition read as follows:

**§ 50.55a Codes and standards.**

(a) \* \* \*

(3) *U.S. Nuclear Regulatory Commission (NRC) Public Document Room*, 11555 Rockville Pike, Rockville, Maryland 20852; telephone: 1–800–397–4209; email: [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov); <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/>. The use of Code Cases listed in the NRC regulatory guides in paragraphs (a)(3)(i) through (iii) of this section is acceptable with the specified conditions in those guides when implementing the editions and addenda of the ASME BPV Code and ASME OM Code incorporated by reference in paragraph (a)(1) of this section. The NRC report in paragraph (a)(3)(iv) of this section is acceptable as specified in the conditions when implementing Code Cases listed in the NRC regulatory guides in paragraphs (a)(3)(i) through (iii).

\* \* \* \* \*

(iv) *NUREG–2228*. NUREG–2228, “Weld Residual Stress Finite Element Analysis Validation: Part II—Proposed Validation Procedure,” dated July 2020,

which is referenced in RG 1.147, Revision 20.

\* \* \* \* \*

Dated December 23, 2020.

For the Nuclear Regulatory Commission.

**Ho K. Nieh,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 2021–00890 Filed 2–1–21; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Parts 470, 635, and 655

[FHWA Docket No. FHWA–2020–0001]

RIN 2125–AF85

#### National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Revision

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** FHWA is extending the comment period for a notice of proposed amendments (NPA) and request for comments, which was published on December 14, 2020 in the **Federal Register**. The original comment period is set to close on March 15, 2021. The extension is based on concern expressed by a number of stakeholders that, as a result of the scope and complexity of the NPA, the March 15, 2021, closing date does not provide sufficient time to review and provide comprehensive comments. The FHWA recognizes that others interested in commenting may have similar concerns and agrees that the comment period should be extended. Therefore, the closing date for comments is changed to May 14, 2021, which will provide stakeholders and others interested in commenting additional time to discuss, evaluate, and submit responses to the docket.

**DATES:** Comments must be received on or before May 14, 2021. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001;

- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329;

- *Instructions:* You must include the agency name and docket number or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Sylvester, Office of Transportation Operations, (202) 366–2161, [Kevin.Sylvester@dot.gov](mailto:Kevin.Sylvester@dot.gov), or Mr. William Winne, Office of the Chief Counsel, (202) 366–1397, [William.Winne@dot.gov](mailto:William.Winne@dot.gov), Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at <http://www.regulations.gov>. The website is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register’s home page at: <https://www.federalregister.gov>.

##### Background

The Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) is incorporated in FHWA regulations and recognized as the national standard for traffic control devices used on all public roads. On December 14, 2020, at 85 FR 80898, FHWA published in the **Federal Register** an NPA proposing to revise standards, guidance, options, and supporting information relating to the traffic control devices in all parts of the MUTCD. The original comment period for the NPA closes on March 15, 2021. Stakeholders have expressed concern that this closing date does not provide sufficient time to review and provide comprehensive comments on the proposal. The FHWA recognizes that others interested in commenting may have similar concerns and agrees that the comment period should be extended by 60 days for these organizations and others to submit comprehensive

comments. The closing date is changed from March 15, 2021, to May 14, 2021.

**Authority:** Sections 1525 and 1303 of Pub. L. 112–141, Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101, 103(b)(2), 103(c), 104, 109, 112, 113, 114, 116, 119, 128, 134, 135, 217, 315 and 402(a); 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

**Thomas Everett,**  
Executive Director, Federal Highway  
Administration.

[FR Doc. 2021–01440 Filed 2–1–21; 8:45 am]

**BILLING CODE 4910–22–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 51

[WC Docket No. 18–156; DA 21–42; FRS  
17407]

### Petition for Reconsideration of Action in Proceeding

**AGENCY:** Federal Communications  
Commission.

**ACTION:** Petition for reconsideration.

**SUMMARY:** USTelecom—The Broadband  
Association (USTelecom) has filed a  
Petition for Reconsideration (Petition) in

Federal Communications Commission  
(FCC) WC Docket No. 18–156.

**DATES:** Oppositions to the Petition must  
be filed on or before February 17, 2021.  
Replies to any oppositions must be filed  
on or before March 1, 2021.

**ADDRESSES:** Federal Communications  
Commission, 45 L Street NE,  
Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:**  
Ahuva Battams, Pricing Policy Division,  
Wireline Competition Bureau, at (202)  
418–1565 or via email at  
[ahuva.battams@fcc.gov](mailto:ahuva.battams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a  
summary of the FCC's Public Notice, DA  
21–42, released January 12, 2021. The  
full text of the FCC's Public Notice is  
available at: ([https://docs.fcc.gov/  
public/attachments/DA-21-42A1.pdf](https://docs.fcc.gov/public/attachments/DA-21-42A1.pdf)).  
The full text of USTelecom's Petition for  
Reconsideration is available at: [https://  
ecfsapi.fcc.gov/file/1228118483840/  
USTelecom%208YY%20PFR%20  
Draft%2012.28.20%20FINAL.pdf](https://ecfsapi.fcc.gov/file/1228118483840/USTelecom%208YY%20PFR%20Draft%2012.28.20%20FINAL.pdf).

USTelecom requests reconsideration  
of the portion of the *8YY Access Charge  
Reform Order* related to a revenue  
recovery mechanism for price cap  
incumbent local exchange carriers.<sup>1</sup>

<sup>1</sup> See USTelecom—The Broadband Association  
Petition for Reconsideration, WC Docket No. 18–  
156 (filed Dec. 28, 2020) (seeking partial

Pursuant to the Commission's rules,  
oppositions to the Petition for  
Reconsideration must be filed no later  
than 15 days after the publication date  
of this Public Notice in the **Federal  
Register** and replies to oppositions must  
be filed no later than 10 days  
thereafter.<sup>2</sup> Oppositions and replies may  
be filed using the Commission's  
Electronic Comment Filing System, or  
by filing paper copies.

**Subject:** 8YY Charge Reform, FCC 20–  
143, published at 85 FR 75894,  
November 27, 2020, in WC Docket No.  
18–156. This document is being  
published pursuant to 47 CFR 1.429(e).  
*See also* 47 CFR 1.4(b)(1) and 1.429(f),  
(g).

*Number of Petitions Filed:* 1.

Federal Communications Commission.

**Daniel Kahn,**

Associate Bureau Chief, Wireline Competition  
Bureau.

**Editorial Note:** This document was  
received at the **Federal Register** on January  
19, 2021.

[FR Doc. 2021–01579 Filed 1–29–21; 4:15 pm]

**BILLING CODE 6712–01–P**

reconsideration of *8YY Access Charge Reform*, WC  
Docket No. 18–156, Report and Order, 35 FCC Rcd  
11594 (2020) (*8YY Access Charge Reform Order*).

<sup>2</sup> 47 CFR 1.429(f)–(g).



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

### Rural Housing Service

[Docket No. RHS–21–MFH–0004]

#### Notice of Solicitation of Applications for Section 514 Off-Farm Labor Housing Loans and Section 516 Off-Farm Labor Housing Grants for New Construction for Fiscal Year 2021

**AGENCY:** Rural Housing Service, United States Department of Agriculture.

**ACTION:** Notice.

**SUMMARY:** The Rural Housing Service (RHS), an agency of the United States Department of Agriculture (USDA), announces that it is soliciting competitive pre-applications for Section 514 Off-Farm Labor Housing (Off-FLH) loans and Section 516 Off-FLH grants for the construction of new Off-FLH units for domestic farm laborers, retired domestic farm laborers, or disabled domestic farm laborers. The program objective is to increase the supply of affordable housing for farm laborers. This Notice describes the method used to distribute funds, the pre-application and final application process, and submission requirements.

**DATES:** Eligible pre-applications submitted to the Production and Preservation Division, Processing and Report Review Branch, for this Notice will be accepted until November 1, 2022, 12:00 p.m., Eastern Standard Time. See the **SUPPLEMENTARY INFORMATION** section for additional information.

**ADDRESSES:** Applications to this Notice must be submitted electronically to the Production and Preservation Division, Processing and Report Review Branch. Specific instructions on how to submit applications electronically are provided below within this Notice under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Bell, Branch Chief, Processing

and Report Review Branch 1, Production and Preservation Division, Multifamily Housing Programs, Rural Development, United States Department of Agriculture, via email:

MFHprocessing1@usda.gov or phone at: 254–742–9764.

**SUPPLEMENTARY INFORMATION:** The amount of program dollars available will be determined by yearly appropriations. Available loan and grant funding amounts can be found at the following link: <https://www.rd.usda.gov/programs-services/farm-labor-housing-direct-loans-grants>. Expenses incurred in developing pre-applications and final applications will be at the applicant's sole risk.

#### Application Submission Deadlines

There will be three rounds of pre-application submissions and selections set forth below. Pre-applications that are deemed eligible but are not selected for further processing for each individual fiscal year that this Notice is open, will be withdrawn from processing. The applicant may reapply in a future funding round. RHS will not consider any application that is received after the established deadlines unless the date and time are extended by another Notice published in the **Federal Register**. RHS may at any time supplement, extend, amend, modify, or supersede this Notice by publishing another Notice in the **Federal Register**.

The application deadlines are as follows:

##### First Round

1. Available loan and grant funding posted to the RHS website by February 5, 2021.
2. Pre-applications must be submitted by April 1, 2021, 12:00 p.m., Eastern Standard Time.
3. RHS notification to applicants by June 1, 2021.
4. Pre-application selections posted to the RHS website by July 1, 2021.
5. Final applications must be submitted by August 2, 2021, 12:00 p.m., Eastern Standard Time.
6. Funds must be obligated by September 30, 2021.

##### Second Round

1. Available loan and grant funding posted to the RHS website by August 2, 2021.
2. Pre-applications will be accepted after September 1, 2021.

3. Pre-applications must be submitted by November 1, 2021, 12:00 p.m., Eastern Standard Time.

4. RHS notification to applicants by January 4, 2022.

5. Pre-application selections posted to the RHS website by March 1, 2022.

6. Final applications must be submitted by May 2, 2022, 12:00 p.m., Eastern Standard Time.

7. Funds must be obligated by September 30, 2022.

##### Third Round

1. Available loan and grant funding posted to the RHS website by August 1, 2022.

2. Pre-applications will be accepted after September 1, 2022.

3. Pre-applications must be submitted by November 1, 2022, 12:00 p.m., Eastern Standard Time.

4. RHS notification to applicants by January 2, 2023.

5. Pre-application selections posted to the RHS website by March 1, 2023.

6. Final applications must be submitted by May 1, 2023, 12:00 p.m., local time.

7. Funds must be obligated by September 29, 2023.

#### Priority Language for Funding Opportunities

RHS encourages applications that will help advance equity and improve outcomes in rural America. To encourage investments in rural properties, RHS will award points to projects located in rural Opportunity Zones where projects should provide measurable results in helping communities build robust and sustainable economies. An Opportunity Zone is an economically distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the state and that nomination has been certified by the Secretary of the U.S. Treasury via his delegation of authority to the Internal Revenue Service. See <https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions> for more information.

To focus investments in areas where the need for increased prosperity is greatest, RHS will set aside 10 percent of the available funds for applications that will serve persistent poverty

counties for each individual fiscal year that this Notice is open. Persistent poverty counties are areas where at least 20 percent of the population is living in poverty over the last 30 years (measured by the 1980, 1990, 2000 and 2010 decennial censuses and 2007–2011 American Community Survey five-year estimates) according to the American Community Survey census tract data. Information on which counties are considered persistent poverty counties can be found through the USDA Economic Research Service (ERS) (<http://ers.usda.gov/>). ERS is the main source of economic information and research for USDA and a principal Agency of the U.S. Federal Statistical System located in Washington, DC. Set-aside funds will be awarded in the order of receipt of pre-applications. Once the set-aside funds are exhausted for each individual fiscal year that this Notice is open, any further set-aside applications will be evaluated and ranked with the other applications submitted in response to this Notice. If, after the preapplications are reviewed, RHS does not receive enough eligible applications to fully utilize the 10 percent set-aside in the service of these areas in each individual fiscal year that this Notice is open, RHS will award any unused set-aside funds to other eligible applicants.

#### Overview

*Federal Agency:* Rural Housing Service.

*Funding Opportunity Title:* Notice of Solicitation of Applications for Section 514 Off-Farm Labor Housing Loans and Section 516 and Off-Farm Labor Housing Grants for New Construction for Fiscal Year 2021.

*Announcement Type:* Solicitation of applications from qualified applicants for Fiscal Year 2021.

*Catalog of Federal Domestic Assistance Numbers (CFDA):* 10.405 and 10.427.

#### A. Federal Award Description

Pre-applications will only be accepted through the dates and times listed in this Notice. All awards are subject to the availability of funding. The maximum award per selected project may not exceed \$5 million (total loan and grant).

A state will not receive more than 30 percent of the Off-FLH funding for each fiscal year that this Notice is open, unless there are remaining Section 514 and Section 516 funds after all eligible applications Nationwide have been funded. In this case, funds will be awarded to the next highest-ranking eligible applications among all of the remaining unfunded applications within the applicable application round.

The allocation of these funds may result in a state or states exceeding the 30 percent limitation.

Section 516 Off-FLH grants may not exceed 90 percent of the total development cost (TDC) of the housing. TDC is defined in 7 CFR 3560.11. Section 514 Off-FLH loans may not exceed the limits set forth in 7 CFR 3560.562(b).

If leveraged funds are going to be used and are in the form of Low-Income Housing Tax Credits (LIHTC), the applicant must include in the pre-application, written evidence that a LIHTC application has been submitted and accepted by the Housing Finance Agency (HFA). Applicants without written evidence that a tax credit application has been submitted and accepted by an HFA must certify in writing within the pre-application that they will apply for tax credits to an HFA, obtain a firm commitment letter, and include the commitment letter within their final application submission, if available. The firm commitment letter from the HFA must be submitted prior to the approval of the final application. If the applicant is unable to secure a firm commitment letter from the HFA in order to submit it to RHS by September 30th of the relevant fiscal year, the application will be deemed incomplete and the applicant will be notified in writing that the application will not be considered for funding.

Pre-applications that propose the use of other forms of leveraged funds must submit firm commitment letters within their final application, if available. If the applicant is unable to secure a firm commitment letter from the funding source in order to submit it by September 30th of the relevant fiscal year, the application will be deemed incomplete and the applicant will be notified in writing that the application will not be considered for funding.

A firm commitment letter is defined as a lender's unqualified pledge to the borrower that they have passed their underwriting guidelines and they are willing to offer the borrower a loan and/or grant under specified terms. The letter validates that the borrower's financing has been fully approved and that the lender is prepared to close the transaction. Preliminary commitment letters, term sheets, or any other letter from the lender that does not meet the definition above will not be considered a firm commitment letter and will not meet the requirements specified in this Notice.

Rental Assistance (RA) and Operating Assistance (OA) will be available for this Notice. OA is described in 7 CFR

3560.574 and may be used in lieu of tenant-specific RA in Off-FLH projects financed under Section 514 or Section 516(i) of the Housing Act of 1949 (U.S.C. 1486(i)) as amended (42 U.S.C. 1484 and 1486(h) respectively), that serve migrant farmworkers as defined in 7 CFR 3560.11.

In order to maximize the use of the limited supply of FLH funds, RHS may contact eligible applicants selected for an award in point score order starting with the highest score, with proposals to modify the transaction's proportions of loan and grant funds for each individual fiscal year that this Notice is open. In addition, if funds remain after the highest scoring eligible applications are selected for awards, we may contact those eligible applicants selected for the awards, in point score order, starting with the highest score, to ascertain whether those respondents will accept the remaining funds for each individual fiscal year that this Notice is open.

In order to enhance customer service and the transparency of this program, RHS will publish a list of awardees, the loan and/or grant amounts of their respective awards, the self-score provided by the applicant, and the final score as computed by RHS in accordance with the dates listed in this Notice. This will be done for each funding round. This information can be found at: <https://www.rd.usda.gov/programs-services/farm-labor-housing-direct-loans-grants>. RHS reserves the right to post all information submitted as part of the pre-application and final application package, which is not protected under the Privacy Act, on a public website with free and open access to any member of the public.

#### B. Eligibility Information

##### 1. Eligibility

Housing Eligibility—housing that is constructed with FLH loans and/or grant funds must meet RHS's design and construction standards contained in 7 CFR part 1924, subparts A and C. Once constructed, Off-FLH must be managed in accordance with 7 CFR part 3560. In addition, Off-FLH must be operated on a non-profit basis and tenancy must be open to all qualified domestic farm laborers, regardless of which farm they work. Section 514(f)(3) of the Housing Act of 1949, as amended (42 U.S.C. 1484(f)(3)) defines domestic farm laborers to include any person regardless of the person's source of employment, who receives a substantial portion of his/her income from the primary production of agricultural or aqua cultural commodities in the

unprocessed or processed stage, and also includes the person's family.

Tenant Eligibility—tenant eligibility is limited to persons who meet the definition of a “domestic farm laborer,” or a “disabled domestic farm laborer,” or a “retired domestic farm laborer” as defined in Section 514(f)(3) of the Housing Act of 1949, as amended (42 U.S.C. 1484(f)(3)).

Section 514(f)(3)(A) of the Housing Act of 1949 (42 U.S.C. 1484(f)(3)(A)) has been amended to extend FLH tenant eligibility to agricultural workers legally admitted to the United States and authorized to work in agriculture. In addition, under no circumstance may any currently eligible FLH tenants be displaced from their homes as a result of this statutory change.

Owners are responsible for verifying tenant income eligibility. Only very-low or low-income households are eligible for the operating assistance rents. Households with incomes above the low-income limits must pay the full rent.

In accordance with 7 CFR 3560.554, off-farm labor housing may be used to serve migrant farmworkers. Migrants or migrant agricultural laborer is a person (and the family of such person) who receives a substantial portion of his or her income from farm labor employment and who establishes a residence in a location on a seasonal or temporary basis, in an attempt to receive farm labor employment at one or more locations away from their home base state, excluding day-haul agricultural workers whose travels are limited to work areas within one day of their residence.

Seasonal housing is housing that is operated on a seasonal basis, typically for migrants or migrant agricultural laborers as opposed to year-round. Off-FLH loan and grant funds may be used to provide facilities for seasonal or temporary residential use with appropriate furnishings and equipment. A temporary residence is a dwelling which is used for occupancy, usually for a short period of time, but is not the legal residence for the occupant.

The design and construction requirements established in § 3560.60 apply to all applications for Off-FLH loans and grants except that seasonal Off-FLH that will be occupied for eight months or less per year by migrant farmworkers while they are away from their residence, may be constructed in accordance with Exhibit I of 7 CFR part 1924, subpart A.

For Off-FLH operating on a seasonal basis, the management plan must establish specific opening and closing dates. During the off-season, Off-FLH may be used as defined in 7 CFR part

3560, subpart A, under short-term lease provisions. Where rents are charged on a per-unit basis and family income qualifies the household for rental assistance, rental assistance may be used.

Off-FLH is subject to the tenant contribution and rental unit rent requirements for Plan II housing established under 7 CFR part 3560, subpart E, except where seasonal housing will be occupied for less than a three-month period. In such instances the best available and practical income verification methods may be used with prior approval of RHS.

Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the Standard Federal regions as published by RHS for their particular region of the country. For migrant farmworkers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual income limits indicated for the Standard Federal regions, as published by RHS.

#### Applicant Eligibility—

(a) To be eligible to receive a Section 514 loan for Off-FLH, the applicant must meet the requirements of 7 CFR 3560.555(a) and be a broad-based non-profit organization of farmworkers, a Federally recognized Indian tribe, a community organization, or an Agency or political subdivision of state or local Government, and must meet the requirements of § 3560.55, excluding § 3560.55(a)(6). A broad-based non-profit organization is a non-profit organization that has a membership that reflects a variety of interests in the area where the housing will be located; or a limited partnership with a non-profit general partner which meets the requirements of § 3560.55(d).

(b) To be eligible to receive a Section 516 grant for Off-FLH, the applicant must meet the requirements of 7 CFR 3560.555(b) and be a broad-based non-profit organization of farmworkers, a federally recognized Indian tribe, a community organization, or an agency or political subdivision of State or local Government, and must meet the requirements of § 3560.55, excluding § 3560.55(a)(6). A broad-based non-profit organization is a non-profit organization that has a membership that reflects a variety of interests in the area where the housing will be located; and be able to contribute at least one-tenth of the total farm labor housing development cost from its own or other resources. The applicant's contribution must be available at the time of the grant closing. An Off-FLH loan financed by

RHS may be used to meet this requirement, however, an RHS grant cannot be used to meet this requirement. Limited partnerships with a non-profit general partner are eligible for Section 514 loans; however, they are not eligible for Section 516 grants.

(1) The applicant must be unable to provide the necessary housing from the applicant's own resources and be unable to obtain credit from any other source upon terms and conditions which the applicant could reasonably be expected to fulfill.

(2) Provide evidence that the applicant is unable to obtain credit from other sources.

(3) In order to demonstrate the applicant meets the requirement at 7 CFR 3560.55(a)(2), at least two letters from two separate credit institutions which normally provide real estate loans in the area must be obtained and these letters must indicate the rates and terms upon which a loan might be provided. (Note: not required from State or local public agencies or Indian tribes.) If two letters from two separate credit institutions that indicate the rates and terms upon which a loan might be provided is not submitted within the pre-application, the pre-application will be considered incomplete and will not be considered for funding.

(4) Broad-based non-profit organizations must have a membership that reflects a variety of interests in the area where the housing will be located.

2. *Cost Sharing or Matching*—the amount of any Off-FLH grant must not exceed 90 percent of the TDC as provided in 7 CFR 3560.562(c)(1).

3. *Other Requirements*—the following requirements apply to loans and grants made in response to this Notice:

(a) 7 CFR part 1901, subpart E, regarding equal opportunity requirements;

(b) For grants only, 2 CFR parts 200 and 400, which establishes the uniform administrative and audit requirements for grants and cooperative agreements to State and local Governments and to non-profit organizations;

(c) 7 CFR part 1901, subpart F, regarding historical and archaeological properties;

(d) 7 CFR 1970.11, Timing of the environmental review process. *Please note, the environmental information must be submitted by the applicant to RHS. RHS must review and determine that the environmental information is acceptable before the obligation of funds;*

(e) 7 CFR part 3560, regarding the loan and grant authorities of the Off-FLH program;

(f) 7 CFR part 1924, subpart A, regarding planning and performing construction and other development;

(g) 7 CFR part 1924, subpart C, regarding the planning and performing of site development work;

(h) For construction financed with a Section 516 grant, the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)–276(a)–5) and implementing regulations published at 29 CFR parts 1, 3, and 5;

(i) A credit report fee of at least \$24 will be charged to the applicant and paid to the United States Department of Agriculture. This fee is used to pay credit reports obtained by RHS;

(j) Borrowers and grantees must take reasonable steps to ensure that tenants receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge. Failure to provide this assistance to tenants who can effectively participate in or benefit from Federally assisted programs or activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* and Title VI regulations against national origin discrimination.

(k) In accordance with 7 CFR 3560.60, the housing must be economical to construct, operate, and maintain and must not be of elaborate design or materials.

(l) System for Awards Management. All program applicants must be registered in the System for Awards Management (SAM) prior to submitting an application, unless determined exempt under 2 CFR 25.110. Federal award recipients must maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

### C. Pre-Application and Submission Information

#### 1. Pre-Application Submission

The application process will be in two phases, for each individual fiscal year that this Notice is open: The initial pre-application and the submission of a final application. Only those pre-applications that are selected for further processing will be invited to submit a final application. In the event that a pre-application is selected for further processing and the applicant declines, the next highest ranked pre-application will be selected for further processing in

each individual fiscal year that this Notice is open. All pre-applications for Section 514 and Section 516 funds must meet the requirements of this Notice. Incomplete pre-applications will be rejected and returned to the applicant. No pre-application will be accepted after the deadline in a given round unless the date and time is extended by another Notice published in the **Federal Register**.

Pre-applications should be submitted electronically. The process for submitting an electronic application to RHS is as follows:

(a) At least two business days prior to the application deadline for the applicable funding round, the applicant must email RHS a request to create a shared folder in CloudVault. The email must be sent to the following address: [Off-FLHapplication@usda.gov](mailto:Off-FLHapplication@usda.gov). The email must contain the following information:

(1) Subject line: “Off-FLH Application Submission.”

(2) Body of email: Borrower Name, Project Name, Borrower Contact Information, Project State.

(3) Request language: “Please create a shared CloudVault folder so that we may submit our application documents.”

Once the email request to create a shared CloudVault folder has been received, a shared folder will be created within two business days. When the shared CloudVault folder is created by RHS, the system will automatically send an email to the applicant’s submission email with a link to the shared folder. All required application documents in accordance with this Notice must be loaded into the shared CloudVault folder. When the submission deadline is reached for each applicable funding round, the applicant’s access to the shared CloudVault folder will be removed. Any document uploaded to the shared CloudVault folder after the application deadline, for each applicable funding round, will not be reviewed or considered.

The applicant should upload a Table of Contents of all of the documents that have been uploaded to the shared CloudVault folder. Last-minute requests and submissions may not allow adequate time for the submission process to take place prior to the deadline. *Applicants are reminded that all submissions must be received by the deadline, for each applicable funding round, and the application will be rejected if it is not received by the deadline date and time, regardless of when the application was submitted.*

(b) Prior to the submission of a pre-application, the applicant is encouraged

to schedule a concept meeting with RHS to discuss the application process, the specifics on the proposed project, and the borrower’s responsibilities under the Off-FLH program, among other topics. Requests for concept meetings can be sent to the following email address: [MFHprocessing1@usda.gov](mailto:MFHprocessing1@usda.gov).

(c) If a pre-application is accepted for further processing, the applicant must submit a final application, acceptable to RHS, prior to the obligation of funds. If the pre-application is not accepted for further processing due to being incomplete or ineligible, the applicant will be notified of appeal rights under 7 CFR part 11. Pre-applications that are deemed eligible but are not selected for further processing for each individual fiscal year that this Notice is open will be withdrawn from processing. The applicant may reapply in a future funding round.

#### 2. Pre-Application Requirements

(a) The pre-application must contain the following:

(1) An executed and dated Executive Summary on the applicant’s letterhead that must include at least the following:

(i) Brief description of the proposed project. Be sure to address if the project will be used year-round or seasonally and to what standards the housing will be built.

(ii) Document the need for the project. The applicant must document that the housing and related facilities will fulfill a pressing need in the area in which the project will be located.

(iii) Description of the proposed ownership structure with an organizational chart.

(iv) Narrative verifying the applicant’s ability to meet the eligibility requirements stated earlier in this Notice.

(v) A statement of the applicant’s experience in operating labor housing or other rental housing. If the applicant’s experience is limited, additional information should be provided to indicate how the applicant plans to compensate for this limited experience (*i.e.*, obtaining assistance and advice of a management firm, non-profit group, public agency, or other organization which is experienced in rental management and will be available on a continuous basis).

(vi) Description of the applicant’s legal and financial capability to carry out the obligation of the loan and/or grant.

(vii) Proposed management. A brief statement explaining the applicant’s proposed method of operation and management (*i.e.*, on-site manager, contract for management services, etc.).

As stated earlier in this Notice, the housing must be managed in accordance with the program's management regulations, 7 CFR part 3560.

(viii) Description of established site control.

(ix) Proposed Return to Owner (RTO), if applicable.

(x) Any financial commitments, financial concessions, or other economic benefits proposed to be provided by RHS.

(xi) Third-party funding, if applicable. For each third-party funding source or leveraged funds, discuss briefly the funding provider, funding amount, including terms, commitment status, timing issues, any restrictions that will be applicable to the project, and whether any accommodation from RHS is proposed, such as a subordination in lien position. The desired lien position of any third-party funding source must be clearly disclosed as well as any proposal for RHS to subordinate its lien position.

(xii) Any proposed compensation to parties having an identity of interest with either the seller, purchaser, consultant, or Technical Assistance (TA) provider, etc.

(xii) Any proposed construction financing, for example, a construction or bridge loan or the use of multiple advances.

(xiv) Type and method of construction such as owner builder, negotiated bid, or contractor method.

(xv) If a FLH grant is desired, a statement concerning the need for a FLH grant. The statement must include estimates of the rents required with a grant and rents required without a grant. Documentation to demonstrate how the rent figures were computed must be provided. Documentation must be in the form of a completed Form RD 3560-7 "Multiple Family Housing Project Budget/Utility Allowance" completed as if a grant were received and another form completed as if a grant would not be received. RHS will review each budget to determine that the income and expenses are reasonable and customary for the area. RHS will then verify that the proposed rental rates provided on the budget that considers rents without a grant, are at or above market rate rents or at a level that would overburden the intended residents based on the average income of eligible FLH workers in the primary market area as provided in the market study.

(xvi) If RA or OA is desired, a statement concerning the need for the RA or OA and a statement concerning the specific number of units of RA or OA that is needed. Strong and detailed

justification must be provided for requests of 100 percent RA or OA.

(xvii) Statement by the applicant that they will pay any cost overruns.

(xviii) Estimated development timeline to include estimated start and end date as well as any other important milestones.

(xix) Description of any required site development such as building roads, obtaining easements, installing utilities, verification that there is proper site access, and any state or local approvals such as zoning.

(xx) Description of the required and intended applicant contribution.

(xxi) Any other pertinent information that the applicant feels should be disclosed as part of this proposal, if applicable.

(2) Standard Form 424 "Application for Federal Assistance" which can be obtained at: <https://www.grants.gov/>.

(3) Current (within six months of this Notice's pre-application submission due date of the applicable funding round) financial statements for each entity within the ownership structure with the following paragraph certified by the applicant's designated and legally authorized signer:

"I/we certify the above is a true and accurate reflection of our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part."

(4) A check for \$24 made out to the United States Department of Agriculture. This will be used to pay for credit reports obtained by RHS. The check must be mailed to the following address and received prior to the application deadline for the applicable funding round. If the check is not received by the application deadline for the applicable funding round, the application will be considered incomplete and will not be considered for funding.

Tonya Boykin, Management Assistant,  
United States Department of  
Agriculture, 1400 Independence  
Avenue SW, Room 1263-S, STOP  
0782, Washington, DC 20250

(5) Evidence that the applicant is unable to obtain credit from other sources. At least two letters from two separate credit institutions which normally provide real estate loans in the area must be obtained and these letters must indicate the rates and terms upon which a loan might be provided. RHS

will review each letter to verify that the applicant is only able to obtain market rate financing, which would include a market rate interest rate and term of less than 30 years.

(6) Letter from the IRS indicating the applicant's tax identification number.

(7) Documentation verifying the applicant's DUNS number, if applicable.

(8) Proposed limited partnership agreement and certificates of limited partners, if applicable. (Agency requirements should be contained in one section of the agreement and their location identified by the applicant or their attorney in a cover sheet.)

(9) If a non-profit organization:

(i) Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization. If the designation is pending, a copy of the designation request must be submitted.

(ii) Purpose statement, including the provision of low-income housing.

(iii) Evidence of organization under Tribal, state and local law, or copies of pending applications and a copy of the applicant's charter, Articles of Incorporation, and by-laws.

(iv) List of Board of Directors including their names, occupations, phone numbers, and addresses.

(v) If a member or subsidiary of another organization, the organization's name, address, and nature of business.

(10) Market feasibility documentation to identify the supply and demand for Off-FLH in the primary market area. A market study must be submitted. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. Documentation must be provided to justify a need within the intended primary market area for the housing of domestic farm laborers. The documentation must also consider disabled and retired farm workers and adjusted medium incomes of very-low, low, and moderate. The market study must include all of the content in Exhibit 4-10 and Exhibit 4-11. These exhibits are located in HB-1-3560, Chapter 4, Section 4.18. The market study must also include documentation of all the elements in Attachment 4-F, located in HB-1-3560, Chapter 4. The provider must include a copy of Attachment 4-F within the report and provide the page number of the report where it contains the information that satisfies each element of Attachment 4-F. The market study must be obtained from, and performed by, an independent third-party provider that has no identity of interest with the property owner, management agent, applicant or any other principle or

affiliate. The market study must also include the following:

(i) The annual income level of farmworker families in the area and the probable income of the farm workers who will likely occupy the proposed housing;

(ii) A realistic estimate of the number of farm workers who remain in the area where they harvest and the number of farm workers who normally migrate into the area. Information on migratory workers should indicate the average number of months the migrants reside in the area and an indication of what type of households are represented by the migrants (*i.e.*, single individuals as opposed to families);

(iii) General information concerning the type of labor-intensive crops grown in the area and prospects for continued demand for farm laborers;

(iv) The overall occupancy rate for comparable rental units in the area and the rents charged and customary rental practices for these units (*i.e.*, will they rent to large families, do they require annual leases, etc.);

(v) The number, condition, adequacy, rental rates and ownership of units currently used or available to farm workers;

(vi) Information on any proposed new construction of housing units within the primary market area. The building permit information and pending tax credit applications must be checked for the primary market area;

(vii) Documentation verifying that interviews were conducted with farms and other agricultural businesses within the primary market area to inquire if they are in need of additional housing for their employees or if they plan to expand and hire additional employees that will need housing; and

(viii) A description of the proposed units, including the number, type, size, rental rates, amenities such as carpets and drapes, related facilities such as a laundry room or a community room and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants such as a health clinic or day care facility.

(11) Evidence of site control, such as an executed option contract or sales contract. In addition, a map and description of the proposed site, including the availability of water, sewer, and utilities and the proximity to community facilities and services such as shopping, schools, transportation, doctors, dentists, and hospitals. Off-FLH projects must comply with the site requirements in 7 CFR 3560.558 with the exception of the requirement that

the property be located in a designated place.

(12) A supportive services plan which describes services that will be provided on-site or made available to tenants through cooperative agreements with service providers in the community, such as a health clinic or day care facility. Off-site services must be accessible and affordable to farm workers and their families. A map showing the location of supportive services must be included. Letters of commitment from service providers are acceptable documentation. The plan must describe how the services will be funded. RA may not fund supportive services.

(13) Preliminary plans and specifications, including a plot plan, site plan with contour lines, floor plan for each living unit type and other spaces, such as laundry facilities, community rooms, stairwells, etc., building exterior elevations, typical building exterior wall section, building layouts, and type of construction and materials. The housing must meet RHS's design and construction standards contained in 7 CFR part 1924, subparts A and C, and must also meet all applicable federal, state, and local accessibility standards and be in compliance with all building codes. Also, applications for Off-FLH loans and grants must meet the design requirements in 7 CFR 3560.559.

(14) Provide a description of the proposed interior/exterior washing facilities. Applicants should consider incorporating interior/exterior washing facilities for tenants, as necessary to protect the asset and the tenants from excess dirt and chemical exposure. Such facilities might include a boot washing station or hose bibs, among others.

(15) Description and justification of related facilities and a schedule of separate charges for the related facilities.

(16) The applicant must submit a checklist, certification, and signed affidavit by the project architect or engineer, as applicable, for any energy programs the applicant intends to participate in.

(17) A Sources and Uses Statement which shows all sources of funding included in the proposed project. The terms and schedules of all sources included in the project should be included in the Sources and Uses Statement. (Note: Section 516 grants may not exceed 90 percent of the TDC of the project).

(18) Evidence of the submission of the project description to the applicable State Housing Preservation Office (SHPO), and/or Tribal Historic

Preservation Officer (THPO) with the request for comments.

(19) Evidence of compliance with Executive Order 12372. The applicant must send a copy of Form SF-424, "Application for Federal Assistance," to the applicant's State clearinghouse for intergovernmental review. If the applicant is located in a State that does not have a clearinghouse, the applicant is not required to submit the form. However, evidence that the State does not have a clearinghouse must be submitted. Applications from Federally recognized Indian tribes are not subject to this requirement.

(20) Phase I Environmental Site Assessment, ASTM E-1527 (Phase I ESA).

(22) FEMA Form 81-93, Standard Flood Hazard Determination.

(23) Comments regarding relevant offsite conditions.

(24) The following forms are required to be submitted with the pre-application:

(i) Awards made under this Notice are subject to the provisions contained in the Consolidated Appropriations Act, 2021 (Pub. L. 116-260) sections 745 and 746 regarding felony convictions and corporate Federal tax delinquencies. To comply with these provisions, applicants that are, or propose to be, corporations will submit form AD-3030, "Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants," as part of their pre-application. Form AD-3030 can be found at: <http://www.ocio.usda.gov/document/ad3030>.

(ii) A prepared Form HUD-935.2A, "Affirmative Fair Housing Marketing Plan (AFHMP)—Multifamily Housing" in accordance with 7 CFR 1901.203(c). The AFHMP will reflect that occupancy is open to all qualified "domestic farm laborers," regardless of which farming operation they work for, and that they will not discriminate on the basis of race, color, sex, age, disability, marital or familial status or National origin in regard to the occupancy or use of the units. The AFHMP must include all attachments and supporting documentation. The form can be found at: <http://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.PDF>.

Indian Tribes, including instrumentalities of such Indian Tribes, are not required to comply with certain aspects of the AFHMP guidelines above, and may allow members of Indian Tribes to be given preference for housing. The Native American Housing Enhancement Act of 2005 (NAHEA), Public Law 109-136, Codified at 25 U.S.C. 4101 *et seq.*, amended Title V of the Housing Act of 1949 (42 U.S.C. 1471

*et seq.*) which created the housing programs administered by the United States Department of Agriculture, Rural Housing Service. The NAHEA excludes Indian Tribes, including instrumentalities of such Indian Tribes, from the requirement to comply with Title VI of the Civil Rights Act of 1964, and Title VIII of the Civil Rights Act of 1968, allowing members of Indian Tribes to be given preference for housing in accordance to the Native American Housing Assistance and Self Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

The NAHEA does not exempt Indian Tribes from complying with other laws that apply to recipients of Federal financial assistance. Therefore, federally recognized Indian Tribes must continue to comply with Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title IX of the Education Amendments Act of 1972, where applicable. The NAHEA also did not exempt Indian Tribes from complying with the accessibility requirements of the Fair Housing Amendments Act (FHAA) of 1988. This Act amended Title VIII of the Fair Housing Act of 1968, to include disability and familial status. Therefore, the NAHEA did not specifically exempt Indian Tribes from the accessibility requirements of the FHAA. The requirements to construct multi-family housing properties accessible to, or adaptable for, persons with disabilities are to be followed. This requirement shall be consistent with RD Instructions 7 CFR part 3560, § 3560.60, Design Requirements.

(iii) A proposed post-construction operating budget utilizing Form RD 3560–7, “Multiple Family Housing Project Budget/Utility Allowance” can be found at: <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-7.PDF>.

RHS will review the budget to determine that the income and expenses are reasonable and customary for the area. RHS will also verify that the budget reflects the correct and estimated RHS debt service, number of units, unit mix, and proposed rents. Overall, RHS

will review the budget for feasibility, accuracy, and reasonableness.

(iv) An estimate of development costs utilizing Form RD 1924–13 “Estimate and Certificate of Actual Cost” can be found at: <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1924-13.PDF>.

(v) Form RD 3560–30, “Certification of no Identity of Interest (IOI),” if applicable, can be found at: <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-30.PDF>.

(vi) Form RD 3560–31, “Identity of Interest Disclosure/Qualification Certification” if applicable, can be found at: <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-31.PDF>.

An IOI is defined in 7 CFR 3560.11. RHS will review Form RD 3560–30 and Form RD 3560–31, as applicable, to determine if they are completed in accordance with the Forms Manual Insert and to determine that all IOI’s have been disclosed. TA will not be funded by RHS when an IOI exists between the TA provider and the loan or grant applicant.

(vii) Form HUD 2530, “Previous Participation Certification” can be found at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/2530.pdf>.

(viii) If requesting RA or OA, Form RD 3560–25, “Initial Request for Rental Assistance or Operating Assistance” can be found at: <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-25.PDF>.

(ix) Form RD 400–4, “Assurance Agreement” can be found at: <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-4.PDF>.

(x) RD Instruction 1940–Q, Exhibit A–1, “Certification for contracts, grants and loans,” can be found at: <https://www.rd.usda.gov/files/1940q.pdf>.

A separate one-page information sheet listing each of the pre-application scoring criteria contained in this Notice, followed by a reference to the page numbers of all relevant material and documentation that is contained in the proposal that supports the criteria. Applicants are encouraged to include a checklist of all of the application

requirements in accordance with this Notice and to have their electronic application submission documents indexed in the order of this Notice to facilitate the review process. If any of the required items listed above are not submitted within the pre-application in accordance with this Notice or are incomplete, the pre-application will be considered incomplete and will not be considered for funding.

RHS will not consider information from an applicant after the pre-application deadline for the applicable funding round. RHS may contact the applicant to clarify items in the application. RHS will uniformly notify applicants of each curable deficiency. A curable deficiency is an error or oversight that if corrected it would not alter, in a positive or negative fashion, the review and rating of the application. An example of a curable (correctable) deficiency would be inconsistencies in the amount of the funding request.

#### D. Pre-Application Review Information

1. *Selection Criteria.* Section 514 Off-FLH loan funds and Section 516 Off-FLH grant funds will be distributed to states based on a national competition, as follows:

(a) RHS will accept, review, and score pre-applications in accordance with this Notice.

(1) Points will be allocated for applications that leverage other funds based on the ratio of leveraged funds to RHS’s total investment. This is calculated as follows:

The leverage ratio equals the sum of all permanent third-party project investments plus RHS’s allowed value of donated land. The value of the donated land will be calculated in accordance with RHS’s HB–1–3560. The amount of permanent third-party project investments is limited to third-party funds from equity, grants, loans, and deferred developer fees. To obtain the ratio from which the leveraged funds points are derived, the leveraged fund amount is divided by RHS’s investment, which equals the total amount of approved Section 514 loans and/or Section 516 grants. For example:

**\$15 million third-party funds + \$500,000 RHS value of donated land**

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**\$3 million Section 514 loan**

**= leverage ratio of 5.167 percent**



The leverage ratio is multiplied by 10 to determine the points value for this section. Using the above leverage ratio, this would be  $5.167 \times 10$ , which equates to 51.67 score points for leverage.

A score point for leverage of more than zero but less than one will be rounded to one point. A score point for leverage of zero or less will not receive any points. There is no maximum amount of score points for leverage. All score points for leverage will be rounded to two decimal places.

Donated land must meet the requirements of 7 CFR 3560.56(c)(1)(iv). Land that has been donated and received points in the scoring process as donated land may not be considered an equity contribution nor may a return on the value of the land be allowed.

(2) The presence of operational cost savings, such as tax abatements, non-RHS tenant subsidies or donated services are calculated on a per-unit cost savings for the sum of the savings. Savings must be available for at least five years and documentation must be provided within the pre-application demonstrating the availability of savings for five years. To calculate the savings, take the total amount of savings and divide it by the number of units in the project that will benefit from the savings to obtain the per-unit cost savings. For non-RHS tenant subsidy, if the value changes during the five-year calculation, the applicant must use the lower of the non-RHS tenant subsidy to calculate per-unit cost savings. For example, a 10-unit property with 100 percent designated farm labor housing units receiving \$20,000 per year non-RHS subsidy yields a cost savings of \$100,000 ( $\$20,000 \times 5$  years); resulting in a \$10,000 per-unit cost savings ( $\$100,000/10$  units).

Use the following table to apply points:

Per-unit cost savings	Points
Above \$15,000 .....	50
\$10,001–\$15,000 .....	35
\$7,501–\$10,000 .....	20
\$5,001–\$7,500 .....	15
\$3,501–\$5,000 .....	10
\$2,001–\$3,500 .....	5
\$1,000–\$2,000 .....	2

Documentation must be provided within the pre-application that verifies the presence of operational cost savings. RHS will not be providing excess assistance to the project. This is determined by conducting a subsidy layering review and underwriting prior to the obligation of funds.

(3) Ten points will be awarded to projects in Opportunity Zones. An Opportunity Zone is an economically

distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the state and that nomination has been certified by the Secretary of the U.S. Treasury via his delegation of authority to the IRS. See <https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions> for more information. Documentation must be provided within the pre-application that verifies the property is within an Opportunity Zone.

(4) Points will be allocated for the presence of tenant supportive services. Two points will be awarded for each tenant service included in the tenant supportive services plan up to a maximum of 10 points. The plan must describe the proposed supportive services, including a description of the public or private funds that are expected to fund the proposed services as well as the way the services will be delivered, who will administer them, and where they will be administered. All tenant service plans must include letters of intent that clearly state the service that will be provided at the project for the benefit of the residents from any party administering each service, including the applicant. These services may include, but are not limited to, transportation related services, on-site English as a Second Language classes, move-in funds, emergency assistance funds, homeownership counseling, food pantries, after school tutoring, and computer learning centers. The proposed supportive services plan must describe how the services will meet the identified needs of the tenants and how the services will be provided on a consistent, long-term basis to support the tenants. The plan must clearly state how the services will be funded. RA may not be used to pay for these services.

(5) Points will be allocated for Energy initiatives (the aggregate points for all the Energy Initiative categories may not exceed (20 points)).

Properties may receive points for energy initiatives in the categories of energy conservation, energy generation, water conservation and green property management. Properties may earn “energy initiative” points for new construction.

National energy programs including the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED (National Association of Homebuilders 2020 ICC 700 National Green Building Standard, U.S. Department of Energy (DOE) Zero

Energy Ready Homes, International Living Future Institute’s Living Building Challenge, U.S. Environmental Protection Agency (EPA) Energy Star for Homes, Passive House Institute’s PHIUS+, Enterprise Community Partners Green Communities, and local energy conservation programs, will each have an initial checklist indicating prerequisites for participation in its energy program. The applicable energy program checklist will establish whether prerequisites for the energy program’s participation will be met. All checklists must be accompanied by a signed affidavit by the project architect or engineer stating that the goals are achievable, and the project has been enrolled in these programs if enrollment is applicable to that program. These programs evolve and newer versions are published, sometimes annually. Projects must participate in the current version of the programs and must consult with the program provider for the most current, applicable and available programs for their project location. In addition, projects that apply for points under the energy generation category must include calculations of savings of energy. Compare property energy usage of three scenarios: (1) Property built to required code of state with no renewables, to (2) property as-designed with commitments to stated energy conservation programs without the use of renewables and (3) property as-designed with commitments to stated energy conservation programs and the use of proposed renewables. Use local average metrics for weather and utility costs and detail savings in kWh and dollars. Provide payback calculations. These calculations must be done by a licensed engineer or credentialed renewable energy provider. Include with the application, the provider/engineer’s credentials including qualifications, recommendations, and proof of previous work. The checklist, affidavit, calculations, and qualifications of the engineer/energy provider must be submitted together with the pre-application.

Enrollment in EPA Portfolio Manager Program. All projects awarded scoring points for energy initiatives must enroll the project in the EPA Portfolio Manager program to track post-construction energy consumption data. More information about this program may be found at: <http://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager>.

(i) Energy Conservation for New Construction. Projects may be eligible for scoring points when the pre-application includes a written



certification by the applicant to participate and achieve certification in the following energy efficiency programs.

The points will be allocated as follows:

- Participation in the EPA's Energy Star Multifamily New Construction Certification Process (5 points). [https://www.energystar.gov/partner\\_resources/residential\\_new/homes\\_prog\\_reqs/multifamily\\_national\\_page](https://www.energystar.gov/partner_resources/residential_new/homes_prog_reqs/multifamily_national_page)

- Participation in the Green Communities program by the Enterprise Community Partners (2020 Criteria). (7 points) <https://www.enterprisecommunity.org/solutions-and-innovation/green-communities>

OR

- Participation in one of the following two programs will be awarded points for certification.

**NOTE:** Each program has four levels of certification. State the level of certification that the applicant's plans will achieve in their certification:

- LEED Residential BD&C program by the United States Green Building Council (USGBC): <http://www.usgbc.org>.—Certified Level (6 points), OR—Silver Level (7 points), OR—Gold Level (8 points), OR—Platinum Level (9 points)

The applicant must state the level of certification that the applicant's plans will achieve in their certification in the pre-application.

OR

- The National Association of Home Builders (NAHB) 2020 ICC 700 National Green Building Standard: <https://www.nahb.org/>

—Green-Bronze Level (6 points), OR—Silver Level (7 points), OR—Gold Level (8 points), OR—Emerald Level (9 points). Applicant must state the level of certification that the applicant's plans will achieve in their certification in the pre-application.

OR

- Participation in the DOE Zero Energy Ready Homes program. (9 points) <https://www.energy.gov/eere/buildings/zero-energy-ready-homes>

- PHIUS+ Passive Building Standard (2018) (10 points) <https://multifamily.phius.org/service-category/phiplus-within-reach>

OR

- International Living Future Institute Living Building Challenge (11 points) <https://living-future.org/lbc/>

AND

- Participation in local green/energy efficient building standards. Applicants

who participate in a city, county or municipality programs (1 points).

(ii) Energy Generation. Projects that commit to participate in the above-mentioned programs in section i) also will receive scoring points for installation of on-site renewable energy sources. Energy analysis of preliminary building plans using industry-recognized simulation software must document the projected total energy consumption of all the building components and building site usage. Projects with an energy analysis of the preliminary or rehabilitation building plans that propose a 10 percent to 100 percent energy generation commitment (where generation is considered to be the total amount of energy needed to be generated on-site to get the building a net-zero or net positive consumer/producer of energy) will be awarded points as follows:

- 0 to 9 percent commitment to energy generation—0 points
- 10 to 20 percent commitment to energy generation—1 point
- 21 to 40 percent commitment to energy generation—2 points
- 41 to 60 percent commitment to energy generation—3 points
- 61 to 80 percent commitment to energy generation—4 points
- 81 to 100 percent or more commitment to energy generation—5 points

Projects may participate in Power Purchase Agreements or Solar Leases to achieve their on-site renewable energy generation goals provided that the financial obligations of the lease/purchase agreements are clearly documented and included in the pre-application, and qualifying ratios continue to be achieved.

An additional one point (1 point) will be awarded for off-grid systems, or elements of systems, provided that at least five percent of the on-site renewable system is off-grid. See [www.dsireusa.org](http://www.dsireusa.org) for State and local specific incentives and regulations of energy initiatives.

(iii) Water Conservation in Irrigation Measures. Projects may be awarded one point (1 point) for the use of an engineered recycled water (gray water or storm water) for landscape irrigation covering 50 percent or more of the property's site landscaping needs.

(iv) Property Management Credentials. Projects may be awarded one point (1 point) if the designated property management company or individuals that will assume maintenance and operation responsibilities upon completion of construction work have a Credential for

Green Property Management.

Credentialing can be obtained from the National Apartment Association (NAA), National Affordable Housing Management Association, The Institute for Real Estate Management, USGBC LEED for Operations and Maintenance, or another source with a certifiable credentialing program. Credentialing must be illustrated in the resume(s) of the property management team and included with the pre-application.

(6) Market. The applicant must provide the required market study as described above in Section C, Pre-application and Submission Information, number 11 and will be awarded points as follows:

Need. Applications will be rated on the absorption ratio. The absorption ratio is computed by dividing the number of units in the proposed project by the number of income eligible and farm labor eligible households within the primary market area.

- Evidence of Strong Need (4 points). An absorption ratio of 15 percent or less.

- Evidence of Need (2 points). An absorption ratio greater than 15 percent and less than 30 percent.

- No Evidence of Need (0 points). An absorption ratio 30 percent or greater.

Neighborhood and Context. Applicants must demonstrate that the location of the site supports farm labor housing. The applicant must identify the location, the proximity, and ease of access of the project site to amenities important to the residents that supplement the services provided on-site. The site location will be rated on the following:

- Health care and social services (hospital, medical clinic, social service organization that offers services to farm workers) (2 points);

- Grocery stores (e.g., supermarket or other store that sells produce and meat) (2 points);

- Recreational facilities (e.g., parks and green space, community center, gym, health club, or family entertainment venue, library) (2 points);

- Civic facilities (e.g., place of worship, police or fire station, post office) (2 points);

- Other neighborhood-serving amenities (e.g., apparel store, convenience store, pharmacy, bank, hair care, and restaurants) (2 points).

Applicants must describe how residents could reasonably access critical amenities. Amenities will generally be considered readily available if they are within one-half mile walking distance or they can be accessed by public transportation (within one-quarter walking mile)

including accessible public transportation option, and/or affordable private door-to-door shuttle/van service that is reliable and accessible. Applicants may commit to providing such transportation services if the nature of the commitment and the financing of the commitment is adequately described. Project funds cannot be used for this purpose.

To score the maximum number of points on this factor, applicants must make a compelling argument that the location of the proposed project is well suited with respect to proximate amenities to meet the needs of farm workers. Documentation must be provided that clearly outlines the project site and its proximity to the applicable amenities.

(7) Owner capacity. This factor addresses the extent to which the applicant, or a member of the applicant's team, has the experience and organizational resources to successfully implement the proposed activities in a timely manner. In this rating factor, RHS will consider the extent to which the application demonstrates the applicant's ability to develop and operate FLH on a long-term basis. In the case of co-sponsored applications, the rating will be based upon the combination of the experience of all co-sponsors in the area under review.

A firm resume must be provided for the applicant and all Sponsors/Co-Sponsors. Each resume must include evidence of development experience and services experience, as applicable. In addition, the resume should include a description of all similar projects that the applicant and Sponsors/Co-Sponsors have been involved with, to include whether they were Federal housing projects, and information regarding the success of the projects.

Development Experience. Applicants should demonstrate how the scope, extent, and quality of the Sponsor's and/or their consultant team's recent experience in developing and operating housing is consistent with the details of the proposed project. The evaluation will consider experience with LIHTC, FLH with RHS funds, and other complex financing development transactions to the extent such expertise is relevant to the proposal, experience that shows familiarity with FLH and experience operating Federally assisted housing, which may be demonstrated by providing supporting data related to actual performance. The description or firm resumes must include any rental housing projects and supportive services facilities that the applicant sponsored, owns or operates.

RHS will make a determination on the level of experience of the applicant and all Sponsors/Co-Sponsors, if applicable, based on the information and documentation presented within the pre-application. Points will be awarded as follows:

- No development experience (0 points)
- Low level of development experience (2 points)
- Medium level of development experience (5 points)
- High level of development experience (10 points)

To score the highest number of points for this factor, applicants must describe significant previous experience in providing housing to farm laborer's generally and significant previous experience implementing development activities with the type of financing proposed.

Supportive Services Experience. Applicants should demonstrate how the scope, extent, and quality of the applicant's experience and/or the experience of committed partners, including property managers, in providing services is consistent with the details of the proposed supportive services plan. The description and firm resumes must identify specific services provided. Applicants must explain their experience in RHS subsidy administration and/or their partners' experience in providing property management and coordinating supportive services.

RHS will make a determination on the level of experience of the applicant and all Sponsors/Co-Sponsors, if applicable, based on the information and documentation presented within the pre-application. Points will be awarded as follows:

- No supportive services experience (0 points)
- Low level of supportive services experience (1 point)
- Medium level of supportive services experience (3 points)
- High level of supportive services experience (6 points)

To score the highest number of points for this factor, applicants and/or committed partners must describe and provide evidence of significant previous experience in providing and coordinating supportive services to farm laborers.

## E. Federal Award Administration Information

### 1. Federal Award Notices

Applicants must submit their pre-applications by the due dates specified in this Notice. RHS will rank by score,

highest to lowest, eligible and complete pre-applications. Based on available funding, the 10 percent persistent poverty counties set-aside, and the 30 percent limitation per state, RHS will determine which pre-applications will be selected for further processing starting with the highest scoring pre-application. RHS will notify applicants with pre-applications found eligible and selected for further processing.

Applicants will be notified if there are insufficient funds available for the proposal and such notification is not appealable. For applications found ineligible or incomplete, RHS will send notices of ineligibility that provide appeal rights under 7 CFR part 11, as appropriate.

RHS will rank all pre-applications nationwide. When proposals have an equal score and not all pre-applications can be funded, preference will be given first to *Indian tribes* as defined in § 3560.11, then *local non-profit organizations or public bodies whose principal purposes include low-income housing* that meet the conditions of § 3560.55(c), and the following conditions:

- Is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue Service code;
- Is not wholly or partially owned or controlled by a for-profit or limited-profit type entity;
- Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity;
- Is not co-venturing with another entity; and
- The entity or its members will not be receiving any direct or indirect benefits pursuant to LIHTC.

If after all of the above evaluations are completed and there are two or more pre-applications that have the same score, and all cannot be funded, a lottery will be used to break the tie. The lottery will consist of the names of each pre-application with equal scores printed onto a same size piece of paper, which will then be placed into a receptacle that fully obstructs the view of the names. The Director of the Production and Preservation Division, in the presence of two witnesses, will draw a piece of paper from the receptacle. The name on the piece of paper drawn will be the applicant to be funded.

If insufficient funds or RA/OA remain for the next ranked proposal, that applicant will be given a chance to modify their pre-application to bring it within the remaining available funding. This will be repeated for each next

ranked eligible proposal until an award can be made or the list is exhausted.

## 2. Administrative and National Policy

All FLH loans and grants are subject to the restrictive-use requirements contained in 7 CFR 3560.72(a)(2).

A FLH grant agreement, prepared by RHS, must be dated and executed by the applicant on the date of closing, if applicable. The form of loan resolution to be adopted by the applicant must contain policy and procedural requirements that should be read and be fully understood by the applicant's Board of Directors and officers. The grant agreement will remain in effect for so long as there is a need for FLH and will not expire until an official determination has been made by RHS, if applicable.

## 3. Reporting

Borrowers must maintain separate financial records for the operation and maintenance of the project and for tenant services. Tenant services will not be funded by RHS. Funds allocated to the operation and maintenance of the project may not be used to supplement the cost of tenant services, nor may tenant service funds be used to supplement the project operation and maintenance. Detailed financial reports regarding tenant services will not be required unless specifically requested by RHS, and then only to the extent necessary for RHS and the borrower to discuss the affordability (and competitiveness) of the service provided to the tenant. The project audit, or verification of accounts on Form RD 3560-10, "Borrower Balance Sheet" together with an accompanying Form RD 3560-7, "Multiple Family Housing Project Budget/Utility Allowance" must allocate revenue and expenses between project operations and the tenant services component.

## F. Preliminary Eligibility Assessment

RHS shall make a preliminary eligibility assessment using the following criteria:

1. The pre-application was received by the applicable submission deadlines specified in the Notice;
2. The pre-application is complete as specified by the Notice;
3. The applicant is an eligible entity and is not currently debarred, suspended, or delinquent on any Federal debt; and
4. The proposal is for authorized purposes.

## G. Final Application and Submission Information

### 1. Final Application Submission

The pre-applications that are selected for further processing will be invited to submit final applications. In the event that a pre-application is selected for further processing and the applicant declines, the next highest ranked pre-application will be selected for further processing in each individual fiscal year that this Notice is open. The final applications will be due by the dates specified in this Notice for the applicable funding round.

All final applications must be filed with RHS and must meet the requirements of this Notice. Incomplete final applications will be rejected and returned to the applicant. No final applications will be accepted after the deadline in a given round unless the date and time are extended by another Notice published in the **Federal Register**.

A final application in accordance with this Notice must be submitted and approved by RHS prior to the obligation of funds.

The final application submission process will be the same as previously explained and outlined for the pre-application submission process in Section C (1), "Pre-Application and Submission Information."

### 2. Final Application Requirements

(a) The final application must contain the following in addition to the pre-application documents that were previously submitted:

- (1) Description of any changes from the pre-application submission including funding, scope of work, etc.
- (2) If any document that was submitted within the pre-application has since changed or needs to be updated with the final application, please submit the updated form(s) with the final application.
- (3) Final Standard Form 424, "Application for Federal Assistance."
- (4) Final proposed Form RD 1924-13, "Estimate and Certificate of Actual Cost."
- (5) Final proposed post-construction operating budget utilizing Form RD 3560-7, "Multiple Family Housing Project Budget/Utility Allowance."
- (6) Updated financial statements, if applicable (must be within six months of this Notice's final application submission due date of the applicable funding round).
- (7) Form RD 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts" can be found at: [https://](https://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1910-11.PDF)

[forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1910-11.PDF](https://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1910-11.PDF).

(8) Form RD 400-1, "Equal Opportunity Agreement" can be found at: <https://forms.sc.egov.usda.gov/eForms/searchAction.do?pageAction=BrowseForms&MenuAction=Yes>.

(9) Form RD 400-6, "Compliance Statement" can be found at: <https://forms.sc.egov.usda.gov/eForms/searchAction.do?pageAction=BrowseForms&MenuAction=Yes>.

(10) Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions," can be found at: [https://www.ocio.usda.gov/sites/default/files/docs/2012/AD1047\\_PrimaryCoveredTransactions\\_final.pdf](https://www.ocio.usda.gov/sites/default/files/docs/2012/AD1047_PrimaryCoveredTransactions_final.pdf). This form is only required for applicants exempt under 2 CFR 25.110 (i.e. individual applicants).

(11) Form AD-1048, "Certification of Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions" if applicable, can be found at: [https://www.ocio.usda.gov/sites/default/files/docs/2012/AD1048\\_LowerTierCoveredTransactions\\_final.pdf](https://www.ocio.usda.gov/sites/default/files/docs/2012/AD1048_LowerTierCoveredTransactions_final.pdf). This form is only required for applicants exempt under 2 CFR 25.110 (i.e. individual applicants).

(12) Form AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals," can be found at: [https://www.ocio.usda.gov/sites/default/files/docs/2012/AD1049\\_Alt1\\_GranteesOtherThanIndividuals\\_v2\\_final.pdf](https://www.ocio.usda.gov/sites/default/files/docs/2012/AD1049_Alt1_GranteesOtherThanIndividuals_v2_final.pdf).

(13) Form RD 3560-13, "Multi-Family Project Borrower's/Management Agent's Management Certification" if applicable, can be found at: <https://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-13.PDF>.

(14) Management plan with all attachments including the proposed record keeping system, the proposed lease with an attorney's certification, if applicable, and the proposed occupancy rules.

(15) Management Agreement, if applicable.

(16) Final organizational documents or Certificate of Good Standing.

(17) Attorney Certification. Letter from the applicant's attorney certifying the legal sufficiency of the organizational documents. The attorney must certify:

(i) The applicant's legal capacity to successfully operate the proposed project for the life of the loan and/or grant.

(ii) The organizational documents comply with RHS regulations.

(iii) For partnership purchasers, that the term of the partnership extends at least through the latest maturity of all proposed RHS debt.

(iv) That the organizational documents require prior written RHS approval for any of the following: Withdrawal of a general partner/managing member, admission of a general partner/managing member, amending the organizational documents, and selling all or substantially all of the assets of the purchaser.

(18) Acceptable appraisal. Applicants should contact RHS to discuss the appraisal requirements including the Statement of Work (SOW) prior to engaging an appraiser. Appraisals prepared for any other participants or lenders may not satisfy RHS SOW requirements and may require the applicant to incur additional costs. Please contact RHS at [MFHprocessing1@usda.gov](mailto:MFHprocessing1@usda.gov) to obtain a SOW prior to ordering the appraisal.

(19) An acceptable Post Construction Capital Needs Assessment (CNA). The minimum requirements for a CNA acceptable to RHS can be found in Attachment B, CNA SOW. This is supplemented by Attachment C, Fannie Mae Physical Needs Assessment Guidance to the Property Evaluator. The CNA report must be obtained by the CNA recipient from an independent third-party CNA provider that has no identity of interest with the property owner, management agent, applicant or any other principle or affiliate. The CNA recipient will contract with the CNA provider and is therefore, the client of the provider. However, the CNA recipient must consult with RHS, before contracting with a CNA provider to review Guidance Regarding Contracting for a CNA. The RHS CNA reviewer will evaluate a proposed agreement or engagement letter between the CNA recipient and the CNA provider using Attachment D, CNA Guidance to the Reviewer, prior to reviewing any CNA report. Unacceptable CNA proposals, contracts or reports will be returned to the CNA recipient for appropriate corrections before they will be used for any underwriting determinations. The CNA reviewer will also review the cost of the CNA contract. In most cases, the CNA service contract amount has not exceeded \$3,500 based on RHS's most recent cost analysis. Borrowers and applicants are encouraged to obtain multiple bids in all cases. However, there is no RHS requirement to select the "low bidder." All of the information and requirements, including the CNA Template that the CNA must be submitted on, can be found at: [https://](https://www.rd.usda.gov/programs-services/multi-family-housing-direct-loans)

[www.rd.usda.gov/programs-services/multi-family-housing-direct-loans](https://www.rd.usda.gov/programs-services/multi-family-housing-direct-loans).

(20) Final plans and specifications along with the proposed manner of construction, if available. The housing must meet RHS's design and construction standards contained in 7 CFR part 1924, subparts A and C, and must also meet all applicable Federal, state, and local accessibility standards and be in compliance with all building codes. The final plans and specifications along with the proposed manner of construction must be submitted prior to the approval of the final application.

(21) Final construction planning, bidding, and contract documents, including the construction contract and architectural agreement, etc., if available. The final construction planning, bidding, and contract documents, including the construction contract and architectural agreement, etc., must be submitted prior to the approval of the final application.

(22) Environmental information in accordance with the requirements in 7 CFR part 1970. The applicant should consult with RHS to determine the appropriate level of environmental review and to obtain publicly available resources at the earliest possible time for guidance in identifying all relevant environmental issues that must be addressed and considered during early project planning and design throughout the process. Requests for consult meetings can be sent to the following email address: [MFHprocessing1@usda.gov](mailto:MFHprocessing1@usda.gov). The applicant is responsible for preparing and submitting the environmental review document in accordance with the format and standards provided by RHS in 7 CFR part 1970. Applicants may employ a design or environmental professional or technical service provider to assist them in the preparation of their environmental review documents at their own expense. The levels of review are as follows:

(i) Categorical Exclusion without an Environmental Report (7 CFR 1970.53).

This level of review is generally required for proposals for financial assistance that involve minimal alterations in the physical environment and typically occur on previously disturbed land.

(ii) Categorical Exclusion with an Environmental Report (7 CFR 1970.54).

This level of review is generally required for proposals for financial assistance that require an applicant to submit an environmental report with their application to facilitate RHS's determination of extraordinary circumstances. This level of review

would apply to proposals where site development activities for rural development purposes would impact not more than 10 acres of real property and would not cause a substantial increase in traffic.

(iii) Environmental Assessment (7 CFR part 1970, subpart C).

This level of review is generally required for proposals for financial assistance that do not fall within the categories listed in § 1970.53 or § 1970.54.

The information above applies generally and cannot be used as official guidance, as stated above, please contact RHS to determine the appropriate level of environmental review before developing the report.

(23) The environmental information must include evidence of compliance with the requirements of the applicable State Housing Preservation Office (SHPO), and/or Tribal Historic Preservation Officer (THPO). A letter from the SHPO and/or THPO where the Off-FLH project is located signed by their designee will serve as evidence of compliance.

(24) If leveraged funds are going to be used and are in the form of LIHTC, the applicant must include in the final application a firm commitment letter from the HFA, if available. The firm commitment letter from the HFA must be submitted prior to the approval of the final application. If the applicant is unable to secure a firm commitment letter from the HFA in order to submit it to RHS to meet the deadlines stated in this Notice, the application will be deemed incomplete and the applicant will be notified in writing that the application will not be considered for funding. Additionally, the applicant will be required to submit a letter of intent or commitment from the investor or syndicator for the purchase of the LIHTC prior to the approval of the final application.

(25) All applications that propose the use of any leveraged funds must submit firm commitment letters within their final application, if available. This includes any interim lender commitment letters with evidence of license to do business in the applicable state. If the applicant is unable to secure firm commitment letters from the funding sources in order to submit them to RHS to meet the deadlines stated in this Notice, the application will be deemed incomplete and the applicant will be notified in writing that the application will not be considered for funding.

(26) Current Preliminary title insurance commitment/binder.

(27) Land survey with flood plain certification.

(28) Description of how the applicant will meet the equity contribution requirement as applicable.

(29) Description of how the applicant will provide the two percent initial operating and maintenance reserve requirement.

(30) Signed statement from the applicant agreeing to pay cost overruns.

#### Final Applications

RHS will follow this Notice for the processing of final applications. Final applications will need to follow the bidding process as set forth in 7 CFR part 1924.

#### Documentation of Underwriting and Costs

All final applications including the loan and/or grant requests will be analyzed using an underwriting template that RHS has developed. A complete analysis and underwriting of the proposed transaction will be completed to ensure all regulatory requirements are met and to ensure overall project feasibility as well as to determine the minimum amount of assistance that is needed for the proposal.

Once the loan and/or grant funds have been obligated, the applicant should be prepared to close the transaction and complete construction within 12–18 months. Off-FLH loans and/or grants must be liquidated not more than three years from the date the loan and/or grant funds were obligated. Annually, if the loan and/or grant funds have not been fully liquidated, the applicant must submit an obligation extension request to RHS.

Questions regarding this Notice may be directed to Jonathan Bell, Branch Chief, Processing and Report Review Branch 1, Production and Preservation Division, Multifamily Housing Program, Rural Development, United States Department of Agriculture, or email: [MFHprocessing1@usda.gov](mailto:MFHprocessing1@usda.gov) or phone at: 254-742-9764.

#### Technical Assistance Providers

Please be aware that TA services may not be used to reimburse a non-profit or public body applicant for technical services provided by a non-profit organization, with housing and/or community development experience, to assist the non-profit applicant entity in the development and packaging of its loan/grant docket and project. In addition, TA will not be funded by RHS when an identity of interest exists between the TA provider and the loan

or grant applicant. Identity of interest is defined in 7 CFR 3560.11.

#### Equal Opportunity Survey

RHS should provide applicants the voluntary OMB 1890-0014 form, "Survey on Ensuring Equal Opportunity for Applicants," (or other forms currently being used by RHS) and ask the applicant to complete it and return it to RHS.

#### Substantial Portion of Income From Farm Labor

The Notice restates the requirement that domestic farm laborers must receive a substantial portion of their income from "farm labor." Further explanation of this requirement can be found in the regulation at 7 CFR 3560.576(b)(2). The term "farm labor" is defined in 7 CFR 3560.11.

#### H. Equal Opportunity and Non-Discrimination Requirements

In accordance with federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program. Political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of a complaint form, call, (866) 632-9992. Submit your completed form or letter to USDA by:

(1) *Mail*: United States Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410;

(2) *Fax*: (202) 690-7442; or

(3) *Email at*: [program.intake@usda.gov](mailto:program.intake@usda.gov).

USDA is an equal opportunity provider, employer, and lender.

**Chadwick Parker,**

*Acting Administrator, Rural Housing Service.*

[FR Doc. 2021-02193 Filed 2-1-21; 8:45 am]

**BILLING CODE 3410-XV-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-063]

#### Cast Iron Soil Pipe Fittings From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017–2018

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that certain producers and/or exporters of cast iron soil pipe fittings (soil pipe fittings) from the People's Republic of China (China), received countervailable subsidies during the period of review (POR) December 19, 2017, through December 31, 2018.

**DATES:** Applicable February 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dennis McClure or Joseph Dowling, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5973 or (202) 482-1646, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

Commerce published the *Preliminary Results* of the administrative review in the *Federal Register* on October 23, 2020.<sup>1</sup> We invited interested parties to comment on the *Preliminary Results*.

On November 23, 2020, we received a case brief from Wor-Biz Industrial Product Co., Limited (Anhui) (Wor-Biz).<sup>2</sup> On November 30, 2020, we

<sup>1</sup> See *Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 85 FR 67515 (October 23, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

<sup>2</sup> On January 8, 2020, Commerce published its final determination in a changed circumstances

received a rebuttal brief from the petitioner.<sup>4</sup> For a complete description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.<sup>5</sup>

#### Scope of the Order<sup>6</sup>

The product covered by the *Order* is cast iron soil pipe fittings from China. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.

#### Analysis of Comments Received

All issues raised by parties in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

#### Changes Since the Preliminary Results

Based on our analysis of the case and rebuttal briefs, and the evidence on the record, Commerce made no changes to the preliminary results.

#### Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs

review, finding that Wor-Biz Industrial Product Co., Ltd. (Anhui) is the successor in interest to Wor-Biz Trading Co., Ltd. (Anhui). See *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Results of Changed Circumstances Reviews*, 85 FR 881 (January 8, 2020).

<sup>3</sup> See Wor-Biz's Letter, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Comments on Preliminary Results," dated November 23, 2020.

<sup>4</sup> See Petitioner's Letter, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Rebuttal Brief, dated November 30, 2020. The petitioner in this review is the Cast Iron Soil Pipe Institute, which is a trade association, whose members are all domestic producers of cast iron soil pipe fittings.

<sup>5</sup> See Memorandum, "Issues and Decision Memorandum for the Final Results of the 2017–2018 Countervailing Duty Administrative Review of Cast Iron Soil Pipe Fittings from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>6</sup> See *Cast Iron Soil Pipe Fittings from the People's Republic of China: Countervailing Duty Order*, 83 FR 44566 (August 31, 2018) (*Order*).

found countervailable, we find that there is a subsidy, *i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>7</sup> The Issues and Decision Memorandum contains a full description of the methodology underlying Commerce's conclusions, including any determination that relied upon the use of adverse facts available (AFA) pursuant to sections 776(a) and (b) of the Act.

#### Rate for Non-Selected Companies Under Review

There are nine companies for which a review was requested, but which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent. For these nine companies, we applied the subsidy rate calculated for Wor-Biz, as the only rate calculated for a mandatory respondent that was above *de minimis* and not based entirely on facts available. This methodology for establishing the subsidy rate for the non-selected companies is consistent with our practice and with section 705(c)(5)(A) of the Act.

#### Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a countervailable subsidy rate for the mandatory respondent Wor-Biz. We determined the countervailable subsidy rate for Qinshui Shunshida Casting Co., Ltd. based entirely on AFA, in accordance with section 776 of the Act. We also assigned an individual estimated subsidy rate based on AFA to entries produced or exported by Wor-Biz's unaffiliated supplier, Wuhu Best Machines Co., Ltd., in accordance with section 776 of the Act. Therefore, the only rate that is not zero, *de minimis*, or based entirely on facts otherwise available is the rate calculated for Wor-Biz. Consequently, as discussed above, the rate calculated for Wor-Biz is also assigned as the rate for all other producers and exporters subject to this review but not selected for individual examination (*i.e.*, non-selected companies).

We find the countervailable subsidy rates for the mandatory and non-selected respondents under review to be as follows:

<sup>7</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Producer/exporter	Subsidy rate (percent)
Qinshui Shunshida Casting Co., Ltd .....	109.32
Wor-Biz Industrial Product Co., Ltd. (Anhui) .....	<sup>8</sup> 5.13
Wuhu Best Machines Co., Ltd ...	109.32
Non-Selected Companies Under Review:	
Dalian Lino F.T.Z. Co., Ltd ..	5.13
Dalian Metal I/E Co., Ltd .....	5.13
Dinggin Hardware (Dalian) Co., Ltd .....	5.13
Golden Orange International Ltd .....	5.13
Hebei Metals & Engineering Products Trading Co., Ltd	5.13
Richang Qiaoshan Trade Co., Ltd .....	5.13
Shanxi Zhongrui Tianyue Trading Co., Ltd .....	5.13
Shijiazhuang Asia Casting Co., Ltd .....	5.13
Yangcheng County Huawang Universal .....	5.13

#### Assessment Rates

Pursuant to 19 CFR 351.212(b)(2), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. Consistent with its recent notice,<sup>9</sup> Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

#### Cash Deposit Instructions

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this

<sup>8</sup> This rate applies to subject merchandise exported by Wor-Biz Industrial Product Co., Ltd. (Anhui) and produced by companies other than Wuhu Best Machines Co., Ltd.

<sup>9</sup> See *Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings*, 86 FR 3995 (January 15, 2021).

administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

### Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

### Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: January 27, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

### Appendix

#### List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Period of Review
- V. Subsidies Valuation Information
- VI. Changes Since the Preliminary Results
- VII. Use of Facts Otherwise Available
- VIII. Analysis of Programs
- IX. Analysis of Comments
- Comment 1: Whether To Use the Value-Added Tax (VAT) Rates Provided by Wor-Biz or the Government of China
- Comment 2: Whether To Adjust the Electricity for Less-Than-Adequate-Remuneration (LTAR) Calculation To Reflect a VAT-Exclusive Subsidy Rate
- X. Recommendation

[FR Doc. 2021-02152 Filed 2-1-21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration [A-570-044]

#### 1,1,1,2-Tetrafluoroethane (R-134a) From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that the sole company subject to this administrative review is part of the China-wide entity because it did not file a separate rate application (SRA). The period of review (POR) is April 1, 2019, through March 31, 2020. We invite interested parties to comment on these preliminary results.

**DATES:** Applicable February 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Berger, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2483.

#### SUPPLEMENTARY INFORMATION:

#### Background

On April 1, 2020, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on 1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China (China).<sup>1</sup> In response, on April 30, 2020, the American HFC Coalition and its individual members<sup>2</sup> (the petitioners) requested a review of one company, Puremann, Inc. (Puremann).<sup>3</sup> Commerce initiated a review of this company on June 8, 2020.<sup>4</sup> The deadline for interested parties to submit an SRA or separate rate certification (SRC) was July 8, 2020.<sup>5</sup> No party submitted an SRA or

an SRC. On July 16, 2020, Commerce placed U.S. Customs and Border Protection (CBP) data on the record of this review demonstrating that there were no entries of subject merchandise during the POR.<sup>6</sup> The petitioners submitted comments on the CBP data on August 6, 2020.<sup>7</sup> On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days.<sup>8</sup> The deadline for the preliminary results of this review is now March 1, 2020.

#### Scope of the Order

The merchandise covered by the order is 1,1,1,2-Tetrafluoroethane, R-134a, or its chemical equivalent, regardless of form, type, or purity level. The chemical formula for 1,1,1,2-Tetrafluoroethane is CF<sub>3</sub>-CH<sub>2</sub>F, and the Chemical Abstracts Service registry number is CAS 811-97-2.<sup>9</sup>

Merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2903.39.2020. Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

#### Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

#### Preliminary Results of Review

Puremann, the sole company subject to this review, did not file an SRA. Thus, Commerce preliminarily determines that this company has not demonstrated its eligibility for separate rate status. As such, Commerce preliminarily determines that the company subject to this review is part of the China-wide entity. In addition, Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an

<sup>6</sup> See Memorandum, "2019–2020 Administrative Review of the Antidumping Duty Order on 1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China," dated July 16, 2020.

<sup>7</sup> See Petitioners' Letter, "Antidumping Duty Administrative Review of 1,1,1,2-Tetrafluoroethane (R-134a) from China: HFC Coalition's Comments on CBP Data and Request to Issue Quantity and Value Questionnaire," dated August 6, 2020.

<sup>8</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

<sup>9</sup> 1,1,1,2-Tetrafluoroethane is sold under a number of trade names including Klea 134a and Zephex 134a (Mexichem Fluor); Genetron 134a (Honeywell); Freon™ 134a, Suva 134a, Dymel 134a, and Dymel P134a (Chemours); Solkane 134a (Solvay); and Forane 134a (Arkema). Generically, 1,1,1,2-Tetrafluoroethane has been sold as Fluorocarbon 134a, R-134a, HFC-134a, HF A-134a, Refrigerant 134a, and UN3159.

<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 18191 (April 1, 2020).

<sup>2</sup> American HFC Coalition's members include the following companies: Arkema Inc., the Chemours Company FC LLC, Honeywell International Inc., and Mexichem Fluor, Inc.

<sup>3</sup> See Petitioner's Letter, "1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Request for Administrative Review of Antidumping Duty Order," dated April 30, 2020.

<sup>4</sup> See *Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews*, 85 FR 35068 (June 8, 2020) (*Initiation Notice*).

<sup>5</sup> SRAs and SRCs were due thirty days from the publication of Commerce's *Initiation Notice*. In this administrative review, the deadline was July 8, 2020.



antidumping duty administrative review.<sup>10</sup> Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity. In this administrative review, no party requested a review of the China-wide entity. Moreover, we have not self-initiated a review of the China-wide entity. Because no review of the China-wide entity is being conducted, the China-wide entity's entries are not subject to the review, and the rate applicable to the NME entity is not subject to change as a result of this review. The China-wide entity rate is 167.02 percent.<sup>11</sup>

### Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments, filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), within 30 days after the date of publication of these preliminary results of review.<sup>12</sup> ACCESS is available to registered users at <https://access.trade.gov>. Rebuttal briefs, limited to issues raised in the case briefs, must be filed within seven days after the time limit for filing case briefs.<sup>13</sup> Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities.<sup>14</sup> Note that Commerce has temporarily modified certain portions of its requirements for serving documents containing business proprietary information, until further notice.<sup>15</sup>

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to Commerce within 30 days of the date of publication of this notice.<sup>16</sup> Requests should contain: (1) The party's name, address, the telephone number; (2) the number of participants; and (3)

a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held.<sup>17</sup> Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

### Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP will shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.<sup>18</sup> We intend to instruct CBP to liquidate entries containing subject merchandise exported by the company under review that we determine in the final results to be part of the China-wide entity at the China-wide entity rate of 167.02 percent. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For companies that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required); (2) for previously investigated or reviewed Chinese or non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will

be that for the China-wide entity (*i.e.*, 167.02 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 315.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

### Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: January 27, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2021-02167 Filed 2-1-21; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-4735.

### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR

<sup>10</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).

<sup>11</sup> See 1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Antidumping Duty Order, 82 FR 18422, 18423 (April 19, 2017).

<sup>12</sup> See 19 CFR 351.309(c)(1)(ii).

<sup>13</sup> See 19 CFR 351.309(d)(1) and (2); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

<sup>14</sup> See 19 CFR 351.309(c) and (d); see also 19 CFR 351.303 (for general filing requirements).

<sup>15</sup> See *Temporary Rule*.

<sup>16</sup> See 19 CFR 351.310(c).

<sup>17</sup> See 19 CFR 310(d).

<sup>18</sup> See 19 CFR 351.212(b)(1).



351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

### Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be “collapsed” (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often

require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

### Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do

so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

### Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.<sup>1</sup> Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

*Opportunity To Request a Review:* Not later than the last day of February 2021,<sup>2</sup> interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period to be reviewed
<b>Antidumping Duty Proceedings</b>	
BRAZIL: Carbon and Alloy Steel Cut-to-Length Plate, A-351-847 .....	2/1/20–1/31/21
INDIA: Certain Cut-To-Length Carbon-Quality Steel Plate A-533-817 .....	2/1/20–1/31/21
INDIA: Certain Preserved Mushrooms, A-533-813 .....	2/1/20–1/31/21
INDIA: Certain Frozen Warmwater Shrimp, A-533-840 .....	2/1/20–1/31/21
INDIA: Stainless Steel Bar, A-533-810 .....	2/1/20–1/31/21
INDONESIA: Certain Cut-To-Length Carbon-Quality Steel Plate, A-560-805 .....	2/1/20–1/31/21
INDONESIA: Certain Preserved Mushrooms, A-560-802 .....	2/1/20–1/31/21
ITALY: Stainless Steel Butt-Weld Pipe Fittings, A-475-828 .....	2/1/20–1/31/21

<sup>1</sup> See Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

<sup>2</sup> Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

	Period to be reviewed
JAPAN: Carbon Steel Butt-Weld Pipe Fittings, A-588-602 .....	2/1/20-1/31/21
MALAYSIA: Stainless Steel Butt-Weld Pipe Fittings, A-557-809 .....	2/1/20-1/31/21
MEXICO: Large Residential Washers, A-201-842 .....	2/1/20-1/31/21
PHILIPPINES: Stainless Steel Butt-Weld Pipe Fittings, A-565-801 .....	2/1/20-1/31/21
REPUBLIC OF KOREA: Certain Cut-To-Length Carbon-Quality Steel Plate, A-580-836 .....	2/1/20-1/31/21
SOCIALIST REPUBLIC OF VIETNAM: Certain Frozen Warmwater Shrimp, A-552-802 .....	2/1/20-1/31/21
SOCIALIST REPUBLIC OF VIETNAM: Steel Wire Garment Hangers, A-552-812 .....	2/1/20-1/31/21
SOCIALIST REPUBLIC OF VIETNAM: Utility Scale Wind Towers, A-552-814 .....	2/1/20-1/31/21
SOUTH AFRICA: Certain Carbon and Alloy Steel Cut-To-Length Plate, A-791-822 .....	2/1/20-1/31/21
TAIWAN: Crystalline Silicon Photovoltaic Products, A-583-853 .....	2/1/20-1/31/21
TAIWAN: Carbon and Alloy Steel Threaded Rod, A-583-865 .....	9/25/19-1/31/21
THAILAND: Certain Frozen Warmwater Shrimp, A-549-822 .....	2/1/20-1/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Certain Preserved Mushrooms, A-570-851 .....	2/1/20-1/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Common Alloy Aluminum Sheet, A-570-073 .....	2/1/20-1/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Crystalline Silicon Photovoltaic, A-570-010 .....	2/1/20-1/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Certain Frozen Warmwater Shrimp, A-570-893 .....	2/1/20-1/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Heavy Forged Hand Tools, With or Without Handles, A-570-803 .....	2/1/20-1/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Large Residential Washers, A-570-033 .....	2/1/20-1/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Rubber Bands, A-570-069 .....	2/1/20-1/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Small Diameter Graphite Electrodes, A-570-929 .....	2/1/20-1/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Truck and Bus Tires, A-570-040 .....	2/1/20-1/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Uncovered Innerspring Units, A-570-928 .....	2/1/20-1/31/21
THE PEOPLE'S REPUBLIC OF CHINA: Utility Scale Wind Towers, A-570-981 .....	2/1/20-1/31/21
TURKEY: Certain Carbon and Alloy Steel Cut-To-Length Plate, A-489-828 .....	2/1/20-1/31/21

#### Countervailing Duty Proceedings

INDIA: Certain Cut-To-Length Carbon-Quality Steel Plate C-533-818 .....	1/1/20-12/31/20
INDIA: Prestressed Concrete Steel Wire Strand, C-533-829 .....	1/1/20-12/31/20
INDIA: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, C-533-874 .....	1/1/20-12/31/20
INDONESIA: Certain Cut-To-Length Carbon-Quality Steel Plate, C-560-806 .....	1/1/20-12/31/20
REPUBLIC OF KOREA: Certain Cut-To-Length Carbon-Quality Steel Plate, C-580-837 .....	1/1/20-12/31/20
SOCIALIST REPUBLIC OF VIETNAM: Steel Wire Garment Hangers, C-552-813 .....	1/1/20-12/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Cold-Drawn Mechanical Tubing, C-570-059 .....	1/1/20-12/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Common Alloy Aluminum Sheet, C-570-074 .....	1/1/20-12/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Crystalline Silicon Photovoltaic Products, C-570-011 .....	1/1/20-12/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Rubber Bands, C-570-070 .....	1/1/20-12/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Truck and Bus Tires, C-570-041 .....	1/1/20-12/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Utility Scale Wind Towers, C-570-982 .....	1/1/20-12/31/20

#### Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of

origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings*:

*Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.<sup>3</sup>

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative

<sup>3</sup> See the Enforcement and Compliance website at <https://legacy.trade.gov/enforcement/>.

reviews.<sup>4</sup> Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.<sup>5</sup> In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at <https://access.trade.gov>.<sup>6</sup> Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>7</sup>

Commerce will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of

February 2021. If Commerce does not receive, by the last day of February 2021, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 27, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021-02151 Filed 2-1-21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-520-803]

#### **Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2018-2019**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that Flex Middle East FZE (Flex), the sole producer/exporter subject to this administrative review, made sales of subject merchandise at less than normal value during the period of review (POR), November 1, 2018, through October 31, 2019.

**DATES:** Applicable February 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4261.

## SUPPLEMENTARY INFORMATION:

### Background

Commerce published the preliminary results of this administrative review on November 10, 2020.<sup>1</sup> We invited interested parties to comment on the *Preliminary Results*. No parties submitted comments.

### Scope of the Order

The products covered by the order are all gauges of raw, pre-treated, or primed polyethylene terephthalate film (PET Film), whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET Film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

### Changes Since the Preliminary Results

Because we received no comments on the *Preliminary Results*, we have made no changes to the weighted-average dumping margin determined for Flex, nor have we prepared an Issues and Decision Memorandum to accompany this notice. We, therefore, adopt the analysis and explanation in our *Preliminary Results* for purposes of these final results.

### Final Results of Review

As a result of this review, we determine that the following weighted-average dumping margin exists for the period of November 1, 2018, through October 31, 2019:

Manufacturer/exporter	Weighted-average margin (percent)
Flex Middle East FZE .....	70.75

### Assessment Rates

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all

<sup>4</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

<sup>5</sup> In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

<sup>6</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

<sup>7</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 41363 (July 10, 2020).

<sup>1</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 71606 (November 10, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

appropriate entries of subject merchandise in accordance with the final results of this review. Consistent with its recent notice,<sup>2</sup> Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) For Flex, the cash deposit rate will be equal to the weighted-average dumping margin listed above in the section "Final Results of Review;" (2) for merchandise exported by producers or exporters not covered in this review but covered in a previously completed segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the final results for the most recent period in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, then the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the final results for the most recent period in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previously completed segment of this proceeding, then the cash deposit rate will be 4.05 percent, the all-others rate established in the less-than-fair-value investigation.<sup>3</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

<sup>2</sup> See *Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings*, 86 FR 3995 (January 15, 2021).

<sup>3</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates*, 73 FR 66595, 66596 (November 10, 2008).

#### Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the final results within five days of the date of publication of the notice of preliminary results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, there are no calculations to disclose here because, in accordance with section 776 of the Act, Commerce applied facts otherwise available with adverse inferences in determining the weighted-average dumping margin of Flex, the only respondent subject to this review.<sup>4</sup>

#### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

#### Administrative Protective Order

This notice is the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

#### Notification to Interested Parties

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: January 27, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2021-02168 Filed 2-1-21; 8:45 am]

**BILLING CODE 3510-DS-P**

<sup>4</sup> See *Preliminary Results Preliminary Decision Memorandum*.

#### DEPARTMENT OF COMMERCE

##### National Institute of Standards and Technology

##### Notice of NIST's Consortium for the Advancement of Genome Editing

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice of Research Consortium; extension of Research Consortium.

**SUMMARY:** The National Institute of Standards and Technology (NIST) extends the duration of the NIST Consortium for the Advancement of Genome Editing (Genome Editing Consortium or Consortium) to December 1, 2025. NIST will now accept letters of interest to participate in this Consortium on an ongoing basis. The Consortium duration was originally through December 1, 2020, and the deadline for letters of interest was originally January 1, 2020. NIST is taking this action to provide additional time for interested parties to join the Consortium and to ensure the successful implementation and achievement of outcomes of the current Consortium activities, as well as to address additional standards needs as defined by the Consortium.

**DATES:** The Consortium's activities will continue until December 1, 2025. NIST will accept letters of interest to participate in this Consortium on an ongoing basis. Acceptance of participants into the Consortium will depend on the availability of NIST resources.

**ADDRESSES:** Information in response to this notice, including completed letters of interest or requests for additional information about the Consortium, can be directed via mail to the Consortium Manager, Dr. Samantha Maragh, Biosystems and Biomaterials Division of NIST's Material Measurement Laboratory, 100 Bureau Drive, Mail Stop 8312, Gaithersburg, Maryland 20899, or via electronic mail to [samantha@nist.gov](mailto:samantha@nist.gov), or by telephone at (301) 975-4947.

**FOR FURTHER INFORMATION CONTACT:** J'aimé Maynard, CRADA Administrator, National Institute of Standards and Technology's Technology Partnerships Office, by mail to 100 Bureau Drive, Mail Stop 2200, Gaithersburg, Maryland 20899, by electronic mail to [Jaime.maynard@nist.gov](mailto:Jaime.maynard@nist.gov), or by telephone at (301) 975-8408.

**SUPPLEMENTARY INFORMATION:** On January 11, 2018, NIST published a notice in the **Federal Register** (83 FR 1335), about establishing the Genome

Editing Consortium. The notice requested letters of interest on or before January 1, 2020. Multiple parties expressed interest in submitting letters of interest and participating in the Consortium after the original deadline, and have asked for an extension. In light of these requests, NIST extends the term of the Consortium to December 1, 2025, and will accept letters of interest on an ongoing basis. Previously submitted letters of interest do not need to be resubmitted.

(Authority: 15 U.S.C. 3710a)

**Kevin A. Kimball,**

*Chief of Staff.*

[FR Doc. 2021-02136 Filed 2-1-21; 8:45 am]

BILLING CODE 3510-13-P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Open Meeting of the Information Security and Privacy Advisory Board

**AGENCY:** National Institute of Standards and Technology.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, March 3, 2021 from 10:00 a.m. until 5:00 p.m., Eastern Time, and Thursday, March 4, 2021 from 10:00 a.m. until 5:00 p.m., Eastern Time. All sessions will be open to the public.

**DATES:** The meeting will be held on Wednesday, March 3, 2021 from 10:00 a.m. until 5:00 p.m., Eastern Time, and Thursday, March 4, 2021 from 10:00 a.m. until 5:00 p.m., Eastern Time.

**ADDRESSES:** The meeting will be a virtual meeting via webinar. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Jeff Brewer, Information Technology Laboratory, National Institute of Standards and Technology, Telephone: (301) 975-2489, Email address: [jeffrey.brewer@nist.gov](mailto:jeffrey.brewer@nist.gov).

#### SUPPLEMENTARY INFORMATION:

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the ISPAB will hold an open meeting Wednesday, March 3, 2021 from 10:00 a.m. until 5:00 p.m., Eastern Time, and Thursday, March 4, 2021 from 10:00 a.m. until 5:00 p.m. Eastern Time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g-4, as amended, and advises the National Institute of Standards and Technology

(NIST), the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal government information systems, including through review of proposed standards and guidelines developed by NIST. Details regarding the ISPAB's activities are available at <https://csrc.nist.gov/projects/ispab>.

The agenda is expected to include the following items:

- Discussions on federal government incident response and breach activities,
- Presentation by NIST staff on NIST activities in response to the Internet of Things Cybersecurity Act of 2020 (Pub. L. 116-207),
- Presentation by NIST staff on NIST updates to FIPS 201,
- Presentation on federal government supply chain cybersecurity activity,
- Presentation on Biometrics and Facial Recognition Technology used for identity and cybersecurity,
- Discussions on potential ISPAB recommendations to NIST,
- Presentation on NIST Information Technology Laboratory Activities since last meeting.

Note that agenda items may change without notice. The final agenda will be posted on the ISPAB event page at: <https://csrc.nist.gov/Events/2021/ispab-march-2021-meeting>.

**Public Participation:** Written questions or comments from the public are invited and may be submitted electronically by email to Jeff Brewer at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. March 1, 2021.

The ISPAB agenda will include a period, not to exceed thirty minutes, for submitted questions or comments from the public (Wednesday, March 3, 2021, between 4:30 p.m. and 5:00 p.m.). Submitted questions or comments from the public will be selected on a first-come, first-served basis and limited to five minutes per person.

Members of the public who wish to expand upon their submitted statements, those who had wished to submit a question or comment but could not be accommodated on the agenda, and those who were unable to attend the meeting via webinar are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory by email to: [jeffrey.brewer@nist.gov](mailto:jeffrey.brewer@nist.gov).

**Admittance Instructions:** All participants will be attending via webinar and must register on ISPAB's event page at: <https://csrc.nist.gov/Events/2021/ispab-march-2021-meeting> by 5 p.m. Eastern Time, March 1, 2021.

**Kevin Kimball,**

*Chief of Staff.*

[FR Doc. 2021-02137 Filed 2-1-21; 8:45 am]

BILLING CODE 3510-13-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XA836]

#### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council (Pacific Council) will hold an online meeting of its Habitat Committee (HC) to consider information on marine planning and offshore development activities. This meeting is open to the public.

**DATES:** The online meeting will be held Wednesday, February 24, 2021, from 1 p.m. to 5 p.m., Pacific Standard Time, or until business for the day has been completed.

**ADDRESSES:** The meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see [www.pcouncil.org](http://www.pcouncil.org)). You may send an email to Mr. Kris Kleinschmidt ([kris.kleinschmidt@noaa.gov](mailto:kris.kleinschmidt@noaa.gov)) or contact him at (503) 820-2412 for technical assistance.

**Council address:** Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

#### FOR FURTHER INFORMATION CONTACT:

Kerry Griffin, Pacific Council; telephone: (503) 820-2409.

#### SUPPLEMENTARY INFORMATION:

Representatives of NOAA will present information related to the identification of Aquaculture Opportunity Areas, and representatives of the Bureau of Ocean Energy Development will provide a presentation on identifying potential offshore wind energy sites. The HC and other Pacific Council Advisory Bodies will consider the information and will

develop reports to the Pacific Council for its March 2021 meeting.

The HC may discuss other habitat-related issues related to the Pacific Council's March meeting agenda, as necessary. A meeting agenda will be posted to the Pacific Council's website in advance of the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

#### Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt ([kris.kleinschmidt@noaa.gov](mailto:kris.kleinschmidt@noaa.gov); (503) 820-2412) at least 10 days prior to the meeting date.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: January 27, 2021.

**Rey Israel Marquez,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021-02113 Filed 2-1-21; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XA841]

#### Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will hold a one-day meeting via webinar of its Reef Fish Advisory Panel (AP).

**DATES:** The meeting will be held on Wednesday, February 24, 2021, 9 a.m.–5:30 p.m., EST.

**ADDRESSES:** The meeting will take place via webinar; you may register by visiting [www.gulfcouncil.org](http://www.gulfcouncil.org) and clicking on the AP meeting on the calendar.

*Council address:* Gulf of Mexico Fishery Management Council, 4107 W

Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348-1630.

#### FOR FURTHER INFORMATION CONTACT:

Ryan Rindone, Lead Fishery Biologist, Gulf of Mexico Fishery Management Council; [ryan.rindone@gulfcouncil.org](mailto:ryan.rindone@gulfcouncil.org); telephone: (813) 348-1630.

#### SUPPLEMENTARY INFORMATION:

**Wednesday, February 24, 2021; 9 a.m.–5:30 p.m., EDT**

The meeting will begin with Introductions, Adoption of Agenda, Approval of Minutes from the October 16, 2020 webinar meeting, and review Scope of Work.

The Advisory Panel (AP) will review presentation and projections, SSC Recommendations for Overfishing Limits (OFL) and Acceptable Biological Catch (ABC) limits for SEDAR 64: Southeastern U.S. Yellowtail Snapper Stock Assessment; and, presentations on Draft Management Alternatives and Something's Fishy for Yellowtail Snapper. The AP will also discuss recommendations, review the Stock Assessment Executive Summary and the Yellowtail Snapper One-page Info Sheet.

The AP will receive a presentation, discuss AP Recommendations and the Framework Action examining Gray Triggerfish Recreational Fixed Closed Seasons. The AP will review presentation and projections, SSC Recommendations for OFL and ABC, a Presentation of Draft Management Alternatives and Something's Fishy for SEDAR 70: Gulf of Mexico Greater Amberjack Stock Assessment. The AP will also discuss AP Recommendations, review the Stock Assessment Executive Summary and the Greater Amberjack One-page Info Sheet.

*Lunch—12 p.m.–1 p.m.*

The AP will review a presentation, document and AP Recommendations for Draft Reef Fish Amendment 53: Red Grouper Allocations and Annual Catch Levels and Targets. The AP will then receive a presentation on Commercial Electronic Logbooks, and review Southeast Fisheries Science Center's (SEFSC) June 2020 and October 2020 Council Presentations, and AP Recommendations.

The AP will review a presentation on modifications to Vermilion Snapper Recreational Bag Limits, review the Framework Action, and discuss AP Recommendations.

Lastly, the Advisory Panel will discuss Other Business items and receive public comment.

#### —Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting [www.gulfcouncil.org](http://www.gulfcouncil.org) and clicking on the AP meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on [www.gulfcouncil.org](http://www.gulfcouncil.org) as they become available.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: January 27, 2021.

**Rey Israel Marquez,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021-02114 Filed 2-1-21; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Southeast Region Logbook Family of Forms

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on August 19, 2020, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Southeast Region Logbook Family of Forms.

OMB Control Number: 0648-0016.

Form Number(s): None.

Type of Request: Regular submission—extension and revision of a current information collection.

Estimated Number of Respondents: 6,971.

Estimated Time per Response: Annual fixed-cost report, 45 minutes; Colombian fishery logbook, 18 minutes; discard logbook, 15 minutes; headboat, charter vessel, golden crab, reef fish-mackerel, economic cost per trip, wreckfish, and shrimp logbooks, 10 minutes; no-fishing report for golden crab, reef fish-mackerel, charter vessels, wreckfish and Colombian fisheries, 2 minutes; installation of a vessel monitoring unit, 5 hours; landing location request and power-down exemption request, 5 minutes; trip declaration, 2 minutes; and the proposed intercept survey, 15 minutes.

Estimated Total Annual Burden Hours: 69,165.

Needs and Uses: This request is for an extension and revision of a current information collection.

Participants in most federally managed fisheries in the NMFS Southeast Region are currently required to keep and submit catch and effort logbooks from their fishing trips. A subset of fishermen on these vessels also provide information on the species and quantities of fish, shellfish, marine turtles, and marine mammals that are caught and discarded or have interacted with the fishing gear. A subset of fishermen on these vessels also provide information about dockside fish and fuel prices, trip operating costs, and annual fixed costs.

The data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations. Interaction reports are needed for fishery management planning and to help protect endangered species and marine mammals. Price and cost data will be used in analyses of the economic effects of existing and proposed regulations.

A final rule that implements requirements under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) will require a vessel owner or operator with a Federal charter vessel/headboat permit for Gulf of Mexico (Gulf) reef fish or Gulf coastal migratory pelagic (CMP) species to

submit an electronic fishing report (also referred to as an electronic logbook) for each fishing trip (85 FR 44005, July 21, 2020). NMFS is designing and plans to implement an intercept survey in 2021 to support and validate the electronic logbooks submitted for the Gulf for-hire reporting program. These survey data are required to carry out provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

The survey would intercept captains (respondents) of Gulf federally-permitted charter vessels and headboats (for-hire vessels) in the aforementioned fisheries at verified landing locations that are randomly selected in Gulf counties to obtain information after fishing activity for each trip has occurred. The intercept survey is not a census of all electronically reported logbooks but instead would use a stratified random sampling protocol to select landing locations for port samplers to gather a representative sample. Respondents would be asked about vessel information, time and type of fishing, the number of anglers, and details of catch. Catch information would include species identification, number of fish, and disposition (*i.e.*, fish kept and released). Length and weight measurements of species retained on fishing trips may also be collected if circumstances allow.

The purpose of the intercept survey is to validate the electronic logbooks submitted through the Gulf for-hire reporting program, the information collection for which are approved under OMB Control Number 0648-0016. The data collected from the intercept survey would be used to estimate non-reporting of fishing trips and reporting errors. Data from the intercept survey would be analyzed through statistical methods to provide accurate estimates of the total catch and effort. Without the intercept survey, the electronic logbook results would be left unchecked and could be erroneous due to no adjustments for non-reporting and misreporting. Erroneous fisheries information could mislead management and lead to inappropriate or unnecessary regulations or lead to lack thereof when needed.

The total for-hire catch and effort estimates obtained from the intercept survey, as well as from the Gulf for-hire reporting program are intended to be used on an ongoing basis by NMFS, regional fishery management councils, interstate marine fisheries commissions, and state natural resource management agencies to develop, implement, and monitor fishery management programs,

per statutory requirements of the Magnuson-Stevens Act. Catch and effort statistics are fundamental for assessing the influence of fishing on any fish stock. Accurate estimates of the quantities taken, fishing effort, and both the seasonal and geographic distributions of the catch and effort are required for the development of regional management plans and policies.

Affected Public: Businesses or other for-profit organizations; individuals.

Frequency: Annual, periodic, and as needed.

Respondent's Obligation: Mandatory.

Legal Authority: 16 U.S.C. 1801 *et seq.*

This information collection request may be viewed at [www.reginfo.gov](http://www.reginfo.gov). Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the collection or the OMB Control Number 0648-0016.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021-02165 Filed 2-1-21; 8:45 am]

BILLING CODE 3510-22-P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds a service to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

**DATES:** Date added to the Procurement List: February 15, 2021.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Jurkowski, Telephone: (703) 603-2117, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).



**SUPPLEMENTARY INFORMATION:****Additions**

On 10/23/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4. This Notice clarifies the Notice of January 29, 2021 by adjusting the effective date of addition the Procurement from February 28, 2021 to February 15, 2021.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

**End of Certification**

Accordingly, the following service is added to the Procurement List:

**Service**

**Service Type:** Custodial Service  
**Mandatory for:** US Air Force, Cannon Air Force Base, NM  
**Mandatory Source of Supply:** ENMRSH, Inc., Clovis, NM  
**Contracting Activity:** DEPT OF THE AIR FORCE, FA4855 27 SOCONS LGC

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated because of the expiration of

the Custodial Service, US Air Force, Cannon Air Force Base, NM contract. The Federal customer contacted, and has worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the US Air Force will refer its business elsewhere, this addition must be effective on February 15, 2021, ensuring timely execution for a March 1, 2021, start date while still allowing 13 days for comment. Pursuant to its own regulation 41 CFR 51–2.4, the Committee has been in contact with one of the affected parties, the incumbent of the expiring contract, since March 2020 and determined that no severe adverse impact exists. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on October 23, 2020, and did not receive any comments from any interested persons, including from the incumbent contractor. This addition will not create a public hardship and has limited effect on the public at large, but, rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

**Michael R. Jurkowski,**

*Deputy Director, Business & PL Operations.*

[FR Doc. 2021–02141 Filed 2–1–21; 8:45 am]

**BILLING CODE 6353–01–P**

**ELECTION ASSISTANCE COMMISSION****Sunshine Act Meetings**

**AGENCY:** U.S. Election Assistance Commission.

**ACTION:** Sunshine Act notice; notice of public roundtable agenda.

**SUMMARY:** Roundtable Discussion: Accessibility Lessons Learned From the 2020 Elections.

**DATES:** Wednesday, February 17, 2021, 1:00 p.m.–2:30 p.m. Eastern.

**ADDRESSES:** Virtual via Zoom.

The roundtable discussion is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: <https://www.youtube.com/channel/UCpN6i0g2rIF4ITWhwvBwwZw>.

**FOR FURTHER INFORMATION CONTACT:**

Kristen Muthig, Telephone: (202) 897–9285, Email: [kmuthig@eac.gov](mailto:kmuthig@eac.gov).

**SUPPLEMENTARY INFORMATION:**

**Purpose:** In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual roundtable discussion on the lessons learned regarding accessibility for voters with disabilities from the 2020 elections.

**Agenda:** The U.S. Election Assistance Commission (EAC) will hold a roundtable discussion on accessibility for voters with disabilities from the 2020 elections. The first portion of the meeting will include a presentation of findings from the “2020 Disability and Voting Accessibility Survey” conducted by Rutgers University on behalf of the EAC. The second portion of the roundtable will include subject matter experts and election officials who will discuss the challenges and successes they saw during the 2020 elections with regard to serving voters with disabilities.

The full agenda will be posted in advance on the EAC website: <https://www.eac.gov>.

**Status:** This roundtable discussion will be open to the public.

**Amanda Joiner,**

*Associate Counsel, U.S. Election Assistance Commission.*

[FR Doc. 2021–02197 Filed 1–29–21; 11:15 am]

**BILLING CODE 6820–KF–P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Project No. 14635–001]

**Village of Gouverneur, New York; Notice of Settlement Agreement**

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. **Type of Application:** Settlement Agreement.

b. **Project No.:** 14635–001.

c. **Date Filed:** January 13, 2021.

d. **Applicant:** Village of Gouverneur, New York (Village of Gouverneur).

e. **Name of Project:** Gouverneur Hydroelectric Project (Project).

f. **Location:** On the Oswegatchie River, in the Village of Gouverneur, St. Lawrence County, New York. The project does not occupy any federal land.

g. **Filed Pursuant to:** Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. **Applicant Contact:** Ronald P. McDougall, Mayor, Village of



Gouverneur, 33 Clinton Street, Gouverneur, NY 13642; (315) 287-1720; [ronaldpmcdougall@gmail.com](mailto:ronaldpmcdougall@gmail.com).

i. *FERC Contact*: Jody Callihan, (202) 502-8278 or [jody.callihan@ferc.gov](mailto:jody.callihan@ferc.gov).

j. *Deadline for filing comments*: Comments on the Settlement Agreement are due on Tuesday, February 16, 2021. Reply comments are due on Friday, February 26, 2021.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Village of Gouverneur filed an Offer of Settlement (Settlement Agreement) on behalf of itself, the New York State Department of Environmental Conservation, and the U.S. Fish and Wildlife Service. The Settlement Agreement includes protection, mitigation, and enhancement measures addressing project operation, minimum flows, downstream fish passage and protection, recreation enhancements, and by reference, management plans for invasive species (Appendix A) and northern long-eared bat and bald eagles (Appendix B), as well as an impoundment drawdown and cofferdam plan (Appendix C). Village of Gouverneur requests that the measures in the Settlement Agreement be incorporated as license conditions, without modification, in any original license issued for the project. The signatories to the Settlement Agreement also request a 40-year license term for the project.

l. A copy of the Settlement Agreement is available for review on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number

field to access the document. For assistance, contact FERC Online Support.

Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: January 27, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021-02153 Filed 2-1-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[P-2232-794]

#### Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: Request for a temporary amendment of reservoir elevation and minimum flow requirements at the Rhodhiss development.

b. *Project No.*: 2232-794.

c. *Date Filed*: January 13, 2021.

d. *Applicant*: Duke Energy Carolinas, LLC.

e. *Name of Project*: Catawba-Wateree Hydroelectric Project.

f. *Location*: The project is located on the Catawba-Wateree River in Burke, McDowell, Caldwell, Catawba, Alexander, Iredell, Mecklenburg, Lincoln, and Gaston counties, North Carolina, and York, Lancaster, Chester, Fairfield, and Kershaw counties South Carolina.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Jeffrey G. Lineberger, Director of Water Strategy and Hydro Licensing, Duke Energy, Mail Code EC-12Y, 526 South Church Street, Charlotte, NC 28202, (704) 382-5942.

i. *FERC Contact*: Mr. Steven Sachs, (202) 502-8666, [Steven.Sachs@ferc.gov](mailto:Steven.Sachs@ferc.gov).

j. *Deadline for filing comments, motions to intervene, and protests* is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>.

[www.ferc.gov/docs-filing/efiling.asp](http://www.ferc.gov/docs-filing/efiling.asp). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/doc-sfiling/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P-2232-794.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request*: The applicant requests a temporary amendment of its reservoir elevation and minimum average daily flow requirements at the Rhodhiss development from March 1, 2021 through June 30, 2023. The application proposes to regularly exceed its normal maximum reservoir elevation of 995.1 feet mean sea level (full pool), particularly between Monday morning and Friday afternoon during the temporary amendment period. Additionally, rather than complying with its 225 cubic foot per second minimum flow release requirement by averaging flows over each day, the applicant proposes to instead use a rolling 7-day average to determine compliance. The amendment is being requested to facilitate removal of debris from the forebay and replacement of trashracks at the development.

l. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the

last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions To Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "MOTION TO INTERVENE", or "PROTEST" as applicable; (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 27, 2021.

**Kimberly D. Bose,**

Secretary.

[FR Doc. 2021-02147 Filed 2-1-21; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER15-2594-007; ER17-953-003.

*Applicants:* GridLiance High Plains LLC.

*Description:* Supplement to April 5, 2019 GridLiance High Plains LLC tariff filing.

*Filed Date:* 1/19/21.

*Accession Number:* 20210119-5256.

*Comments Due:* 5 p.m. ET 2/9/21.

*Docket Numbers:* ER17-580-002.

*Applicants:* Axium Modesto Solar, LLC.

*Description:* Notice of Change in Status of Axium Modesto Solar, LLC.

*Filed Date:* 1/26/21.

*Accession Number:* 20210126-5163.

*Comments Due:* 5 p.m. ET 2/16/21.

*Docket Numbers:* ER17-1370-004; ER16-581-005; ER16-2271-004; ER16-582-005; ER11-4535-003.

*Applicants:* ENGIE Energy Marketing NA, Inc., ENGIE Portfolio Management, LLC, ENGIE Resources LLC, ENGIE Retail, LLC, Plymouth Rock Energy, LLC.

*Description:* Notice of Change in Status of ENGIE MBR Sellers.

*Filed Date:* 1/26/21.

*Accession Number:* 20210126-5160.

*Comments Due:* 5 p.m. ET 2/16/21.

*Docket Numbers:* ER20-108-003.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Compliance filing: Substitute 3127R1 MDU NITSA NOA and Substitute 3127R2 MDU NITSA NOA to be effective 12/15/2019.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127-5081.

*Comments Due:* 5 p.m. ET 2/17/21.

*Docket Numbers:* ER20-1987-003; ER20-2070-002; ER20-2648-002; ER20-2690-002.

*Applicants:* Cerro Gordo Wind, LLC, Jordan Creek Wind Farm LLC, Northern Divide Wind, LLC, Wheatridge Wind II, LLC.

*Description:* Notice of Non-Material Change in Status of Cerro Gordo Wind, LLC, et al.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127-5150.

*Comments Due:* 5 p.m. ET 2/17/21.

*Docket Numbers:* ER20-2054-001.

*Applicants:* ISO New England Inc., Central Maine Power Company, The United Illuminating Company, Versant

Power, The Connecticut Light and Power Company, Public Service Company of New Hampshire, NSTAR Electric Company, Green Mountain Power Corporation, New England Power Company, Unitil Energy Systems, Inc., Fitchburg Gas and Electric Light Company, Vermont Electric Cooperative, Inc., Vermont Transco LLC, New Hampshire Transmission, LLC.

*Description:* Compliance filing: New England Transmission Owners; Docket No. ER20-2054—to be effective 6/15/2021.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127-5024.

*Comments Due:* 5 p.m. ET 2/17/21.

*Docket Numbers:* ER21-513-002.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Tariff Amendment: Errata to Western Biannual Filing (WDT SA 17) to be effective 2/1/2021.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127-5114.

*Comments Due:* 5 p.m. ET 2/17/21.

*Docket Numbers:* ER21-630-000.

*Applicants:* 325MK 8ME LLC.

*Description:* Amendment to December 11, 2020 325MK 8ME LLC tariff filing.

*Filed Date:* 1/26/21.

*Accession Number:* 20210126-5142.

*Comments Due:* 5 p.m. ET 2/16/21.

*Docket Numbers:* ER21-945-000.

*Applicants:* Southwestern Electric Power Company.

*Description:* § 205(d) Rate Filing: ETEC and NTEC PSA to be effective 3/28/2021.

*Filed Date:* 1/26/21.

*Accession Number:* 20210126-5135.

*Comments Due:* 5 p.m. ET 2/16/21.

*Docket Numbers:* ER21-946-000.

*Applicants:* Southwestern Electric Power Company.

*Description:* § 205(d) Rate Filing: Hope PSA to be effective 3/28/2021.

*Filed Date:* 1/26/21.

*Accession Number:* 20210126-5138.

*Comments Due:* 5 p.m. ET 2/16/21.

*Docket Numbers:* ER21-947-000.

*Applicants:* Southwestern Electric Power Company.

*Description:* § 205(d) Rate Filing: Amended and Restated NTEC PSA to be effective 3/28/2021.

*Filed Date:* 1/26/21.

*Accession Number:* 20210126-5143.

*Comments Due:* 5 p.m. ET 2/16/21.

*Docket Numbers:* ER21-948-000.

*Applicants:* Southwestern Electric Power Company.

*Description:* § 205(d) Rate Filing: Revised and Restated Prescott PSA to be effective 3/28/2021.

*Filed Date:* 1/26/21.

*Accession Number:* 20210126–5148.  
*Comments Due:* 5 p.m. ET 2/16/21.  
*Docket Numbers:* ER21–949–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 2829R5 Midwest Energy/Evergy Kansas Central Meter Agent Agr to be effective 1/1/2021.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127–5038.

*Comments Due:* 5 p.m. ET 2/17/21.

*Docket Numbers:* ER21–950–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* § 205(d) Rate Filing: Q4 2020 Quarterly Filing of City and County of San Francisco's WDT SA (SA 275) to be effective 12/31/2020.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127–5073.

*Comments Due:* 5 p.m. ET 2/17/21.

*Docket Numbers:* ER21–951–000.

*Applicants:* Wrighter Energy LLC.

*Description:* Tariff Cancellation: Request to Cancel MBR Tariff to be effective 1/28/2021.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127–5071.

*Comments Due:* 5 p.m. ET 2/17/21.

*Docket Numbers:* ER21–952–000.

*Applicants:* Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: MAIT submits Eight ECSAs, SA Nos. 5720, 5788, 5789–5781, 5911 and 5912 to be effective 3/29/2021.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127–5110.

*Comments Due:* 5 p.m. ET 2/17/21.

*Docket Numbers:* ER21–953–000.

*Applicants:* Entergy Louisiana, LLC.

*Description:* § 205(d) Rate Filing: Entergy OpCos Reactive Power Update to be effective 2/1/2021.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127–5130.

*Comments Due:* 5 p.m. ET 2/17/21.

*Docket Numbers:* ER21–954–000.

*Applicants:* Central Hudson Gas & Electric Corporation.

*Description:* § 205(d) Rate Filing: Revision to FERC Rate Schedule 202 to be effective 1/20/2021.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127–5133.

*Comments Due:* 5 p.m. ET 2/17/21.

*Docket Numbers:* ER21–955–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* § 205(d) Rate Filing: 2021–01–27 EIM Base Schedule and Real Time Settlement to be effective 4/1/2021.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127–5134.

*Comments Due:* 5 p.m. ET 2/17/21.

*Docket Numbers:* ER21–956–000.

*Applicants:* Stonepeak Kestrel Energy Marketing LLC.

*Description:* § 205(d) Rate Filing: Cost Recovery filing to be effective 3/29/2021.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127–5135.

*Comments Due:* 5 p.m. ET 2/17/21.

*Docket Numbers:* ER21–957–000.

*Applicants:* Bucksport Generation LLC.

*Description:* § 205(d) Rate Filing: Cost Recovery filing to be effective 3/29/2021.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127–5140.

*Comments Due:* 5 p.m. ET 2/17/21.

*Docket Numbers:* ER21–958–000.

*Applicants:* Tri-State Generation and Transmission Association, Inc.

*Description:* § 205(d) Rate Filing: Amendment to Tri-State Rate Schedule No. 93 to be effective 1/28/2021.

*Filed Date:* 1/27/21.

*Accession Number:* 20210127–5149.

*Comments Due:* 5 p.m. ET 2/17/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 27, 2021.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2021–02149 Filed 2–1–21; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–10019–95–OP]

### Notification of Request for Nominations to the National Environmental Justice Advisory Council

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

**ACTION:** Request for Nominations to the National Environmental Justice Advisory Council (NEJAC).

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its National Environmental Justice Advisory Council (NEJAC). The NEJAC was chartered to provide advice regarding broad, cross-cutting issues related to environmental justice. This notice solicits nominations to fill approximately seven (7) new vacancies for terms through September 2022. To maintain the representation outlined by the charter, nominees will be selected to represent: Academia (1 vacancy); community-based organizations (2 vacancies); non-governmental organizations (1 vacancy); state and local governments (2 vacancies); and tribal governments and indigenous organizations (1 vacancy). We are interested in adding members located in EPA regions 1, 2, 7, 8, 9, 10. Vacancies are anticipated to be filled by September 2021. Sources in addition to this **Federal Register** Notice will be utilized in the solicitation of nominees.

**DATES:** Nominations should be submitted in time to arrive no later than Wednesday, March 24, 2021.

**ADDRESSES:** Submit nominations electronically with the subject line NEJAC Membership 2021 to [nejac@epa.gov](mailto:nejac@epa.gov). The Office of Environmental Justice will acknowledge receipt of nominations.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Martin, NEJAC Designated Federal Officer, U.S. EPA; email: [nejac@epa.gov](mailto:nejac@epa.gov); telephone: (202) 564–0203.

**SUPPLEMENTARY INFORMATION:** The NEJAC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the NEJAC in 1993 to provide independent consensus advice to the EPA Administrator about a broad range of environmental issues related to environmental justice. The NEJAC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations.

The Council consists of 30 members (including a Chairperson and two Vice-Chairpersons) appointed by EPA's Administrator. Members serve as non-federal stakeholders representing: Six (6) from academia, four (4) from business and industry; seven (7) from community based organizations; six (6) from non-governmental/environmental organizations; four (4) from state and local governments; and three (3) from tribal governments and indigenous organizations, of which one member serves as a liaison to the National Tribal Caucus. Members are appointed for one (1); two (2) or three (3)-year terms with the possibility of reappointment for another term.

The NEJAC usually meets face-to-face twice a year, generally in the Spring and the Fall. Additionally, members may be asked to participate in teleconference meetings or serve on work groups to develop recommendations, advice letters, and reports to address specific policy issues. The average workload for members is approximately 5 to 8 hours per month. EPA provides reimbursement for travel and other incidental expenses associated with official government business.

**Nominations:** Any interested person and/or organization may nominate qualified individuals for membership. Individuals are encouraged to self-nominate. The EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, the Agency encourages nominations of women and men of all racial and ethnic groups from all geographic locations of the United States of America. All nominations will be fully considered, but applicants need to be aware of the specific representation sought as outlined in the summary above. In addition, EPA is seeking nominees with knowledge in youth perspectives and youth development; environmental measures; public health/health disparities; water infrastructure and other water concerns; farmworkers and pesticides; community sustainability and resiliency; green jobs and green infrastructure; land use and equitable development; and emerging inclusion of sub-populations such as the homeless, veterans, prisoners, etc.

Other criteria used to evaluate nominees will include:

- The background and experience that would help members contribute to the diversity of perspectives on the committee (e.g., geographic, economic, social, cultural, educational background, professional affiliations, and other considerations;
- demonstrated experience with environmental justice and community

sustainability issues at the national, state, or local level;

- excellent interpersonal and consensus-building skills;
- ability to volunteer time to attend meetings 2–3 times a year, participate in teleconference meetings, attend listening sessions with the Administrator or other senior-level officials, develop policy recommendations to the Administrator, and prepare reports and advice letters; and
- willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees.

**How To Submit Nominations:** Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals are encouraged to self-nominate. Nominations will be submitted in electronic format following the template available at <https://www.epa.gov/environmentaljustice/nominations-nejac>. To be considered, all nominations should include:

- Current contact information for the nominee/applicant, including the nominee's/applicant's name, organization (and position within that organization), current business address, email address, telephone numbers and the stakeholder category position you are interested in.
- Brief Statement describing the nominee's/applicant's interest in serving on the NEJAC.
- Résumé and a short biography describing the professional and educational qualifications of the nominee, including a list of relevant activities, and any current or previous service on advisory committees.
- Brief statements describing experience as it relates to engaging affected communities, understanding environmental justice/relevant issues, consensus building, communication skills and availability.

- Letter[s] of recommendation from a third party supporting the nomination. Letter[s] should describe how the nominee's experience and knowledge will bring value to the work of the NEJAC.

**Matthew Tejada,**

*Director Office of Environmental Justice.*

[FR Doc. 2021–02154 Filed 2–1–21; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL ELECTION COMMISSION

[Notice 2021–03]

### Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of adjustments to contribution and expenditure limitations and lobbyist bundling disclosure threshold.

**SUMMARY:** As mandated by provisions of the Federal Election Campaign Act (“the Act”), the Federal Election Commission (“the Commission”) is adjusting certain contribution and expenditure limitations and the lobbyist bundling disclosure threshold set forth in the Act, to index the amounts for inflation. Additional details appear in the supplemental information that follows.

**DATES:** The new limitation at 52 U.S.C. 30116(a)(1)(A) applies beginning on November 4, 2020. The new limitations at 52 U.S.C. 30104(i)(3)(A), 30116(a)(1)(B), 30116(d) and 30116(h) apply beginning on January 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; (202) 694–1100 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** Under the Federal Election Campaign Act, 52 U.S.C. 30101–45, coordinated party expenditure limits (52 U.S.C. 30116(d)(2)–(3)), certain contribution limits (52 U.S.C. 30116(a)(1)(A) and (B), and (h)), and the disclosure threshold for contributions bundled by lobbyists (52 U.S.C. 30104(i)(3)(A)) are adjusted periodically to reflect changes in the consumer price index. *See* 52 U.S.C. 30104(i)(3)(B), 30116(c); 11 CFR 109.32(a)(2), (b)(3), 110.17(a), (f). The Commission is publishing this notice to announce the adjusted limits and disclosure threshold.

### Coordinated Party Expenditure Limits for 2021

Under 52 U.S.C. 30116(c), the Commission must adjust the expenditure limitations established by 52 U.S.C. 30116(d) (the limits on expenditures by national party committees, state party committees, or their subordinate committees in connection with the general election campaign of candidates for Federal office) annually to account for inflation. This expenditure limitation is increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor,

for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 1974). 52 U.S.C. 30116(c)(1)(B)(i), (2)(B)(i).

*1. Expenditure Limitation for House of Representatives in States With More Than One Congressional District*

Both the national and state party committees have an expenditure limitation for each general election held to fill a seat in the House of Representatives in states with more than one congressional district. *See* 52 U.S.C. 30116(d)(3)(B). This limitation also applies to the District of Columbia and territories that elect individuals to the office of Delegate or Resident Commissioner.<sup>1</sup> *Id.* The formula used to calculate the expenditure limitation in such states and territories multiplies the base figure of \$10,000 by the difference in the price index (5.24905), rounding to

the nearest \$100. *See* 52 U.S.C. 30116(c)(1)(B), (d)(3)(B); 11 CFR 109.32(b), 110.17. Based upon this formula, the expenditure limitation for 2021 general elections for House candidates in these states, districts, and territories is \$52,500.

*2. Expenditure Limitation for Senate and for House of Representatives in States With Only One Congressional District*

Both the national and state party committees have an expenditure limitation for a general election held to fill a seat in the Senate or in the House of Representatives in states with only one congressional district. *See* 52 U.S.C. 30116(d)(3)(A). The formula used to calculate this expenditure limitation considers not only the price index but also the voting age population ("VAP") of the state. *Id.* The VAP figures used to calculate the expenditure limitations

were certified by the U.S. Census Bureau. The VAP of each state is also published annually in the **Federal Register** by the U.S. Department of Commerce. 11 CFR 110.18. The general election expenditure limitation is the greater of: The base figure (\$20,000) multiplied by the difference in the price index, 5.24905 (which totals \$105,000); or \$0.02 multiplied by the VAP of the state, multiplied by 5.24905. *See* 52 U.S.C. 30116(c)(1)(B), (d)(3)(A); 11 CFR 109.32(b), 110.17. Amounts are rounded to the nearest \$100. 52 U.S.C. 30116(c)(1)(B)(iii); 11 CFR 109.32(b)(3), 110.17(c). The chart below provides the state-by-state breakdown of the 2021 general election expenditure limitations for Senate elections. The expenditure limitation for 2021 House elections in states with only one congressional district<sup>2</sup> is \$105,000.

SENATE GENERAL ELECTION COORDINATED EXPENDITURE LIMITS—2021 ELECTIONS<sup>3</sup>

State	Voting age population (VAP)	VAP × .02 × the price index (5.24905)	Senate expenditure limit (the greater of the amount in column 3 or \$105,000)
Alabama	3,834,249	\$402,500	\$402,500
Alaska	552,427	58,000	105,000
Arizona	5,774,978	606,300	606,300
Arkansas	2,330,808	244,700	244,700
California	30,576,844	3,210,000	3,210,000
Colorado	4,557,684	478,500	478,500
Connecticut	2,838,054	297,900	297,900
Delaware	782,153	82,100	105,000
Florida	17,482,580	1,835,300	1,835,300
Georgia	8,210,067	861,900	861,900
Hawaii	1,111,188	116,700	116,700
Idaho	1,375,870	144,400	144,400
Illinois	9,809,562	1,029,800	1,029,800
Indiana	5,188,514	544,700	544,700
Iowa	2,438,002	255,900	255,900
Kansas	2,217,059	232,700	232,700
Kentucky	3,475,334	364,800	364,800
Louisiana	3,564,038	374,200	374,200
Maine	1,101,973	115,700	115,700
Maryland	4,721,883	495,700	495,700
Massachusetts	5,552,051	582,900	582,900
Michigan	7,839,742	823,000	823,000
Minnesota	4,356,123	457,300	457,300
Mississippi	2,273,653	238,700	238,700
Missouri	4,780,119	501,800	501,800
Montana	850,894	89,300	105,000
Nebraska	1,462,537	153,500	153,500
Nevada	2,440,679	256,200	256,200
New Hampshire	1,113,141	116,900	116,900
New Jersey	6,947,836	729,400	729,400
New Mexico	1,633,828	171,500	171,500
New York	15,348,422	1,611,300	1,611,300
North Carolina	8,294,423	870,800	870,800
North Dakota	583,680	61,300	105,000
Ohio	9,124,576	957,900	957,900
Oklahoma	3,027,263	317,800	317,800

<sup>1</sup> Currently, these are Puerto Rico, American Samoa, Guam, the United States Virgin Islands and the Northern Mariana Islands. *See* <http://www.house.gov/representatives>.

<sup>2</sup> Currently, these states are: Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont and

Wyoming. *See* <http://www.house.gov/representatives/>.

<sup>3</sup> This expenditure limit does not apply to the District of Columbia, Puerto Rico, American Samoa, Guam, the United States Virgin Islands, and the Northern Mariana Islands because those

jurisdictions do not elect Senators. *See* 52 U.S.C. 30116(d)(3)(A); 11 CFR 109.32(b)(2)(i).

SENATE GENERAL ELECTION COORDINATED EXPENDITURE LIMITS—2021 ELECTIONS<sup>3</sup>—Continued

State	Voting age population (VAP)	VAP × .02 × the price index (5.24905)	Senate expenditure limit (the greater of the amount in column 3 or \$105,000)
Oregon .....	3,380,729	354,900	354,900
Pennsylvania .....	10,162,497	1,066,900	1,066,900
Rhode Island .....	855,276	89,800	105,000
South Carolina .....	4,100,115	430,400	430,400
South Dakota .....	674,238	70,800	105,000
Tennessee .....	5,373,433	564,100	564,100
Texas .....	21,925,627	2,301,800	2,301,800
Utah .....	2,320,603	243,600	243,600
Vermont .....	510,181	53,600	105,000
Virginia .....	6,724,143	705,900	705,900
Washington .....	6,027,818	632,800	632,800
West Virginia .....	1,428,520	150,000	150,000
Wisconsin .....	4,574,131	480,200	480,200
Wyoming .....	449,237	47,200	105,000

**Limitations on Contributions by Individuals, Non-Multicandidate Committees and Certain Political Party Committees Giving to U.S. Senate Candidates for the 2021–2022 Election Cycle**

The Act requires inflation indexing of:

(1) The limitations on contributions made by persons under 52 U.S.C. 30116(a)(1)(A) (contributions to

candidates) and 30116(a)(1)(B) (contributions to national party committees); and (2) the limitation on contributions made to U.S. Senate candidates by certain political party committees at 52 U.S.C. 30116(h). *See* 52 U.S.C. 30116(c). These contribution limitations are increased by multiplying the respective statutory contribution amount by 1.46170, the percent difference between the price index, as

certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 2001). 52 U.S.C. 30116(c)(1)(B)(i), (2)(B)(ii). The resulting amount is rounded to the nearest multiple of \$100. *See* 52 U.S.C. 30116(c); 11 CFR 110.17(b). Contribution limitations shall be adjusted accordingly:

Statutory provision	Statutory amount	2021–2022 limit
52 U.S.C. 30116(a)(1)(A) .....	\$2,000	\$2,900
52 U.S.C. 30116(a)(1)(B) .....	25,000	36,500
52 U.S.C. 30116(h) .....	35,000	51,200

The limitation at 52 U.S.C. 30116(a)(1)(A) is to be in effect for the two-year period beginning on the first day following the date of the general election in the preceding year and ending on the date of the next regularly scheduled election. 52 U.S.C. 30116(c)(1)(C); 11 CFR 110.1(b)(1)(ii). Thus the \$2,900 figure above is in effect from November 4, 2020, to November 8, 2022. The limitations under 52 U.S.C. 30116(a)(1)(B) and 30116(h) shall be in effect beginning January 1st of the odd-numbered year and ending on December 31st of the next even-numbered year. 11 CFR 110.1(c)(1)(ii). Thus the new contribution limitations under 52 U.S.C. 30116(a)(1)(B) and 30116(h) are in effect from January 1, 2021, to December 31, 2022. *See* 11 CFR 110.17(b)(1).

**Lobbyist Bundling Disclosure Threshold for 2021**

The Act requires certain political committees to disclose contributions bundled by lobbyists/registrants and lobbyist/registrant political action committees once the contributions

exceed a specified threshold amount. 52 U.S.C. 30104(i)(1), (i)(3)(A). The Commission must adjust this threshold amount annually to account for inflation. 52 U.S.C. 30104(i)(3)(B). The disclosure threshold is increased by multiplying the \$15,000 statutory disclosure threshold by 1.28380, the difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 2006). *See* 52 U.S.C. 30104(i)(3), 30116(c)(1)(B); 11 CFR 104.22(g). The resulting amount is rounded to the nearest multiple of \$100. 52 U.S.C. 30104(i)(3)(B), 30116(c)(1)(B)(iii); 11 CFR 104.22(g)(4). Based upon this formula (\$15,000 × 1.28380), the lobbyist bundling disclosure threshold for calendar year 2021 is \$19,300.

Dated: January 28, 2021.

On behalf of the Commission,

**Shana M. Broussard,**

*Chair, Federal Election Commission.*

[FR Doc. 2021–02173 Filed 2–1–21; 8:45 am]

**BILLING CODE 6715–01–P**

**FEDERAL RESERVE SYSTEM**

**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as

other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551-0001, not later than March 4, 2021.

*A. Federal Reserve Bank of Dallas*  
(Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *VeraBank, Inc., Henderson, Texas;* to acquire Panola National Bank, Carthage, Texas.

Board of Governors of the Federal Reserve System, January 28, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021-02148 Filed 2-1-21; 8:45 am]

**BILLING CODE P**

## FEDERAL TRADE COMMISSION

### Revised Jurisdictional Thresholds for Section 7A of the Clayton Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Trade Commission announces the revised thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 required by law.

**DATES:** March 4, 2021.

**FOR FURTHER INFORMATION CONTACT:**  
Nora Whitehead (202-326-3100),  
Bureau of Competition, Premerger

Notification Office, 400 7th Street SW, Room 5301, Washington, DC 20024.

**SUPPLEMENTARY INFORMATION:** Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94-435, 90 Stat. 1390 ("the Act"), requires all persons contemplating certain mergers or acquisitions, which meet or exceed the jurisdictional thresholds in the Act, to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Section 7A(a)(2) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product, in accordance with Section 8(a)(5). Note that while the filing fee thresholds are revised annually, the actual filing fees are not similarly indexed and, as a result, have not been adjusted for inflation in over a decade. The new thresholds, which take effect 30 days after publication in the **Federal Register**, are as follows:

Subsection of 7A	Original threshold (million)	Adjusted threshold (million)
7A(a)(2)(A) .....	\$200	\$368
7A(a)(2)(B)(i) .....	50	92
7A(a)(2)(B)(i) .....	200	368
7A(a)(2)(B)(ii)(i) .....	10	18.4
7A(a)(2)(B)(ii)(i) .....	100	184
7A(a)(2)(B)(ii)(II) .....	10	18.4
7A(a)(2)(B)(ii)(II) .....	100	184
7A(a)(2)(B)(ii)(III) .....	100	184
7A(a)(2)(B)(ii)(III) .....	10	18.4
Section 7A note: Assessment and Collection of Filing Fee <sup>1</sup> (3)(b)(1) .....	100	184
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2) .....	100	184
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2) .....	500	919.9
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(3) .....	500	919.9

Any reference to these thresholds and related thresholds and limitation values in the HSR rules (16 CFR parts 801-803) and the Antitrust Improvements Act Notification and Report Form ("the HSR Form") and its Instructions will also be adjusted, where indicated by the term "(as adjusted)", as follows:

Original threshold	Adjusted threshold (million)
\$10 million .....	18.4
\$50 million .....	92
\$100 million .....	184
\$110 million .....	202.4
\$200 million .....	368
\$500 million .....	919.9
\$1 billion .....	1,839.8

By direction of the Commission.

**April J. Tabor,**

*Secretary.*

[FR Doc. 2021-02110 Filed 2-1-21; 8:45 am]

**BILLING CODE 6750-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92-463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP21-001, Integrating Social Emotional Well Being with Physical Activity and Nutrition Practices in School-Based Out-of-School Time (OST) Programs: A Demonstration Project.*

<sup>1</sup> Public Law 106-553, Sec. 630(b) amended Sec. 18a note.

*Date:* April 27, 2021.

*Time:* 11:00 a.m.–6:00 p.m., EDT.

*Place:* Teleconference.

*Agenda:* To review and evaluate grant applications.

*For Further Information Contact:* Jaya Raman, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107–8, Atlanta, Georgia 30341, Telephone (770) 488–6511, [JRaman@cdc.gov](mailto:JRaman@cdc.gov).

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

#### **Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2021–02161 Filed 2–1–21; 8:45 am]

**BILLING CODE 4163–18–P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Disease Control and Prevention**

#### **Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—PAR 20–297, NIOSH Centers of Excellence for Total Worker Health (TWH).

*Date:* April 26–29, 2021.

*Time:* 11:00 a.m.–6:00 p.m., EDT.

*Place:* Video-Assisted Meeting.

*Agenda:* To review and evaluate grant applications.

*For Further Information Contact:* Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505, Telephone (304) 285–5951, [MGGoldcamp@cdc.gov](mailto:MGGoldcamp@cdc.gov).

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

#### **Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2021–02162 Filed 2–1–21; 8:45 am]

**BILLING CODE 4163–18–P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Disease Control and Prevention**

#### **Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP21–002, Examining Contexts of Alcohol Availability and Accessibility.

*Date:* April 28, 2021.

*Time:* 11:00 a.m.–6:00 p.m., EDT.

*Place:* Teleconference.

*Agenda:* To review and evaluate grant applications.

*For Further Information Contact:* Jaya Raman, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107–8, Atlanta, Georgia 30341, Telephone (770) 488–6511, [JRaman@cdc.gov](mailto:JRaman@cdc.gov).

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

#### **Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2021–02163 Filed 2–1–21; 8:45 am]

**BILLING CODE 4163–18–P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Disease Control and Prevention**

#### **Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP21–004, Development, Evaluation and Dissemination of an Evidence-Based Intervention to Increase Sun Safety among Outdoor Workers.

*Date:* May 4, 2021.

*Time:* 11:00 a.m.–6:00 p.m., EDT.

*Place:* Teleconference.



*Agenda:* To review and evaluate grant applications.

*For Further Information Contact:* Jaya Raman, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107-8, Atlanta, Georgia 30341, Telephone (770) 488-6511, [JRaman@cdc.gov](mailto:JRaman@cdc.gov).

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2021-02164 Filed 2-1-21; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92-463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP21-003, Evaluating Alternative Delivery Models for Arthritis-Appropriate Evidence-Based Physical Activity and Self-Management Interventions.

*Date:* April 29, 2021.

*Time:* 11:00 a.m.–6:00 p.m., EDT.

*Place:* Teleconference.

*Agenda:* To review and evaluate grant applications.

*For Further Information Contact:* Jaya Raman, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107-8, Atlanta, Georgia 30341, Telephone (770) 488-6511, [JRaman@cdc.gov](mailto:JRaman@cdc.gov).

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2021-02160 Filed 2-1-21; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Fifth Amendment to Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19

**ACTION:** Notice of amendment.

**SUMMARY:** The Acting Secretary issues this amendment pursuant to section 319F-3 of the Public Health Service Act to add additional categories of Qualified Persons authorized to prescribe, dispense, and administer COVID-19 vaccines that are covered countermeasures under section VI of this Declaration.

**DATES:** This amendment to the Declaration is effective as of February 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** L. Paige Ezernack, Office of the Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; Telephone: 202-260-0365; [paige.ezernack@hhs.gov](mailto:paige.ezernack@hhs.gov).

**SUPPLEMENTARY INFORMATION:** The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of,

relating to, or resulting from the manufacture, distribution, administration, or use of medical countermeasures (Covered Countermeasures), except for claims involving “willful misconduct” as defined in the PREP Act. Under the PREP Act, a Declaration may be amended as circumstances warrant.

The PREP Act was enacted on December 30, 2005, as Public Law 109-148, Division C, section 2. It amended the Public Health Service (PHS) Act, adding section 319F-3, which addresses liability immunity, and section 319F-4, which creates a compensation program. These sections are codified at 42 U.S.C. 247d-6d and 42 U.S.C. 247d-6e, respectively. Section 319F-3 of the PHS Act has been amended by the Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113-5, enacted on March 13, 2013 and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, enacted on March 27, 2020, to expand Countermeasures under the PREP Act.

On January 31, 2020, former Secretary Alex M. Azar II declared a public health emergency pursuant to section 319 of the PHS Act, 42 U.S.C. 247d, effective January 27, 2020, for the entire United States to aid in the response of the nation’s health care community to the COVID-19 outbreak. Pursuant to section 319 of the PHS Act, the Secretary renewed that declaration effective on April 26, 2020, July 25, 2020, October 23, 2020, and January 21, 2121.

On March 10, 2020, former Secretary Azar issued a Declaration under the PREP Act for medical countermeasures against COVID-19 (85 FR 15198, Mar. 17, 2020) (the Declaration). On April 10, the former Secretary amended the Declaration under the PREP Act to extend liability immunity to covered countermeasures authorized under the CARES Act (85 FR 21012, Apr. 15, 2020). On June 4, the former Secretary amended the Declaration to clarify that covered countermeasures under the Declaration include qualified countermeasures that limit the harm COVID-19 might otherwise cause. (85 FR 35100, June 8, 2020) On August 19, the former Secretary amended the declaration to add additional categories of Qualified Persons and amend the category of disease, health condition, or threat for which he recommended the administration or use of the Covered Countermeasures. (85 FR 51236, August 24, 2020). On December 3, 2020, the former Secretary amended the declaration to incorporate Advisory Opinions of the General Counsel interpreting the PREP Act and the

Secretary's Declaration and authorizations issued by the Department's Office of the Assistant Secretary for Health as an Authority Having Jurisdiction to respond; added an additional category of qualified persons under Section V of the Declaration; made explicit that the Declaration covers all qualified pandemic and epidemic products as defined under the PREP Act; added a third method of distribution to provide liability protections for, among other things, private distribution channels; made explicit that there can be situations where not administering a covered countermeasure to a particular individual can fall within the PREP Act and the Declaration's liability protections; made explicit that there are substantive Federal legal and policy issues and interests in having a unified whole-of-nation response to the COVID-19 pandemic among Federal, state, local, and private-sector entities; revised the effective time period of the Declaration; and republished the declaration in full. (85 FR 79190 December 9, 2020).

The Acting Secretary now amends section V of the Declaration to add additional categories of qualified persons covered under the PREP Act, and thus authorizes:

(f) Any healthcare professional or other individual who holds an active license or certification permitting the person to prescribe, dispense, or administer vaccines under the law of any State as of the effective date of this amendment, or as authorized under section V(d) of this Declaration, who prescribes, dispenses, or administers COVID-19 vaccines that are Covered Countermeasures under section VI of this Declaration in any jurisdiction where the PREP Act applies, other than the State in which the license or certification is held, in association with a COVID-19 vaccination effort by a federal, State, local, Tribal, or territorial authority or by an institution in the State in which the COVID-19 vaccine covered countermeasure is administered, so long as the license or certification of the healthcare professional has not been suspended or restricted by any licensing authority, surrendered while under suspension, discipline or investigation by a licensing authority or surrendered following an arrest, and the individual is not on the List of Excluded Individuals/Entities maintained by the Office of Inspector General, subject to:

(i) Documentation of completion of the Centers for Disease Control and Prevention COVID-19 (CDC) Vaccine

Training Modules<sup>1</sup> and, for healthcare providers who are not currently practicing, documentation of an observation period by a currently practicing healthcare professional adequately experienced in vaccination who confirms competency of the healthcare provider in preparation and administration of the particular COVID-19 vaccine(s) to be administered; and

(g) Any physician, advanced practice registered nurse, registered nurse, or practical nurse who has held an active license or certification to prescribe, dispense, or administer vaccines under the law of any State within the last five years, which is inactive, expired or lapsed, who prescribes, dispenses, or administers COVID-19 vaccines that are Covered Countermeasures under section VI of this Declaration in any jurisdiction where the PREP Act applies in association with a COVID-19 vaccination effort by a federal, State, local, tribal or territorial authority or by an institution in which the COVID-19 vaccine covered countermeasure is administered, so long as the license or certification was active and in good standing prior to the date it went inactive, expired or lapsed and was not revoked by the licensing authority, surrendered while under suspension, discipline, or investigation by a licensing authority or surrendered following an arrest, and the individual is not on the List of Excluded Individuals/Entities maintained by the Office of Inspector General, subject to (i) documentation of completion of the Centers for Disease Control and Prevention COVID-19 Vaccine Training Modules and (ii) documentation of an observation period by a currently practicing healthcare professional adequately experienced in vaccination who confirms competency of the healthcare provider in preparation and administration of the particular COVID-19 vaccine(s) to be administered.

#### **Description of This Amendment by Section**

##### *Section V. Covered Persons*

Under the PREP Act and the Declaration, a "qualified person" is a "covered person." Subject to certain limitations, a covered person is immune from suit and liability under Federal and State law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration or use of a covered countermeasure if a declaration under the PREP Act has been issued with

respect to such countermeasure. "Qualified person" includes (A) a licensed health professional or other individual who is authorized to prescribe, administer, or dispense such countermeasures under the law of the State in which the countermeasure was prescribed, administered, or dispensed; or (B) "a person within a category of persons so identified in a declaration by the Secretary" under subsection (b) of the PREP Act. 42 U.S.C. 247d-6d(i)(8).

By this amendment to the Declaration, the Acting Secretary identifies two additional categories of persons who are qualified persons under section 247d-6d(i)(8)(B), allowing healthcare providers who are licensed in a State to prescribe, dispense, and/or administer COVID-19 vaccines in any State or jurisdiction where the PREP Act applies, and allowing physicians, registered nurses, and practical nurses whose licenses expired within the past five years to prescribe, dispense, and/or administer COVID-19 vaccines in any State.

The Acting Secretary has determined that there is an urgent need to expand the pool of available COVID-19 vaccinators in order to respond effectively to the pandemic. As vaccine supply is made more widely available over the coming months, health care system capacity and the vaccination workforce are likely to become increasingly strained throughout the Nation. Permitting Physicians, registered nurses, and practical nurses who have recently expired licenses also significantly expands the vaccination workforce. There are approximately 160,000 inactive physicians and 350,000 inactive registered nurses and practical nurses in the United States.

These healthcare professionals can safely administer COVID-19 vaccines because they all have training in performing injections and observing for side effects and will be required to document completion of the Centers for Disease Control and Prevention (CDC) COVID-19 Vaccine Training Modules.

Including these healthcare professionals as Qualified Persons under this amended Declaration achieves two purposes. First, the healthcare professionals will be afforded liability protections in accordance with the PREP Act and the terms of this amended Declaration. Second, any State law that would otherwise prohibit the healthcare professionals who are a "qualified person" from prescribing, dispensing, or administering COVID-19 vaccines is preempted. On May 19, 2020, the Office of the General Counsel issued an advisory opinion concluding that, because licensed pharmacists are

<sup>1</sup> See COVID-19 Vaccine Training Modules, available at <https://www.cdc.gov/vaccines/covid-19/training.html>.

“qualified persons” under this declaration, the PREP Act preempts state law that would otherwise prohibit such pharmacists from ordering and administering authorized COVID-19 diagnostic tests.<sup>2</sup> The opinion relied in part on the fact that the Congressional delegation of authority to the Secretary under the PREP Act to specify a class of persons, beyond those who are authorized to administer a covered countermeasure under State law, as “qualified persons” would be rendered a nullity in the absence of such preemption. This opinion is incorporated by reference into this declaration. Based on the reasoning set forth in the May 19, 2020 advisory opinion, any State law that would otherwise prohibit a member of any of the classes of “qualified persons” specified in this declaration from administering a covered countermeasure is likewise preempted. In accordance with section 319F-3(i)(8)(A) of the Public Health Service Act, a State remains free to expand the universe of individuals authorized to administer covered countermeasures within its jurisdiction under State law.

The plain language of the PREP Act makes clear that there is complete preemption of state law as described above. Furthermore, preemption of State law is justified to respond to the nationwide public health emergency caused by COVID-19 as it will enable States to quickly expand the vaccination workforce with additional qualified healthcare professionals where State or local requirements might otherwise inhibit or delay allowing these healthcare professionals to participate in the COVID-19 vaccination program.

### Amendments to Declaration

Amended Declaration for Public Readiness and Emergency Preparedness Act Coverage for medical countermeasures against COVID-19.

Section V of the March 10, 2020 Declaration under the PREP Act for medical countermeasures against COVID-19, as amended April 10, 2020, June 4, 2020, and August 19, 2020 and amended and republished on December

3, 2020 is further amended pursuant to section 319F-3(b)(4) of the PHS Act as described below. All other sections of the Declaration remain in effect as republished at 85 FR 79190 (December 9, 2020).

1. Covered Persons, section V, delete in full and replace with:

#### V. Covered Persons

42 U.S.C. 247d-6d(i)(2), (3), (4), (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are “manufacturers,” “distributors,” “program planners,” “qualified persons,” and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States. “Order” as used herein and in guidance issued by the Office of the Assistant Secretary for Health<sup>3</sup> means a provider medication order, which includes prescribing of vaccines, or a laboratory order, which includes prescribing laboratory orders, if required. In addition, I have determined that the following additional persons are qualified persons:

(a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in Section VII below, to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a Declaration of an Emergency, as that term is defined in Section VII of this Declaration;<sup>4</sup>

<sup>3</sup> See Guidance for Licensed Pharmacists, COVID-19 Testing, and Immunity Under the PREP Act, OASH, Apr. 8, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/authorizing-licensed-pharmacists-to-order-and-administer-covid-19-tests.pdf> (last visited Jan. 24, 2021); Guidance for Licensed Pharmacists and Pharmacy Interns Regarding COVID-19 Vaccines and Immunity under the PREP Act, OASH, Sept. 3, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/authorized-pharmacists-and-pharmacy-interns-regarding-covid-19-vaccines-immunity.pdf> (last visited Jan. 24, 2021).

<sup>4</sup> See, e.g., Guidance for Licensed Pharmacists, COVID-19 Testing, and Immunity Under the PREP Act, OASH, Apr. 8, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/authorizing-licensed-pharmacists-to-order-and-administer-covid-19-tests.pdf> (last visited Jan. 24, 2021); Guidance for PREP Act Coverage for COVID-19 Screening Tests at Nursing Homes, Assisted-Living Facilities, Long-Term-Care Facilities, and other Congregate Facilities, OASH, Aug. 31, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/prep-act-coverage-for-screening-in-congregate-settings.pdf> (last visited Jan. 24, 2021); Guidance for Licensed Pharmacists and Pharmacy Interns Regarding COVID-19 Vaccines and Immunity under the PREP Act, OASH, Sept. 3, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs->

(b) Any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use Authorization in accordance with Section 564 of the FD&C Act;

(c) Any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with Section 564A of the FD&C Act;

(d) A State-licensed pharmacist who orders and administers, and pharmacy interns who administer (if the pharmacy intern acts under the supervision of such pharmacist and the pharmacy intern is licensed or registered by his or her State board of pharmacy),<sup>5</sup> (1) vaccines that the Advisory Committee on Immunization Practices (ACIP) recommends to persons ages three through 18 according to ACIP's standard immunization schedule or (2) FDA authorized or FDA licensed COVID-19 vaccines to persons ages three or older. Such State-licensed pharmacists and the State-licensed or registered interns under their supervision are qualified persons only if the following requirements are met:

- i. The vaccine must be authorized, approved, or licensed by the FDA;
- ii. In the case of a COVID-19 vaccine, the vaccination must be ordered and administered according to ACIP's COVID-19 vaccine recommendation(s).

*guidance-documents/authorized-pharmacists-and-pharmacy-interns-regarding-covid-19-vaccines-immunity.pdf* (last visited Jan. 24, 2021); Guidance for PREP Act Coverage for Qualified Pharmacy Technicians and State-Authorized Pharmacy Interns for Childhood Vaccines, COVID-19 Vaccines, and COVID-19 Testing, OASH, Oct. 20, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/prep-act-guidance.pdf> (last visited Jan. 24, 2021); PREP Act Authorization for Pharmacies Distributing and Administering Certain Covered Countermeasures, Oct. 29, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/prep-act-authorization-pharmacies-administering-covered-countermeasures.pdf> (last visited Jan. 24, 2021) (collectively, OASH PREP Act Authorizations). Nothing herein shall suggest that, for purposes of the Declaration, the foregoing are the only persons authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction.

<sup>5</sup> Some states do not require pharmacy interns to be licensed or registered by the state board of pharmacy. As used herein, “State-licensed or registered intern” (or equivalent phrases) refers to pharmacy interns authorized by the state or board of pharmacy in the state in which the practical pharmacy internship occurs. The authorization can, but need not, take the form of a license from, or registration with, the State board of pharmacy. See Guidance for PREP Act Coverage for Qualified Pharmacy Technicians and State-Authorized Pharmacy Interns for Childhood Vaccines, COVID-19 Vaccines, and COVID-19 Testing, OASH, Oct. 20, 2020 at 2, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/prep-act-guidance.pdf> (last visited Jan. 24, 2021).

<sup>2</sup> Department of Health and Human Services General Counsel Advisory Opinion on the Public Readiness and Emergency Preparedness Act, May 19, 2020, available at: <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/prep-act-advisory-opinion-hhs-ogc.pdf> (last visited Jan. 24, 2021). See also, Department of Justice Office of Legal Counsel Advisory Opinion for Robert P. Charrow, General Counsel of the Department of Health and Human Services, January 12, 2020, available at: <https://www.justice.gov/sites/default/files/opinions/attachments/2021/01/19/2021-01-19-prep-act-preemption.pdf> (last visited Jan. 24, 2021).

iii. In the case of a childhood vaccine, the vaccination must be ordered and administered according to ACIP's standard immunization schedule;

iv. The licensed pharmacist must have completed the immunization training that the licensing State requires in order for pharmacists to order and administer vaccines. If the State does not specify training requirements for the licensed pharmacist to order and administer vaccines, the licensed pharmacist must complete a vaccination training program of at least 20 hours that is approved by the Accreditation Council for Pharmacy Education (ACPE) to order and administer vaccines. Such a training program must include hands on injection technique, clinical evaluation of indications and contraindications of vaccines, and the recognition and treatment of emergency reactions to vaccines;

v. The licensed or registered pharmacy intern must complete a practical training program that is approved by the ACPE. This training program must include hands-on injection technique, clinical evaluation of indications and contraindications of vaccines, and the recognition and treatment of emergency reactions to vaccines;

vi. The licensed pharmacist and licensed or registered pharmacy intern must have a current certificate in basic cardiopulmonary resuscitation;<sup>6</sup>

vii. The licensed pharmacist must complete a minimum of two hours of ACPE-approved, immunization-related continuing pharmacy education during each State licensing period;

viii. The licensed pharmacist must comply with recordkeeping and reporting requirements of the jurisdiction in which he or she administers vaccines, including informing the patient's primary-care

provider when available, submitting the required immunization information to the State or local immunization information system (vaccine registry), complying with requirements with respect to reporting adverse events, and complying with requirements whereby the person administering a vaccine must review the vaccine registry or other vaccination records prior to administering a vaccine;

ix. The licensed pharmacist must inform his or her childhood-vaccination patients and the adult caregiver accompanying the child of the importance of a well-child visit with a pediatrician or other licensed primary care provider and refer patients as appropriate; and

x. The licensed pharmacist and the licensed or registered pharmacy intern must comply with any applicable requirements (or conditions of use) as set forth in the Centers for Disease Control and Prevention (CDC) COVID-19 vaccination provider agreement and any other federal requirements that apply to the administration of COVID-19 vaccine(s).

(e) Healthcare personnel using telehealth to order or administer Covered Countermeasures for patients in a state other than the state where the healthcare personnel are licensed or otherwise permitted to practice. When ordering and administering Covered Countermeasures by means of telehealth to patients in a state where the healthcare personnel are not already permitted to practice, the healthcare personnel must comply with all requirements for ordering and administering Covered Countermeasures to patients by means of telehealth in the state where the healthcare personnel are permitted to practice. Any state law that prohibits or effectively prohibits such a qualified person from ordering and administering Covered Countermeasures by means of telehealth is preempted.<sup>7</sup> Nothing in this Declaration shall preempt state laws that permit additional persons to deliver telehealth services.

(f) Any healthcare professional or other individual who holds an active license or certification permitting the person to prescribe, dispense, or administer vaccines under the law of any State as of the effective date of this amendment, or as authorized under the section V(d) of this Declaration, who

prescribes, dispenses, or administers COVID-19 vaccines that are Covered Countermeasures under section VI of this Declaration in any jurisdiction where the PREP Act applies, other than the State in which the license or certification is held, in association with a COVID-19 vaccination effort by a federal, State, local Tribal or territorial authority or by an institution in the State in which the COVID-19 vaccine covered countermeasure is administered, so long as the license or certification of the healthcare professional has not been suspended or restricted by any licensing authority, surrendered while under suspension, discipline or investigation by a licensing authority or surrendered following an arrest, and the individual is not on the List of Excluded Individuals/Entities maintained by the Office of Inspector General, subject to: (i) Documentation of completion of the Centers for Disease Control and Prevention COVID-19 (CDC) Vaccine Training Modules<sup>8</sup> and, for healthcare providers who are not currently practicing, documentation of an observation period by a currently practicing healthcare professional adequately experienced in vaccination who confirms competency of the healthcare provider in preparation and administration of the particular COVID-19 vaccine(s) to be administered; and

(g) Any physician, advanced practice registered nurse, registered nurse, or practical nurse who has held an active license or certification to prescribe, dispense, or administer vaccines under the law of any State within the last five years, which is inactive, expired or lapsed, who prescribes, dispenses, or administers COVID-19 vaccines that are Covered Countermeasures under section VI of this Declaration in any jurisdiction where the PREP Act applies in association with a COVID-19 vaccination effort by a federal, State, local, Tribal or territorial authority or by an institution in which the COVID-19 vaccine covered countermeasure is administered, so long as the license or certification was active and in good standing prior to the date it went inactive, expired or lapsed and was not revoked by the licensing authority, surrendered while under suspension, discipline or investigation by a licensing authority or surrendered following an arrest, and the individual is not on the List of Excluded Individuals/Entities maintained by the Office of Inspector

<sup>6</sup> This requirement is satisfied by, among other things, a certification in basic cardiopulmonary resuscitation by an online program that has received accreditation from the American Nurses Credentialing Center, the ACPE, or the Accreditation Council for Continuing Medical Education. The phrase "current certificate in basic cardiopulmonary resuscitation," when used in the September 3, 2020 or October 20, 2020 OASH authorizations, shall be interpreted the same way. See Guidance for Licensed Pharmacists and Pharmacy Interns Regarding COVID-19 Vaccines and Immunity under the PREP Act, OASH, Sept. 3, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/licensed-pharmacists-and-pharmacy-interns-regarding-covid-19-vaccines-immunity.pdf> (last visited Jan. 24, 2021); Guidance for PREP Act Coverage for Qualified Pharmacy Technicians and State-Authorized Pharmacy Interns for Childhood Vaccines, COVID-19 Vaccines, and COVID-19 Testing, OASH, Oct. 20, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/prep-act-guidance.pdf> (last visited Jan. 24, 2021).

<sup>7</sup> See, e.g., Advisory Opinion 20-02 on the Public Readiness and Emergency Preparedness Act and the Secretary's Declaration under the Act, May 19, 2020, available at <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/advisory-opinion-20-02-hhs-ogc-prep-act.pdf> (last visited Jan. 24, 2021).

<sup>8</sup> See COVID-19 Vaccine Training Modules, available at <https://www2.cdc.gov/vaccines/ed/covid19/index.asp> (last visited Jan. 23, 2021) <https://www.cdc.gov/vaccines/covid-19/training.html>.

General, subject to (i) documentation of completion of the Centers for Disease Control and Prevention COVID–19 Vaccine Training Modules and (ii) documentation of an observation period by a currently practicing healthcare professional adequately experienced in vaccination who confirms competency of the healthcare provider in preparation and administration of the particular COVID–19 vaccine(s) to be administered.

Nothing in this Declaration shall be construed to affect the National Vaccine Injury Compensation Program, including an injured party's ability to obtain compensation under that program. Covered countermeasures that are subject to the National Vaccine Injury Compensation Program authorized under 42 U.S.C. 300aa–10 *et seq.* are covered under this Declaration for the purposes of liability immunity and injury compensation only to the extent that injury compensation is not provided under that Program. All other terms and conditions of the Declaration apply to such covered countermeasures.

2. Effective Time Period, section XII, add to the end of the section:

Liability protections for Qualified Persons under sections V(f) and V(d) of the declaration begin on January 28, 2021, and last through October 1, 2024.

**Authority:** 42 U.S.C. 247d–6d.

**Norris Cochran,**

*Acting Secretary, Department of Health and Human Services.*

[FR Doc. 2021–02174 Filed 1–29–21; 4:15 pm]

**BILLING CODE 4150–37–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–663–664 and 731–TA–1555–1556 (Preliminary)]

### Granular Polytetrafluoroethylene (PTFE) Resin From India and Russia; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–663–664 and 731–TA–1555–1556 (Preliminary) pursuant to the Tariff Act of 1930 (“the Act”) to determine whether there is a reasonable indication that an industry in the United States is

materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of granular polytetrafluoroethylene (PTFE) resin from India and Russia, provided for in subheading 3904.61.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of India and Russia. Unless the Department of Commerce (“Commerce”) extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by March 15, 2021. The Commission's views must be transmitted to Commerce within five business days thereafter, or by March 22, 2021.

**DATES:** January 27, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Keysha Martinez ((202) 205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on January 27, 2021, by Daikin America, Inc., Orangeburg, New York.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**Participation in the investigations and public service list.**—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in

the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Conference.**—In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission is conducting the staff conference through video conferencing on February 17, 2021. Requests to appear at the conference should be emailed to [preliminaryconferences@usitc.gov](mailto:preliminaryconferences@usitc.gov) (DO NOT FILE ON EDIS) on or before February 12, 2021. Please provide an email address for each conference participant in the email. Information on conference procedures will be provided separately and guidance on joining the video conference will be available on the Commission's Daily Calendar. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during 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.

**Written submissions.**—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before February 22, 2021, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written

testimony and supplementary material in connection with their presentation at the conference no later than noon on February 16, 2021. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Certification.**—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations 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 these or related investigations or reviews, 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: January 27, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-02108 Filed 2-1-21; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-776-779 (Fourth Review)]

### Preserved Mushrooms From Chile, China, India, and Indonesia; Scheduling of Expedited Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 ("the Act") to determine whether revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

**DATES:** November 6, 2020.

#### FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On November 6, 2020, the Commission determined that the domestic interested party group response to its notice of institution (85 FR 46725, August 3, 2020) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.<sup>1</sup> Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and

Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office 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.

**Staff report.**—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on January 29, 2021, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

**Written submissions.**—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,<sup>2</sup> and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before February 4, 2021 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by February 4, 2021. However, should the Department of Commerce ("Commerce") extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates

<sup>2</sup> The Commission has found the joint response to its notice of institution filed on behalf of the following entities: Giorgio Foods, Inc., L.K. Bowman Co. (a division of Hanover Foods Corporation), Sunny Dell Foods, LLC, and The Mushroom Co. (formerly Mushroom Canning Co.), domestic producers of preserved mushrooms (collectively referred to herein as "domestic interested parties") to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

<sup>1</sup> A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Determination.**—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 28, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-02156 Filed 2-1-21; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1243]

### Certain Active Matrix OLED Display Devices and Components Thereof; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 28, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of Solas OLED Ltd. of Ireland. An amended complaint was filed on January 5, 2021, and a supplement to the amended complaint was filed on January 13, 2021. The complaint, as amended and supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain active matrix OLED display devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,573,068 ("the '068 patent") and U.S. Patent No. 7,868,880 ("the '880 patent"). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the

Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Pathenia M. Proctor, Office of Unfair Import Investigations, telephone (202) 205-2560.

#### SUPPLEMENTARY INFORMATION:

##### Authority:

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on January 27, 2021, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 13-17 of the '068 patent; and claims 2-40 of the '880 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is "electronic devices containing active matrix OLED displays and components thereof, *i.e.*, mobile phones and tablets with active matrix OLED displays";

(3) For the purpose of the investigation so instituted, the following

are hereby named as parties upon which this notice of investigation shall be served:

(a) *The complainant is:*

Solas OLED Ltd., Suite 23, The Hyde Building, Carrickmines, Dublin 18, Ireland

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

BOE Technology Group Co. Ltd., No.12 Xihuanzhong Rd., BDA, Beijing, 100176, People's Republic of China  
Beijing BOE Display Technology Co., Ltd., No.118 Jinghaiyi Rd BDA, Beijing, 100176, People's Republic of China

BOE Technology America Inc., 2350 Mission College Blvd., Suite 600, Santa Clara, CA 95054

Samsung Electronics Co., Ltd., 129 Samsung-Ro, Yeongtong-gu, Suwon-si., Gyeonggi-do, 443-742, South Korea

Samsung Electronics America, Inc., 85 Challenger Rd., Ridgefield Park, NJ 07660

Samsung Display Co., Ltd., 1 Samsung-Ro Giheung-gu, Yongin-si., Gyeonggi-Do, 17113, South Korea

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as



alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 27, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-02135 Filed 2-1-21; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF JUSTICE

[OMB Number 1140-0008]

### Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection; Application and Permit for Permanent Exportation of Firearms (National Firearms Act)—ATF Form 9 (5320.9)

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) OMB 1140-008 (Application and Permit for Permanent Exportation of Firearms (National Firearms Act)—ATF Form 9 (5320.9)) is being revised due to an increase in the total annual respondents and burden hours. Minor changes to update of all references from NFA Branch to NFA Division, and to request the applicant's email address were also made to the form. The proposed IC is also being published to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and will be accepted for 60 days until April 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: James Chancey, NFA Division, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at

*nfaombcomments@atf.gov*, or by telephone at 304-616-4594.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

### Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Application and Permit for Permanent Exportation of Firearms (National Firearms Act).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number (if applicable): ATF Form 9 (5320.9).

*Component:* Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Business or other for-profit.  
*Other (if applicable):* Federal Government.

*Abstract:* The Application and Permit for Permanent Exportation of Firearms (National Firearms Act)—ATF Form 9 (5320.9) is completed by Federal firearms licensees who have paid the special (occupational) tax, when requesting authorization to deal, manufacture and/or import NFA firearms.

5. *An estimate of the total number of respondents and the amount of time*

*estimated for an average respondent to respond:* An estimated 2,373 respondents will use the form annually, and it will take each respondent approximately 18 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 712 hours, which is equal to 2,373 (# of respondents) \* .3 (18 minutes).

7. *An Explanation of the Change in Estimates:* Due to a higher volume of industry submissions for this information collection, both the total respondents and burden hours have increased by 590 and 177 hours respectively, since the last renewal in 2017.

*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: January 27, 2021.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2021-02120 Filed 2-1-21; 8:45 am]

BILLING CODE 4410-FY-P

## DEPARTMENT OF JUSTICE

[OMB Number 1121-0312]

### Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection: 2018–2020 Survey of State Criminal History Information Systems (SSCHIS)

**AGENCY:** Bureau of Justice Statistics, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at Volume 83, Number 211, page 54780, October 31, 2018, allowing for a 60-day comment period; and Volume 84, Number 23, page 1506, February 4, 2019, allowing for a 30-day notice. This notice is being published to seek public comments on changes to the survey instrument proposed for the 2020 collection.



**DATES:** Comments are encouraged and will be accepted for 30 days until March 4, 2021.

**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](http://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.

**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 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 collection approved collection. The 2020 survey instrument is being revised to include new questions and remove others.

(2) *The Title of the Form/Collection:* 2018–2020 Survey of State Criminal History Information Systems (SSCHIS).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is N/A. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents are state government agencies, primarily state criminal history record repositories. The

SSCHIS report, the most comprehensive data available on the collection and maintenance of information by state criminal history record systems, describes the status of such systems and record repositories on a biennial basis. Data collected from state record repositories serves as the basis for estimating the percentage of total state records that are immediately available through the FBI’s Interstate Identification Index (III), and the percentage of arrest records that include dispositions. Other data presented include the number of records maintained by each state, the percentage of automated records in the system, and the number of states participating in the National Fingerprint File and the National Crime Prevention and Privacy Compact which authorizes the interstate exchange of criminal history records for noncriminal justice purposes. The SSCHIS also contains information regarding the timeliness and completeness of data in state record systems and procedures employed to improve data quality.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The total number of respondents is 56. The average length of time per respondent is 6.5 hours. This estimate is based on the average amount of time reported by five states that reviewed the survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total burden associated with this collection is estimated to be 364 hours.

*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: January 27, 2021.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2021–02129 Filed 2–1–21; 8:45 am]

**BILLING CODE 4410–18–P**

#### DEPARTMENT OF JUSTICE

[OMB Number 1121–0317]

#### Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: 2021 Identity Theft Supplement (ITS)

**AGENCY:** Bureau of Justice Statistics, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, 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 April 5, 2021.

**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 Erika Harrell, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: [Erika.Harrell@usdoj.gov](mailto:Erika.Harrell@usdoj.gov); telephone: 202–307–0758).

**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 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:* Reinstatement of the Identity Theft Supplement, with changes, a previously approved collection for which approval has expired.

(2) *The Title of the Form/Collection:* 2021 Identity Theft Supplement.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for the questionnaire is ITS-1. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be persons 16 years or older living in households located throughout the United States sampled for the National Crime Victimization Survey (NCVS). The ITS will be conducted as a supplement to the NCVS in all sample households for a six (6) month period. The ITS is primarily an effort to measure the prevalence of identity theft among persons, the characteristics of identity theft victims, and patterns of reporting to the police, credit bureaus, and other authorities. The ITS was also designed to collect important characteristics of identity theft such as how the victim's personal information was obtained; the physical, emotional and financial impact on victims; offender information; and the measures people take to avoid or minimize their risk of becoming an identity theft victim. BJS plans to publish this information in reports and reference it when responding to queries from the U.S. Congress, Executive Office of the President, the U.S. Supreme Court, state officials, international organizations, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimate of the total number of respondents is 104,910. An estimated 90.2% of respondents (94,630) will have no identity theft and will complete the short interview with an average burden of eight minutes. Among the 9.8% of respondents (10,280) who experience at least one incident of identity theft, the time to ask the detailed questions regarding the aspects of the most recent incident of identity theft is estimated to take an average of fifteen minutes. Respondents will be asked to respond to this survey

only once during the six-month period. The burden estimate is based on actual interview times from the 2018 ITS, an analysis of the 2021 ITS questionnaire changes, and mock interviews done with the 2021 questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 15,185 total 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.405A, Washington, DC 20530.

Dated: January 27, 2021.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2021-02125 Filed 2-1-21; 8:45 am]

**BILLING CODE 4410-18-P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Apprenticeship Evidence-Building Portfolio, New Collection

**AGENCY:** Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed. Currently, the Department of Labor is soliciting comments concerning the collection of data about the Apprenticeship Evidence-Building Portfolio. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the

addressee section below on or before April 5, 2021.

**ADDRESSES:** You may submit comments by either one of the following methods:

*Email:* ChiefEvaluationOffice@dol.gov; *Mail or Courier:* Janet Javar, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

### FOR FURTHER INFORMATION CONTACT:

Janet Javar by email at ChiefEvaluationOffice@dol.gov or by phone at (202) 693-5954.

### SUPPLEMENTARY INFORMATION:

I. *Background:* The Chief Evaluation Office (CEO) of the U.S. Department of Labor (DOL) intends to design and conduct evaluations of DOL-funded apprenticeship initiatives through the Apprenticeship Evidence-Building Portfolio. The portfolio of initiatives includes the *Scaling Apprenticeship Through Sector-Based Strategies* grants, *Closing the Skills Gap* grants, *Youth Apprenticeship Readiness* grants, and other DOL investments. The goal of this five-year study is to build evidence on apprenticeship models, practices, and partnership strategies in high-growth occupations and industries. The overall study is comprised of several components: (1) An implementation study of the *Scaling Apprenticeship* and *Closing the Skills Gap* grants to develop typologies of apprenticeship models and practices, identify promising strategies across the portfolio, and to better understand the implementation of models to help interpret impact evaluation findings; (2) a study of registered apprenticeship state systems and partnerships to assess their capacity to develop, design, modify, implement, replicate, sustain, expand/scale up, and evaluate apprenticeship strategies and models; and (3) an implementation evaluation of the *Youth Apprenticeship Readiness* grant program to understand service delivery design and implementation, challenges, and promising practices. DOL will submit additional ICRs for future data collection requests for this overall study.

This **Federal Register** Notice provides the opportunity to comment on nine

proposed data collection instruments that will be used in the evaluations: Apprenticeship grantee survey; state system capacity assessment interview guide for state staff; state system capacity assessment interview guide for local lead organization staff; state system capacity assessment interview guide for local partner staff; state system capacity assessment interview guide for employer partner staff; youth apprenticeship baseline survey and consent form for program staff; youth apprenticeship interview guide for program staff; youth apprenticeship interview guide for program partners; and youth apprenticeship interview guide for follow-up with program staff.

1. *Apprenticeship grantee survey.* Survey of 23 *Scaling Apprenticeship* and 28 *Closing the Skills Gap* grantees to collect program information.

2. *State System Capacity Assessment semi-structured interview protocol for state staff.* Virtual semi-structured interviews with approximately 5 state staff in each of the approximately 15 states participating in the study, beginning summer 2021.

3. *State System Capacity Assessment semi-structured interview protocol for local lead organization staff.* Virtual semi-structured interviews with approximately 6 staff from local lead organizations in each state.

4. *State System Capacity Assessment semi-structured interview protocol for local partner staff.* Virtual semi-structured interviews with approximately 10 local partner staff in each state.

5. *State System Capacity Assessment semi-structured interview protocol for employer partner staff.* Virtual semi-structured interviews with approximately 2 employer partner staff in each state.

6. *Youth Apprenticeship survey and consent for program staff.* Survey of Youth Apprenticeship Readiness grant program staff to collect program information.

7. *Youth Apprenticeship semi-structured interview protocol for program staff.* In-person semi-structured interviews with approximately 4 program staff in each of the approximately 9 grants participating in the study, beginning in fall 2021. If in-person visits are not possible, the interviews will be conducted virtually.

8. *Youth Apprenticeship semi-structured interview protocol for program partners.* In-person semi-structured interviews with approximately 6 staff of program partners in each grant. If in-person visits are not possible, the interviews will be conducted virtually.

9. *Youth Apprenticeship semi-structured interview protocol for follow-up with program staff.* In-person semi-structured follow-up interviews with approximately 2 program staff in each grant. If in-person visits are not possible, the interviews will be conducted virtually.

II. *Desired Focus of Comments:* Currently, DOL is soliciting comments concerning the above data collection for the Apprenticeship Evidence-Building Portfolio. DOL is particularly interested in comments that do the following:

- evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;

- evaluate the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions;

- enhance the quality, utility, and clarity of the information to be collected; and

- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology—for example, permitting electronic submissions of responses.

III. *Current Actions:* At this time, DOL is requesting clearance for the apprenticeship grantee survey; state system capacity assessment interview protocol for state staff; state system capacity assessment interview protocol for local lead organization staff; state system capacity assessment interview protocol for local partner staff; state system capacity assessment interview protocol for employer partner staff; youth apprenticeship baseline survey and consent form for program staff; youth apprenticeship interview protocol for program staff; youth apprenticeship interview protocol for program partners; and youth apprenticeship interview protocol for follow-up with program staff.

*Type of Review:* New information collection request.

*OMB Control Number:* 1290–0NEW.

*Affected Public:* Program staff, program partners, and participants of the *Scaling Apprenticeship Through Sector-Based Strategies, Closing the Skills Gap, and Youth Apprenticeship Readiness* grants. Additionally, state staff, partners, and representatives of local and regional apprenticeship initiatives and programs.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

#### ESTIMATED ANNUAL BURDEN HOURS

Type of instrument (form/activity)	Number of respondents	Number of responses per respondent	Total number of responses	Average burden time per response (hours)	Estimated burden hours
Apprenticeship grantee survey .....	1 17	1	17	3.0	51
State System Capacity Assessment interview protocol—state staff .....	2 25	1	25	2.0	50
State System Capacity Assessment interview protocol—local lead organization staff .....	3 30	1	30	1.0	30
State System Capacity Assessment interview protocol—local partner staff .....	4 50	1	50	1.0	50
State System Capacity Assessment interview protocol—employer partner staff .....	5 10	1	10	1.0	10
Youth Apprenticeship survey and consent—program staff .....	5	1	5	1.5	7.5
Youth Apprenticeship interview protocol—program staff ....	6 12	1	12	1.0	12
Youth Apprenticeship interview protocol—program partners .....	7 18	1	18	1.0	18

## ESTIMATED ANNUAL BURDEN HOURS—Continued

Type of instrument (form/activity)	Number of respondents	Number of responses per respondent	Total number of responses	Average burden time per response (hours)	Estimated burden hours
Youth Apprenticeship interview protocol—follow-up with program staff .....	<sup>8</sup> 6	1	6	1.0	6
Total .....	173	.....	173	.....	234.5

<sup>1</sup> Assumes 23 Scaling Apprenticeship and 28 Closing the Skill Gap grantees over the three-year clearance period.

<sup>2</sup> Assumes interviews with 5 staff in state programs in 15 states over the three-year clearance period.

<sup>3</sup> Assumes interviews with 6 staff in lead organizations in 15 states over the three-year clearance period.

<sup>4</sup> Assumes interviews with 10 staff in local partner organizations in 15 states over the three-year clearance period.

<sup>5</sup> Assumes interviews with 2 staff with employers in 15 states over the three-year clearance period.

<sup>6</sup> Assumes interviews with 4 program staff in 9 sites over the three-year clearance period.

<sup>7</sup> Assumes interviews with 6 program partner staff in 9 sites over the three-year clearance period.

<sup>8</sup> Assumes follow-up interviews with 2 program staff in 9 sites over the three-year clearance period.

**Christina Yancey,**

*Chief Evaluation Officer, U.S. Department of Labor.*

[FR Doc. 2021-02111 Filed 2-1-21; 8:45 am]

**BILLING CODE 4510-HX-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (21-008)]

### Planetary Science Advisory Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Advisory Committee. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Monday, March 1, 2021, 10:00 a.m. to 6:00 p.m., Eastern Time; and Tuesday, March 2, 2021, 10:00 a.m. to 6:00 p.m., Eastern Time.

**ADDRESSES:** Virtual meeting via WebEx and dial-in teleconference only.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karshelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-2355 or [khenderson@nasa.gov](mailto:khenderson@nasa.gov).

**SUPPLEMENTARY INFORMATION:** As noted above, this meeting will be available to the public telephonically and by WebEx only. The meeting event for attendees is: <https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m1aafd71607930a725986be629a61990e>. The event meeting number is 199 538 6929 and the

password is PAC\_March2021. For audio, when joining the Webex event, you may use your computer or provide your phone number to receive a call back. Otherwise, call the U.S. toll conference number: 1-415-527-5035 and enter the access code 199 538 6929.

The agenda for the meeting includes the following topics:

—Planetary Science Division Update  
—Planetary Science Division Research and Analysis Program Update

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

**Patricia Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2021-02159 Filed 2-1-21; 8:45 am]

**BILLING CODE 7510-13-P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by March 4, 2021. This application may be inspected by

interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

**FOR FURTHER INFORMATION CONTACT:** Nature McGinn, ACA Permit Officer, at the above address, 703-292-8030, or [ACApermits@nsf.gov](mailto:ACApermits@nsf.gov).

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95-541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

### Application Details

*Permit Application: 2021-007*

1. *Applicant:* Lynne Talley, Scripps Institution of Oceanography, UCSD, La Jolla, CA 92093-0230.

*Activity for Which Permit is Requested*

Type, description of activity.

### Location

Waste Management. The applicant is seeking a waste management permit for waste management activities associated with the deployment of floating oceanographic profiling instruments (Argo floats) in Southern Ocean waters. The Argo floats would autonomously collect temperature, salinity, oxygen, pH, nitrate, fluorescence, backscatter, and irradiance from 0 to 2000 m, every 10 days. The floats would freely drift and would likely leave and enter the

region over the course of their operational lifetimes. The applicant proposes to release a maximum of 150 Argo floats south of 60°S during the permit period. Float dimensions are 75 inches tall by 9 inches diameter, weighing approximately 65 lbs. Each float includes 19DD lithium cells, with approximately 0.198 gm of lithium. The floats would drift at 1000 m depth and come to the surface every 10 days. Their lifetime is approximately 5 years, after which the batteries would be depleted and the floats would no longer surface, but would remain in the ocean and sink to the ocean floor. The Argo floats deployed in the Southern Ocean would be part of a global array. The Argo array provides operational and research data that inform nowcast and forecast services, contributing to saving lives, avoiding property damage, and informing the public and government responses to environmental variability and change.

#### *Dates of Permitted Activities*

February 1, 2021–October 31, 2025.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021-02170 Filed 2-1-21; 8:45 am]

BILLING CODE 7555-01-P

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection

#### Activities: Comment Request; National Science Foundation Major Facilities Guide

**AGENCY:** National Science Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the requirement of the Paperwork Reduction Act of 1995, the National Science Foundation (NSF) is providing opportunity for public comment on revisions to the NSF Major Facilities Guide (MFG).

**DATES:** Written comments should be received by April 5, 2021 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Ave., Rm. W 18253, Alexandria, VA 22314, or by email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov).

**FOR FURTHER INFORMATION CONTACT:** Suzanne Plimpton on (703) 292-7556 or

send email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov).

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

#### **SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Major Facilities Guide.

*OMB Approval Number:* 3145-0239.

*Expiration Date of Approval:* September 30, 2022.

*Type of Request:* Intent to seek approval to extend with revision an information collection for three years.

*Proposed Project:* The primary purpose of this revision is to provide expectations for construction schedules for alignment with good practices, minimum competencies for project personnel, and guidance on the content of Segregation of Funding Plans and how to scale earned value management systems (EVMS). The draft version of the NSF MFG is available on the NSF website at: [http://www.nsf.gov/bfa/lfo/lfo\\_documents.jsp](http://www.nsf.gov/bfa/lfo/lfo_documents.jsp).

To facilitate review, a Change Log with brief comment explanations of the changes is provided in the guide. NSF is particularly interested in public comment on the new content provided in Section 4.3 Schedule Development, Estimating, and Analysis and in Section 4.6.6 Project Personnel and Competencies.

The National Science Foundation Act of 1950 (Pub. L. 81-507) set forth NSF's mission and purpose:

"To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense.\* \* \*

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

Among Federal agencies, NSF is a leader in providing the academic community with advanced instrumentation needed to conduct state-of-the-art research and to educate the next generation of scientists, engineers, and technical workers. The knowledge generated by these tools

sustains U.S. leadership in science and engineering (S&E) to drive the U.S. economy and secure the future. NSF's responsibility is to ensure that the research and education communities have access to these resources, and to provide the support needed to utilize them optimally, and implement timely upgrades.

The scale of advanced instrumentation ranges from small research instruments to shared resources or facilities that can be used by entire communities. The demand for such instrumentation is very high, and is growing rapidly, along with the pace of discovery. For major facilities and shared infrastructure, the need is particularly high. This trend is expected to accelerate in the future as increasing numbers of researchers and educators rely on such large facilities, instruments, and databases to provide the reach to make the next intellectual leaps.

NSF currently provides support for facility construction from two accounts: The Major Research Equipment and Facility Construction (MREFC) account, and the Research and Related Activities (R&RA) account. The MREFC account, established in FY 1995, is an agency-wide capital account which provides funding for the construction stage of major facilities, roughly \$100M or greater, and mid-scale projects in the range of approximately \$20-\$100M.

Facilities are defined as shared-use infrastructure, instrumentation and equipment that are accessible to a broad community of researchers and/or educators. Facilities may be centralized or may consist of distributed installations. They may incorporate large-scale networking or computational infrastructure, multi-user instruments or networks of such instruments, or other infrastructure, instrumentation and equipment having a major impact on a broad segment of a scientific or engineering discipline. Historically, awards have been made for such diverse projects as accelerators, telescopes, research vessels and aircraft, and geographically distributed but networked sensors and instrumentation.

The growth and diversification of large facility projects require that NSF remain attentive to the ever-changing issues and challenges inherent in their planning, construction, operation, management, and oversight. Most importantly, dedicated, competent NSF and awardee staff are needed to manage and oversee these projects; giving the attention and oversight that good practice dictates and that proper accountability to taxpayers and Congress demands. To this end, there is

also a need for consistent, documented requirements and procedures to be understood and used by NSF program managers and awardees for all such large projects.

*Use of the Information:* Facilities are an essential part of the science and engineering enterprise, and supporting them is one major responsibility of the National Science Foundation (NSF). NSF makes awards to external entities—primarily universities, consortia of universities or non-profit organizations—to undertake construction, management, and operation of facilities. Such awards frequently take the form of cooperative agreements. NSF does not directly construct or operate the facilities it supports. However, NSF retains responsibility for overseeing their development, management, and successful performance. The Major Facilities Guide is intended to:

- Provide guidance for NSF staff and awardees to carry out effective project planning, management and oversight of major facilities while considering the varying requirements of a diverse portfolio;
- Clearly state the policies, processes, and procedures pertinent at each stage of a facility's life cycle from development through design, construction, operations, and divestment; and
- Document and disseminate “good practices” identified over time so that NSF and awardees can carry out their responsibilities more effectively.

This version of the Major Facilities Guide adds sections for development of construction schedules and minimum competencies for project personnel; updates sections related to legislation and NSF policy on research infrastructure, content of segregation funding plans, and earned value management; and clarifies requirements to transition through the design phases, construction monthly reporting, and property management terminology. The Guide does not replace existing formal procedures required for all NSF awards, which are described in the, *Proposal & Award Policies and Procedures Guide (PAPPG)*. Instead, it draws upon and supplements it for the purpose of providing detailed guidance regarding NSF policy and procedures related to the planning, management, and oversight of Major Facilities. All facilities projects require merit and technical review, as well as approval of certain deliverables. The level of review and approval varies substantially from standard grants, as does the level of oversight needed to ensure appropriate and proper accountability for federal

funds. The requirements, recommended procedures, and best practices presented in the Guide apply to any facility significant enough to require close and substantial interaction with the Foundation and the National Science Board.

This Guide will be updated periodically to reflect changes in requirements, policies and/or procedures. Award Recipients are expected to monitor and adopt the requirements and best practices included in the Guide which are aimed at improving management and oversight of major facilities projects and at enabling the most efficient and cost-effective delivery of tools to the research and education communities.

The submission of proposals and subsequent project documentation to the Foundation related to the development, construction and operations of Major Facilities is part of the collection of information. This information is used to help NSF fulfill this responsibility in supporting merit-based research and education projects in all the scientific and engineering disciplines. The Foundation also has a continuing commitment to provide oversight on facilities development and construction which must be balanced against monitoring its information collection so as to identify and address any excessive reporting burdens.

NSF has approximately twenty-four (24) Major Facilities in various stages of development, design, construction, operations, and divestment. Facilities undergoing a major upgrade may be classified in both design or construction and operations at the same time. Two to four (2 to 4) new construction awards are made approximately every five (5) years based on science community infrastructure needs and availability of funding. Among the twenty-four major facilities, there are approximately seven (7) facilities annually that are either in design or construction. These stages require the highest level of reporting and management documentation per the *Major Facilities Guide*. NSF estimates there will be four (4) mid-scale projects in progress at a given time.

*Burden to the Public:* The Foundation estimates that approximately five (5) Full Time Equivalents (FTE's) are necessary for each major facility project in design or construction to respond to NSF performance and financial reporting and project management documentation requirements on an annual basis; or 10,400 hours per year. The Foundation estimates approximately one and half (1.5) FTE for a major facility in operations to respond to NSF performance and

financial reporting on an annual basis; or 3,120 hours per year. For mid-scale projects, the Foundation estimates approximately one (1) Full Time Equivalent (FTE's) is necessary for each mid-scale project to respond to NSF project management documentation requirements on an annual basis; or 2,080 hours per year. With seven (7) major facilities in design or construction and twenty-one (21) in operations and four (4) mid-scale projects, this equates to roughly 150,000 public burden hours annually.

*Comments:* In addition to the type of comments identified above, comments are also 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; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Dated: January 27, 2021.

**Suzanne H. Plimpton,**  
Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021-02140 Filed 2-1-21; 8:45 am]

BILLING CODE 7555-01-P

## NUCLEAR REGULATORY COMMISSION

[NRC-2021-0020]

### Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment request; notice of opportunity to comment, request a hearing, and petition for leave

to intervene; order imposing procedures.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of three amendment requests. The amendment requests are for Pilgrim Nuclear Power Station, Monticello Nuclear Generating Plant, and Watts Bar Nuclear Plant, Units 1 and 2. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration (NSHC). Because each amendment request contains sensitive unclassified non-safeguards information (SUNSI) and/or safeguards information (SGI), an order imposes procedures to obtain access to SUNSI and SGI for contention preparation.

**DATES:** Comments must be filed by March 4, 2021. A request for a hearing or petitions for leave to intervene must be filed by April 5, 2021. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by February 12, 2021.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking Website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2021–0020. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: [Jennifer.Borges@nrc.gov](mailto: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:** Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1384, email: [Janet.Burkhardt@nrc.gov](mailto:Janet.Burkhardt@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### A. Obtaining Information

Please refer to Docket ID NRC–2021–0020, facility name, unit number(s), docket number(s), application date, and subject 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–2021–0020.
- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto: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.

- *Attention:* The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov) or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Standard Time (EST), Monday through Friday, except Federal holidays.

### B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking Website (<https://www.regulations.gov>). Please include Docket ID NRC–2021–0020, facility name, unit number(s), docket number(s), application date, and subject, 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. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves NSHC, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI and SGI.

## III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve NSHC. Under the Commission’s regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day



comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

#### *A. Opportunity To Request a Hearing and Petition for Leave To Intervene*

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at <https://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and

documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant-hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to

the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

#### *B. Electronic Submissions (E-Filing)*

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at <https://www.nrc.gov/site->



[help/e-submittals.html](#). Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. (EST) on the due date. Upon receipt of a transmission, the E-Filing system time stamps the document and

sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., (EST), Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention:

Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

#### Holtec Pilgrim, LLC and Holtec Decommissioning International; Pilgrim Nuclear Power Station; Plymouth County, MA

Docket No(s) .....	50-293.
Application Date .....	October 5, 2020, as supplemented by email dated December 10, 2020.
ADAMS Accession No .....	ML20283A292, ML20346A047.
Location in Application of NSHC .....	Pages 2-4 of Attachment 1.
Brief Description of Amendment(s) .....	The license amendment application seeks NRC review and approval of the Pilgrim Nuclear Power Station Physical Security Plan revision and a license amendment to incorporate alternative measures.
Proposed Determination .....	NSHC.
Name of Attorney for Licensee, Mailing Address .....	Erin Connolly, Corporate Counsel—Legal, Holtec International, Krishna P. Singh Technology Campus, 1 Holtec Blvd., Camden, NJ 08104.
NRC Project Manager, Telephone Number .....	Amy Snyder, 301-415-6822.

#### Northern States Power Company; Monticello Nuclear Generating Plant; Wright County, MN

Docket No(s) .....	50-263.
Application Date .....	November 3, 2020.
ADAMS Accession No .....	ML20308A826.
Location in Application of NSHC .....	Pages 3-5 of the Enclosure.
Brief Description of Amendment(s) .....	The amendment would adopt Technical Specifications Task Force (TSTF) Traveler TSTF-564, "Safety Limit MCPR [minimum critical power ratio]," Revision 2, with variations.

Proposed Determination .....	NSHC.
Name of Attorney for Licensee, Mailing Address .....	Peter M. Glass, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall—401–8, Minneapolis, MN 55401.
NRC Project Manager, Telephone Number .....	Robert Kuntz, 301–415–3733.

**Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN**

Docket No(s) .....	50–390, 50–391.
Application Date .....	October 2, 2020.
ADAMS Accession No .....	ML20276A092.
Location in Application of NSHC .....	Pages 37–40 of Enclosure 1.
Brief Description of Amendment(s) .....	The amendments would revise the Watts Bar Nuclear Plant, Units 1 and 2, Technical Specification 5.7.2.19, "Containment Leakage Rate Testing Program," to adopt Nuclear Energy Institute 94–01, Revision 3–A, "Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, appendix J." The amendments would also clarify the value of Pa to be used for containment leakage rate testing.
Proposed Determination .....	NSHC.
Name of Attorney for Licensee, Mailing Address .....	Sherry Quirk, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902.
NRC Project Manager, Telephone Number .....	Kimberly Green, 301–415–1627.

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation**

*Holtec Pilgrim, LLC and Holtec Decommissioning International; Docket No. 50–293; Pilgrim Nuclear Power Station; Plymouth County, MA*

*Northern States Power Company; Docket No. 50–263; Monticello Nuclear Generating Plant; Wright County, MN*

*Tennessee Valley Authority; Docket Nos. 50–390, 50–391; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN*

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including SUNSI and SGI). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear

Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are [Hearing.Docket@nrc.gov](mailto:Hearing.Docket@nrc.gov) and [RidsOgcMailCenter.Resource@nrc.gov](mailto:RidsOgcMailCenter.Resource@nrc.gov), respectively.<sup>1</sup> The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention; and

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's "need to know" the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated

<sup>1</sup> While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;<sup>2</sup> and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, "Questionnaire for Non-Sensitive Positions," for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the Electronic Questionnaires for Investigations Processing website, a secure website that is owned and operated by the Defense Counterintelligence and Security Agency (DCSA). To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301–415–3710.<sup>3</sup>

<sup>2</sup> Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already admitted contention or non-adjudicatory access to SGI.

<sup>3</sup> The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor

(c) A completed Form FD-258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD-258 will be provided in the background check request package supplied by the Office of Administration for each individual for whom a background check is being requested. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, subpart C, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an Federal Bureau of Investigation identification and criminal history records check.

(d) A check or money order payable in the amount of \$326.00<sup>4</sup> to the NRC for each individual for whom the request for access has been submitted.

(e) If the requestor or any individual(s) who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF-85 or Form FD-258; however, all other requirements for access to SGI, including the need to know, are still applicable.

**Note:** Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address: U.S. Nuclear Regulatory Commission, Office of Administration, Attn: Personnel Security Branch, Mailstop: TWFN-07D04M, 11555 Rockville Pike, Rockville, MD 20852.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

D. To avoid delays in processing requests for access to SGI, the requestor

usually should be able to obtain access to the online form within one business day.

<sup>4</sup> This fee is subject to change pursuant to the DCSA's adjustable billing rates.

should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.<sup>5</sup>

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order<sup>6</sup> by

<sup>5</sup> Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

<sup>6</sup> Any motion for Protective Order or draft Non-Disclosure Agreement or Affidavit for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes a final adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) for access to SGI, the Office of Administration, in accordance with 10 CFR 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the Office of Administration's final adverse determination with respect to trustworthiness and reliability for access to SGI by filing a request for review in accordance with 10 CFR 2.336(f)(1)(iv).

(5) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding

officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.<sup>7</sup>

L. The Commission expects that the NRC staff and presiding officers (and

any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated: January 14, 2021.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

#### ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0 .....	Publication of <b>Federal Register</b> notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10 .....	Deadline for submitting requests for access to Sensitive Unclassified Non Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60 .....	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20 .....	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25 .....	If NRC staff finds no "need," no "need to know," or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30 .....	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40 .....	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190 .....	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes a final adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205 .....	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination under 10 CFR 2.336(f)(1)(iv).
A .....	If access granted: Issuance of a decision by a presiding officer or other designated officer on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3 .....	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28 .....	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53 .....	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60 .....	(Answer receipt +7) Petitioner/Intervenor reply to answers.

<sup>7</sup>Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR

46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as

applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

**ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued**

Day	Event/Activity
>A + 60 .....	Decision on contention admission.

[FR Doc. 2021-01310 Filed 2-1-21; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

### **Advisory Committee on the Medical Uses of Isotopes: Call for Nominations**

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Call for nominations.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is soliciting nominations for the Health Care Administrator position on the Advisory Committee of the Medical Uses of Isotopes (ACMUI). Health Care Administrator nominees should have professional experience with and/or extensive knowledge about health care administration. Involvement and leadership in professional societies or organizations is preferred.

**DATES:** Nominations are due on or before April 5, 2021.

**ADDRESSES:** *Nomination Process:* Submit an electronic copy of resume or curriculum vitae, along with a cover letter, to Ms. Kellee Jamerson, [Kellee.Jamerson@nrc.gov](mailto:Kellee.Jamerson@nrc.gov). The cover letter should describe the nominee's current involvement with health care administration and express the nominee's interest in the position. Please ensure that the resume or curriculum vitae includes the following information, if applicable: Education; certification(s); professional association and committee membership activities; and number of years, timeframe, and type of setting for health care administration.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kellee Jamerson, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards; (301) 415-7408; [Kellee.Jamerson@nrc.gov](mailto:Kellee.Jamerson@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The ACMUI Health Care Administrator representative provides advice to the NRC staff on a broad perspective of various interests, to include, patients' interests, physicians' interests, and hospitals' interests, as they apply to radiation safety, the treatment of patients, and NRC's medical-use policy.

This individual is appointed based on his or her educational background, certification(s), professional experience, involvement and/or leadership in professional societies or organizations, and other information obtained in letters or during the selection process.

The ACMUI advises the NRC on policy and technical issues that arise in the regulation of the medical use of byproduct material. Responsibilities include providing comments on changes to the NRC regulations and guidance; evaluating certain non-routine uses of byproduct material; providing technical assistance in licensing, inspection, and enforcement cases; and bringing key issues to the attention of the NRC staff, for appropriate action.

ACMUI members are selected based on their educational background, certification(s), work experience, involvement and/or leadership in professional society activities, and other information obtained from recommendation letters or during the selection process. Nominees should have the demonstrated ability to establish effective work relationships with peers and implement successful approaches to problem solving and conflict resolution. ACMUI members currently serve a four-year term and may be considered for reappointment to a second term. The current ACMUI membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) nuclear medicine physicist; (d) therapy medical physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) Agreement State representative; (k) healthcare administrator; and (l) diagnostic radiologist. For additional information about membership on the ACMUI, visit the ACMUI Membership web page, <https://www.nrc.gov/about-nrc/regulatory/advisory/acmui/membership.html>.

Nominees must be U.S. citizens and be able to devote up to 160 hours per year to ACMUI business. Members are expected to attend semi-annual meetings in Rockville, Maryland and to participate in teleconferences or virtual meetings, as needed. Members who are

not Federal employees are compensated for their service. In addition, members are reimbursed for travel (including per diem in lieu of subsistence) and are reimbursed secretarial and correspondence expenses. Full-time Federal employees are reimbursed for travel expenses only.

*Security Background Check:* The selected nominee will undergo a thorough security background check. Security paperwork may take the nominee several weeks to complete. Nominees will also be required to complete a financial disclosure statement to avoid conflicts of interest.

Dated at Rockville, Maryland this 27th day of January, 2021.

For the U.S. Nuclear Regulatory Commission.

**Russell E. Chazell,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2021-02112 Filed 2-1-21; 8:45 am]

**BILLING CODE 7590-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 34182; File No. 812-15099]**

### **Hamilton Lane Private Assets Fund, et al.**

January 28, 2021.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act. Applicants request an order to permit a closed-end management investment company to co-invest in portfolio companies with affiliated investment funds.

**APPLICANTS:** Hamilton Lane Private Assets Fund (the "Fund"), Hamilton Lane Advisors, L.L.C. ("Hamilton Lane"), 2020 Tactical Market Fund LP, Edgewood Partners LP, Fifth Stockholm CI SPV L.P., Finance Street AIV Splitter L.P., Florida Growth Fund II LLC, Green Core Fund, L.P., Hamilton Lane Co-

Investment Fund IV Holdings LP, Hamilton Lane Co-Investment Fund IV Holdings-2 LP, Hamilton Lane NM Fund I LP, Hamilton Lane Private Equity Fund X Holdings LP, Hamilton Lane Private Markets Opportunity Fund LP, Credit Series, Hamilton Lane Private Markets Opportunity Fund LP, Fund-of-Funds Series, Hamilton Lane Private Markets Opportunity Fund LP, Fund-of-Funds Series II, Hamilton Lane SMID II Holdings LP, Hamilton Lane Strategic Opportunities Fund V (Series 2019) Holdings LP, Hamilton Lane Strategic Opportunities Fund VI (Series 2020) Holdings LP, Hamilton Lane Strategic Opportunities Fund VI (Series 2020) LP, Hamilton Lane Venture Capital Series 2020, Hamilton Lane-Carpenters Partnership Fund V L.P., HL International Investors LP, Series H2, HL-HP Global Investments LP, HLSF V Holdings LP, Nakhoda Lane Fund L.P., Nakhoda Lane Fund DE SPV LP, SRCS HL PE 1 (Master) LP, Hamilton Lane/NYSCRF Israel Investment Fund L.P., HL ENPAM Fund Splitter LP, HL Impact Holdings LP, HL International Investors L.P. Series M, HL International Investors L.P. Series N, HL International Investors L.P. Series O, HL International Investors L.P. Series Q, HL International Investors LP Series I, HL International Investors LP, HL Secondary Opportunities 2018 Series, HL International Investors LP, Series H1, HL International Investors, L.P. Series P, HL Miras Secondary Fund LP, HL Pennsylvania Co-Investment Fund, L.P., HL Private Assets Holdings LP, HL/AS Global Coinvest LP, HLSF IV Holdings LP, Hudson River Co-Investment Fund III L.P., Innovation Lane LP, Jati Private Equity Fund III L.P., KPI-Hamilton Lane Multi-Strategy Fund I Master LP, KPS-Hamilton Lane Multi-Strategy Fund I Master LP, Libra Taurus PE Fund Master LP, Moran Real Asset Fund II, L.P., New York Credit Co-Investment Fund II LP, New York Credit SBIC Fund L.P., RAPM NM Secondary Opportunity Fund, L.P., SRE HL PE 1 (Master) LP, SREH HL PE 1 (Master) LP, SRZ HL PE 1 (Master) LP, Tarragon Master Fund LP, Utah Real Assets Portfolio, LP, Hamilton Lane Secondary Fund V International Series Fund LP, Series 2, Hamilton Lane Infrastructure Fund Holdings LP, Hamilton Lane Infrastructure Fund Holdings-2 LP, Hamilton Lane Equity Opportunities Fund V Holding LP, and Hamilton Lane Equity Opportunities Fund V Holding-2 LP.

**FILING DATES:** The application was filed on February 25, 2020, and amended on July 13, 2020 and October 16, 2020.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will

be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request, by email. Hearing requests should be received by the Commission by 5:30 p.m. on February 22, 2021, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov*.

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov*. Applicants: Attn: General Counsel, *hlegal@hamiltonlane.com*.

**FOR FURTHER INFORMATION CONTACT:** Kieran G. Brown, Senior Counsel, at (202) 551–6773 or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090.

### Introduction

1. The Applicants request an order of the Commission under sections 17(d) and 57(i) and rule 17d–1 thereunder (the “Order”) to permit, subject to the terms and conditions set forth in the application (the “Conditions”), a Regulated Fund<sup>1</sup> and one or more other Regulated Funds and/or one or more

<sup>1</sup> “Regulated Funds” means the Fund and any Future Regulated Funds. “Future Regulated Fund” means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a business development company (“BDC”); (b) whose investment adviser is an Adviser; and (c) that intends to participate in the co-investment program. “Adviser” means Hamilton Lane and any other investment adviser that is (i) controlling, under common control with, or controlled by Hamilton Lane, (ii) registered as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”), and (iii) not a Regulated Fund or a subsidiary of a Regulated Fund. Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

Affiliated Funds<sup>2</sup> to enter into Co-Investment Transactions with each other. “Co-Investment Transaction” means any transaction in which one or more Regulated Funds (or its Wholly-Owned Investment Sub) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. “Potential Co-Investment Transaction” means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.<sup>3</sup>

### Applicants

2. The Fund was organized under the Delaware Statutory Trust Act and is a closed-end management investment company registered under the Act. The Fund's Board<sup>4</sup> will be comprised of a majority of members who are Independent Trustees.<sup>5</sup>

3. Hamilton Lane, a Pennsylvania limited liability company that is registered under the Advisers Act, serves as the investment adviser to the Fund.

4. Hamilton Lane also serves as the investment adviser to each of the Existing Affiliated Funds. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and each would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. The Hamilton Lane Proprietary Accounts will hold various financial assets in a principal capacity. Hamilton Lane and its affiliates may

<sup>2</sup> “Affiliated Fund” means the Existing Affiliated Funds, any Future Affiliated Fund or any Hamilton Lane Proprietary Account. “Existing Affiliated Funds” means the investment vehicles identified in Schedule A of the application. “Future Affiliated Fund” means any entity (a) whose investment adviser is an Adviser; (b) that would be an investment company but for section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act; and (c) that intends to participate in the co-investment program. “Hamilton Lane Proprietary Account” means any account of an Adviser or its affiliates or any company that is a direct or indirect, wholly- or majority-owned subsidiary of the Adviser or its affiliates, which, from time to time, may hold various financial assets in a principal capacity.

<sup>3</sup> All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with the terms and conditions of the application.

<sup>4</sup> “Board” means the board of trustees (or the equivalent) of a Regulated Fund.

<sup>5</sup> “Independent Trustee” means a member of the Board of any relevant entity who is not an “interested person” as defined in section 2(a)(19) of the Act. No Independent Trustee of a Regulated Fund will have a direct or indirect financial interest in any Co-Investment Transaction or any interest in any portfolio company, other than indirectly through share ownership in one of the Regulated Funds.

operate through wholly- or majority-owned subsidiaries. Currently, there are no Hamilton Lane Proprietary Accounts or subsidiaries that exist and currently intend to participate in the co-investment program.

5. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.<sup>6</sup> Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d-1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

### Applicants' Representations

#### A. Allocation Process

6. Applicants state that the Advisers are presented with a substantial number of investment opportunities each year on behalf of their clients, and that the Advisers must determine how to allocate those opportunities in a manner that, over time, is fair and equitable to all of their clients. Such investment opportunities may be Potential Co-Investment Transactions.

7. Applicants represent that the Adviser has established processes for allocating initial investment opportunities, opportunities for subsequent investment in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, Applicants represent that these processes will be extended and modified in a manner

reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and Affiliated Funds and (ii) comply with the Conditions. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies<sup>7</sup> and any Board-Established Criteria<sup>8</sup> of a Regulated Fund, the policies and procedures will require that the Adviser to such Regulated Fund receives sufficient information to allow such Adviser's investment committee to make its independent determination and recommendations under the Conditions.

8. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

9. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the Adviser will submit a proposed order amount to

<sup>7</sup> "Objectives and Strategies" means with respect to any Regulated Fund, its investment objectives and strategies, as described in its most current registration statement on Form N-2, other current filings with the Commission under the Securities Act of 1933 (the "Securities Act") or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders.

<sup>8</sup> "Board-Established Criteria" means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Trustees. The Independent Trustees of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

an internal investment committee which the Adviser will establish to handle the allocation of investment opportunities in Potential Co-Investment Transactions. Applicants state further that, at this stage, each proposed order amount may be reviewed and adjusted, in accordance with the Advisers' written allocation policies and procedures, by the Adviser's investment committee.<sup>9</sup> The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its "Internal Order." The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.<sup>10</sup>

10. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the "External Submission"), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.<sup>11</sup> If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain. The Board of the

<sup>9</sup> The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of the Advisers.

<sup>10</sup> "Required Majority" means a required majority, as defined in section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

<sup>11</sup> Each Adviser will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Trustees with information concerning the Affiliated Fund's and Regulated Funds' order sizes to assist the Eligible Trustees with their review of the applicable Regulated Fund's investments for compliance with the Conditions. "Eligible Trustees" means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under section 57(o) of the Act.

<sup>6</sup> "Wholly-Owned Investment Sub" means an entity (i) that is wholly-owned by a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and, in the case of a SBIC Subsidiary (defined below), maintain a license under the SBA Act (defined below) and issue debentures guaranteed by the SBA (defined below)); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. "SBIC Subsidiary" means a Wholly-Owned Investment Sub that is licensed by the Small Business Administration (the "SBA") to operate under the Small Business Investment Act of 1958, as amended, (the "SBA Act") as a small business investment company.



Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with condition 2, 6, 7, 8 or 9, as applicable.

#### B. Follow-On Investments

11. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments<sup>12</sup> in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

12. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.<sup>13</sup> If the Regulated Funds and Affiliated Funds had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

13. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata

Follow-On Investment<sup>14</sup> or (ii) a Non-Negotiated Follow-On Investment.<sup>15</sup> Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

#### C. Dispositions

14. Applicants propose that Dispositions<sup>16</sup> would be divided into two categories. If the Regulated Funds and the Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.<sup>17</sup>

<sup>14</sup> A "Pro Rata Follow-On Investment" is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Trustees in accordance with Condition 8(c).

<sup>15</sup> A "Non-Negotiated Follow-On Investment" is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters. "JT No-Action Letters" means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

<sup>16</sup> "Disposition" means the sale, exchange or other disposition of an interest in a security of an issuer.

<sup>17</sup> However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such

15. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition<sup>18</sup> or (ii) the securities are Tradable Securities<sup>19</sup> and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

#### D. Delayed Settlement

16. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa.

Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Trustees must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.*, in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

<sup>18</sup> A "Pro Rata Disposition" is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Trustees.

<sup>19</sup> "Tradable Security" means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

<sup>12</sup> "Follow-On Investment" means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

<sup>13</sup> "Pre-Boarding Investments" are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that were acquired prior to participating in any Co-Investment Transaction in transactions: (i) In which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters (defined below); or (ii) occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.



Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

#### *E. Holders*

17. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the "Holders") own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the "Shares"), then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on matters specified in the Condition. Applicants believe that this Condition will ensure that the Independent Trustees will act independently in evaluating Co-Investment Transactions, because the ability of the Adviser or its principals to influence the Independent Trustees by a suggestion, explicit or implied, that the Independent Trustees can be removed will be limited significantly.

#### **Applicants' Legal Analysis**

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit participation by a registered investment company and an affiliated person in any "joint enterprise or other joint arrangement or profit-sharing plan," as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d-1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d-1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d-1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by rule 17d-1 and/or section 57(b), as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because (i) Hamilton Lane manages, and may be deemed to control, the Existing Affiliated Funds and any other Affiliated Fund will be managed by, and may be deemed to be controlled by, an Adviser to Affiliated Funds; (ii) Hamilton Lane is the investment adviser to, and may be deemed to control, the Fund and an Adviser to the Regulated Funds will be the investment adviser to, and may be deemed to control, any Future Regulated Fund; and (iii) the Advisers to Affiliated Funds and the Advisers to Regulated Funds are under common control. Thus, each of the Affiliated Funds could be deemed to be a person related to the Regulated Funds in a manner described by section 57(b) and related to the other Regulated Funds in a manner described by rule 17d-1; and therefore the prohibitions of rule 17d-1 and section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds.

4. Because the Hamilton Lane Proprietary Accounts are controlled by the Adviser or its affiliates and, therefore, may be under common control with the Fund, any future Advisers, and any Future Regulated Funds, the Hamilton Lane Proprietary Accounts could be deemed to be persons related to the Regulated Funds (or a company controlled by the Regulated Funds) in a manner described by section 57(b) and also prohibited from participating in the co-investment program. Each Regulated Fund would also be related to each other Regulated Fund in a manner described by section 57(b) or rule 17d-1, as applicable, and thus prohibited from participating in Co-Investment Transactions with each other.

5. In passing upon applications under rule 17d-1, the Commission considers whether a company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from

or less advantageous than that of other participants.

6. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d-1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

#### **Applicants' Conditions**

Applicants agree that the Order will be subject to the following conditions:

##### *1. Identification and Referral of Potential Co-Investment Transactions*

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

##### *2. Board Approvals of Co-Investment Transactions*

(a) If an Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be

invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in Section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Trustees with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Trustees with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Trustees of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or the Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) The interests of the Regulated Fund's shareholders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the

settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Fund and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Trustees will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect<sup>20</sup> financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or

<sup>20</sup> For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,<sup>21</sup> a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.<sup>22</sup>

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

#### 6. *Standard Review Dispositions*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-

<sup>21</sup> This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

<sup>22</sup> "Related Party" means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate. "Close Affiliate" means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in section 57(b) (after giving effect to rule 57b-1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in section 57(b) to section 2(a)(3)(D). "Remote Affiliate" means any person described in section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

Investment Transaction with respect to the issuer, then:

(i) The Adviser to such Regulated Fund or Affiliated Fund<sup>23</sup> will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i)(A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition;<sup>24</sup> (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

#### 7. *Enhanced Review Dispositions*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange

or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Fund, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i) The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by section 57 or rule 17d-1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements.* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b-1) or rule 17d-1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time

of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial<sup>25</sup> in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

#### 8. *Standard Review Follow-Ons*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i)(A) The proposed participation of each Regulated Fund and each

<sup>23</sup> Any Hamilton Lane Proprietary Account that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 6(a)(i), 7(a)(i), 8(a)(i), and 9(a)(i).

<sup>24</sup> In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

<sup>25</sup> In determining whether a holding is "immaterial" for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,<sup>26</sup> immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Trustees must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them *pro rata* based on the size of the Internal Orders, as

described in Section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

#### 9. *Enhanced Review Follow-Ons*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and any Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b-1) or rule 17d-1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b-1) or rule 17d-1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them *pro rata* based on the size of the Internal Orders, as

<sup>26</sup> To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and any Affiliated Fund, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or any Affiliated Fund, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

described in Section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

#### 10. Board Reporting, Compliance and Annual Re-Approval

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or any Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Trustees, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a-1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance.

(d) The Independent Trustees will consider at least annually whether continued participation in new and

existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under section 57(f).

12. *Trustee Independence.* No Independent Trustee of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an "affiliated person" (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and any participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*<sup>27</sup> Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by an Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Adviser, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and

<sup>27</sup> Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by section 17(e) or 57(k) or (iii) in the case of the Adviser, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-02179 Filed 2-1-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA-183; File No. SIPC-2021-01]

### Securities Investor Protection Corporation; Determination

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 3(e)(2) of the Securities Investor Protection Act of 1970 ("SIPA"), notice is hereby given that the Board of Directors of SIPC (the "Board") filed with the Securities and Exchange Commission ("Commission") on January 5, 2021, notification that the Board has determined, beginning January 1, 2022, and for the five year period immediately thereafter, that the standard maximum cash advance amount available to satisfy customer claims for cash in a SIPA liquidation proceeding will remain at \$250,000. The Commission is publishing this notice to solicit comments on Board's determination from interested parties.

**DATES:** Comments are to be received on or before February 17, 2021.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments concerning the foregoing by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/submitcomments.htm>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SIPC-2021-01 on the subject line.

*Paper Comments*

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All comments should refer to File Number SIPC-2021-01. This file numbers 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/other.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to this Notice that are filed with the Commission, and all written communications relating to the Notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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.

**FOR FURTHER INFORMATION CONTACT:**

Michael A. Macchiaroli, Associate Director, at (202) 551-5525; Thomas K. McGowan, Associate Director, at (202) 551-5521; Randall W. Roy, Deputy Associate Director, at (202) 551-5522; Raymond A. Lombardo, at (202) 551-5755; Timothy C. Fox, Branch Chief, at (202) 551-5687; or A.J. Jacob, Special Counsel, at (202) 551-5583; Office of Financial Responsibility, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-7010.

**SUPPLEMENTARY INFORMATION:**

# **I. SIPC'S Statement of the Purpose of and Statutory Basis of the Determination of the Board of Directors of SIPC Not To Adjust the Standard Maximum Cash Advance Amount for Inflation**

In its filing with the Commission, SIPC included statements concerning the purpose of and statutory basis of the SIPC Board's determination. The text of these statements may be examined at the places specified above, and appear in the text, below.

\* \* \* \* \*

"Pursuant to section 9(e)(1) of the Securities Investor Protection Act ("SIPA"), 15 U.S.C. 78fff-3(e)(1),<sup>1</sup> the Board of Directors ("Board") of the Securities Investor Protection Corporation ("SIPC") must determine, "[n]ot later than January 1, 2011, and every five years thereafter, and subject to the approval of the Commission," whether to adjust for inflation the standard maximum cash advance amount that SIPC can advance to satisfy customer claims for cash under SIPA § 78fff-3(a)(1). The Board considered the issue at its Meeting on September 9, 2020, and again at its Meeting on November 12, 2020. Among other things, and as more fully set forth below, the Board considered the criteria set forth in SIPA § 78fff-3(e)(5), and the views of the staffs of the Commission, the FDIC, and FINRA.

The Board has determined that the maximum cash advance amount should remain at the current level of \$250,000 per customer. Pursuant to SIPA § 78fff-3(e)(4), and subject to the approval of the Commission as provided under SIPA §§ 78ccc(e)(2) and 78fff-3(e)(1),<sup>2</sup> the Board's determination will become effective January 1, 2022. Further, pursuant to SIPA § 78fff-3(e)(3)(A), the Commission "shall publish in the **Federal Register** the standard maximum cash advance amount" not later than April 5, 2021.

## *Consideration of the Statutory Criteria*

### A. Amount of Potential Adjustment

Were the Board to have determined that the maximum cash advance amount should be adjusted, the formula for calculation of such adjustment would entail multiplying \$250,000 by: [t]he ratio of the annual value of the Personal Consumption Expenditures

<sup>1</sup> For convenience, references herein to provisions of SIPA shall be to the United States Code, and shall omit "15 U.S.C."

<sup>2</sup> SIPA § 78fff-3(e)(1) provides that approval by the Commission be obtained "as provided under section 78ccc(e)(2)" of SIPA. SIPA § 78ccc(e)(2) establishes procedures governing proposed changes to SIPC's rules.

Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which such determination is made, to the published annual value of such index for the calendar year preceding the year 2010.

SIPA § 78fff-3(e)(1)(B).

A present-day application of the formula would increase the limit by \$40,000, to a total of \$290,000.<sup>3</sup>

### B. Inflation Adjustment Considerations

SIPA § 78fff-3(e)(5) provides that in deciding whether to adjust the maximum cash advance amount, the Board shall consider the following criteria:

- (A) The overall state of the fund and the economic conditions affecting members of SIPC;
- (B) the potential problems affecting members of SIPC; and
- (C) such other factors as the Board of Directors of SIPC may determine appropriate.

### 1. The Overall State of the SIPC Fund and Economic Conditions Affecting Members, and Potential Problems Affecting Members of SIPC

The Board reviewed the projected growth of the SIPC Fund, including the target amount for the Fund of \$5 billion, the assessment rate imposed on SIPC members pursuant to SIPC's Assessments bylaw, as amended, and the potential impact of an inflation adjustment on the Fund, and determined that keeping the standard maximum cash advance at \$250,000 did not adversely affect SIPC members. In its review, the Board also considered SIPC's historical experience and examined: (1) SIPC advances in past and present liquidation proceedings; (2) amounts generated from assessments on member broker-dealers; and (3) projected returns on SIPC investments.

<sup>3</sup> Pursuant to SIPA § 78fff-3(e), the \$40,000 amount was determined as follows: \$250,000 multiplied by 1.1675 [the ratio of 108.763 (the annual value of the Price Index published by the Department of Commerce for calendar year 2019), to 94.094 (the published annual value of the index for 2009)], which equals \$291,875. Pursuant to SIPA § 78fff-3(e)(2), this amount is to be rounded down to the nearest multiple of \$10,000, *i.e.*, \$290,000. However, because the determination is to be made for the calendar year 2021, the annual value of the Price Index to be used is for the "calendar year preceding the year in which such determination is made," namely, the year 2020. The 2020 annual value will not be available until sometime in 2021. Nevertheless, through the month of November 2020, the index increased by approximately 0.9%. Consequently, the index value would have to either increase in December 2020 by approximately 1.9% or decrease by approximately 1.5% for the result to be different from \$290,000, which is extremely unlikely.

In addition, the Board considered the views of the staffs of the Commission, the FDIC, and FINRA, as reported to the SIPC staff and as further reported by the SIPC staff to the Board. The Board concluded that the SIPC Fund remains on a steady growth path for the near future, barring any unforeseen catastrophic event, and that any increases in the cash limit of SIPC protection would not appreciably benefit customers.

## 2. Other Appropriate Factors

### a. Potential Divergence Between FDIC and SIPC Protections

The Board noted the equivalency—presently \$250,000—between SIPA's maximum cash advance amount and the "standard maximum deposit insurance amount" that fixes the limit on bank deposit insurance under the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. 1821 *et seq.* An inflation adjustment to the former without a corresponding adjustment to the latter would result in an unprecedented divergence between the maximum cash advance amount under SIPA and the standard maximum deposit insurance amount under FDIA.

Increases to the limit of protection for cash claims under SIPA historically have been in lockstep with increases in FDIC deposit insurance.<sup>4</sup> In 2008, and again, in 2010, parity with deposit insurance was the primary reason for SIPC's request to Congress to increase the SIPA limit of protection for cash claims. In 2016, uniformity with FDIC deposit insurance was a primary factor in the Board's determination not to adjust the standard maximum cash advance amount.

### b. Historical Claims Experience and Benefit to Customers

The Board also reviewed the number of claims for cash exceeding the limit of protection in past and present liquidation proceedings. This data suggests that the benefit to customers of an inflation adjustment may be limited. Of the more than 770,000 allowed claims in completed or substantially

completed liquidation proceedings as of year-end 2019, the unsatisfied portion of cash claims amounted to \$25 million. More than half of that amount involved only three claims. In the seven SIPA proceedings initiated since 2010, when the cash limit was raised to \$250,000, only one cash claim remains unsatisfied.

### c. Aggregate Credit Balances and Sweep Programs

It also was brought to the Board's attention that aggregate cash credit balances at member firms have not increased over the last five years in line with inflation. Instead, member firms have increasingly utilized sweep programs to move customer free credit balances from broker-dealers to banks.

### Conclusion

The Board weighed all the relevant factors against a potential adjustment of \$40,000, the amount determined by the formula set forth in SIPA § 78fff-3(e)(1)(B). The Board concluded that, on balance, in light of the intent to grow the SIPC Fund to reach a target of \$5 billion, the unprecedented break with the FDIC limit that would result, and the absence of evidence that an appreciable number of investors would be benefitted, an adjustment to the limit of protection for cash claims was not appropriate. Accordingly, the Board determined that the standard maximum cash advance amount should remain at \$250,000 per customer."

\* \* \* \* \*

## II. Date of Effectiveness and Timing for Commission Action

Within thirty-five days of the date of publication of this notice of the SIPC Board's determination in the **Federal Register**, or within such longer period (i) as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SIPC consents, the Commission shall:

(A) By order approve such determination or

(B) Institute proceedings to determine whether such determination should be disapproved.

## III. Notice of the Determination of the SIPC Board Not To Adjust the Standard Maximum Cash Advance Amount for Inflation

On January 1, 2021, pursuant to section 9(e)(1) of the Securities Investor Protection Act, 15 U.S.C. 78fff-3(e)(1), the Board of Directors of the Securities Investor Protection Corporation (the "Board") determined that an inflation

adjustment to the standard maximum cash advance amount would not be appropriate. Accordingly, the Board determined that the standard maximum cash advance amount will remain at \$250,000 per customer, effective January 1, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

Dated: January 27, 2021.

**J. Matthew DesLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-02128 Filed 2-1-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91002; File No. SR-CboeEDGX-2021-006]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

January 27, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 13, 2021, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the 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

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the fee schedule applicable to Members and non-Members of the Exchange pursuant to EDGX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](http://markets.cboe.com/us/options/regulation/rule_filings/edgx/)),

<sup>5</sup> 17 CFR 200.30-3(f)(3).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The below compares the limits of protection for cash under SIPA and the FDIA: SIPA: \$20,000 (Pub. L. No. 91-598, § 6(f)(1)(A), 84 Stat. 1636, 1651 (1970)). FDIA: \$20,000 (Pub. L. 91-151, 7, 83 Stat. 371, 375 (1969)). SIPA: \$40,000 (Pub. L. 95-283, 9, 92 Stat. 249, 265 (1978)). FDIA: \$40,000 (Pub. L. 93-495, 102(a), 88 Stat. 1500, 1502 (1974)). SIPA: \$100,000 (Pub. L. 96-433, 1, 94 Stat. 1855 (1980)). FDIA: \$100,000 (Pub. L. 96-221, 308, 94 Stat. 132, 147 (1980)). SIPA: \$250,000 (Pub. L. 111-203, 929H, 124 Stat. 1376, 1865 (2010)). FDIA: \$250,000 (temporary until 12/31/2009) Public Law 110-343, 136, 122 Stat. 3765, 3799 (2008); (permanent) Public Law 111-203, 335, 124 Stat. 1376, 1540 (2010)).



at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend its fee schedule applicable to its equities trading platform ("EDGX Equities") by eliminating certain routing fee codes.<sup>4</sup>

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,<sup>5</sup> no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction

fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange assesses fees in connection with orders routed away to various exchanges. As a result of minimal use in the last months, the Exchange proposes to eliminate the following routing fee codes currently under the Fee Codes and Associated Fees section of the Fee Schedule:

- Fee code 8, which is appended to Members' orders routed to NYSE American that adds liquidity and assesses a charge of \$0.00020 per contract for orders in securities priced at or above \$1.00 and assesses no charge for orders in securities priced below \$1.00;
- Fee code K, which is appended to Members' orders routed to PSX using the ROUC routing strategy<sup>6</sup> and assesses a charge of \$0.00290 per contract for orders in securities priced at or above \$1.00 and assesses a charge of 30% of the dollar value per contract for orders in securities priced below \$1.00; and
- Fee code MX, which is appended to Members' orders routed to NYSE American using the ROUC routing strategy and assesses a charge of \$0.00020 per contract for orders in securities priced at or above \$1.00 and assesses no charge for orders in securities priced below \$1.00.

The Exchange has observed a minimal amount of volume in recent months in orders yielding fee codes 8, K, or MX. In particular, over the last six months the Exchange observed that orders yielding fee code MX accounted for approximately only 0.01% of all routed order volume, orders yielding fee code 8 accounted for approximately only 0.14% of all routed order volume, and orders yielding fee code K accounted for approximately only 0.004% of all routed order volume. The Exchange believes that, because so few Users elect to route their orders with specifications to which fee codes 8, K or MX, the current demand does not warrant the infrastructure and ongoing Systems maintenance required to support these separate fee codes. Therefore, the Exchange now proposes to delete fee codes 8, K and MX in the Fee Schedule. The Exchange notes that Users will continue to be able to choose to route

their orders with the same specifications to which fee codes 8, K and MX currently apply—such orders will simply be assessed the fees currently in place for routed orders generally.<sup>7</sup> That is, if any of the routed orders to which fee code K or MX currently apply are submitted in the pre- or post-market sessions that remove liquidity,<sup>8</sup> then fee code 7 will apply, which is appended to Members' routed orders in the pre- or post-market sessions and assesses a charge of \$0.00300 per contract for orders in securities priced at or above \$1.00 and assesses a charge of 30% of the dollar value per contract for orders in securities priced below \$1.00. Fee code X will be appended to routed orders not submitted during the pre- or post-market sessions to which fee code K or MX currently apply and to routed orders to which fee code 8 currently applies. Fee code X currently assesses a charge of \$0.00300 per contract for orders in securities priced at or above \$1.00 and assesses a charge of 30% of the dollar value per contract for orders in securities priced below \$1.00. The Exchange notes that rates applicable to orders yielding fee codes 7 and X are the standard routing fees pursuant to the Standard Rates section of the Fee Schedule.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>10</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)<sup>11</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation

<sup>7</sup> The Exchange notes that there are other fee codes that apply to certain other routing specifications, however, those routed orders not otherwise specified in such other routing fee code descriptions yield the general routing fee codes 7 or X.

<sup>8</sup> Fee code 7 is currently appended to all routed orders in the pre- or post-market session that remove liquidity. The proposed rule change updates the description associated with fee code 7 to clarify in the description that such orders remove liquidity. This update does not alter the orders to which fee code 7 currently applies but merely makes it clear in the Fee Schedule that fee code 7 applies to qualifying routed orders that remove liquidity.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> The Exchange initially filed the proposed fee changes January 4, 2021 (SR-CboeEDGX-2021-001). On January 13, 2021, the Exchange withdrew that filing and submitted this proposal.

<sup>5</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (December 29, 2020), available at [https://markets.cboe.com/us/equities/market\\_statistics/](https://markets.cboe.com/us/equities/market_statistics/).

<sup>6</sup> ROUC is a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table, Nasdaq OMX BX, and NYSE. If shares remain unexecuted after routing, they are posted on the EDGX Book, unless otherwise instructed by the User. See Rule 11.11(g)(1); see also Cboe Routing Strategies, FIX/BOE Routing Tags and Instructions, available at: [https://cdn.cboe.com/resources/features/Cboe\\_USE\\_RoutingStrategies.pdf](https://cdn.cboe.com/resources/features/Cboe_USE_RoutingStrategies.pdf).



and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to remove fee codes 8, K and MX is reasonable as the Exchange has observed a minimal amount of volume in orders yielding these fee codes and, therefore, the continuation of these fee codes does not warrant the infrastructure and ongoing Systems maintenance required to support separate fee codes for specific routed orders. As such, the Exchange also believes that is reasonable and equitable to assess routed orders which meet the specifications to which fee codes 8, K and MX are currently applicable the slightly higher standard routing fee currently in place for all other routed orders—via fee codes 7 or X, as applicable. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because Members will continue to have the option to elect to route their orders in the same manner (*i.e.*, routed to NYSE American that add liquidity and routed to PSX or NYSE American using the ROUC routing strategy) will be automatically and uniformly assessed the applicable standard rates in place for generally all other routed orders.<sup>12</sup> Further, if members do not favor the Exchange's pricing for routed orders, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is optional, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition because all Members orders that would yield

current fee codes 8, K or MX, will automatically and uniformly be assessed the fees already in place for routed orders generally,<sup>13</sup> as applicable (*i.e.*, fee codes 7 or X).

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange again notes that orders that meet the specifications to which fee codes 8, K or MX would currently apply, will yield the same fee codes and be assessed the same corresponding rates that are already in place in the Fee Schedule for routed orders generally, as previously filed with the Commission. Also, as previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.<sup>14</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, 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.”<sup>15</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’;

[and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’. . . .”<sup>16</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on 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)<sup>17</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>18</sup> 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)<sup>19</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-

<sup>16</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

<sup>19</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>13</sup> See *id.*

<sup>14</sup> See *supra* note 5.

<sup>15</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>12</sup> See *supra* note 7.

CboeEDGX–2021–006 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–CboeEDGX–2021–006. 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–CboeEDGX–2021–006, and should be submitted on or before February 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–02119 Filed 2–1–21; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90996; File No. SR–NYSE–2021–07]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.32

January 27, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that on January 25, 2021, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Rule 7.32 (Order Entry) to provide that the Exchange would not apply order entry size limitations to Issuer Direct Offering (“IDO”) Orders. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Rule 7.32 (Order Entry) to provide that the Exchange would not apply order entry size limitations to IDO Orders.

Rule 7.32 provides that orders entered that are greater than five million shares in size will be rejected, provided, that in Auction-Eligible Securities, the Exchange will accept orders defined in Rule 7.31(c), DMM Auction Liquidity as defined in Rule 7.35, and Floor Broker Interest intended for the Closing Auction as defined in Rule 7.35B(a)(1), up to 25 million shares in size. In addition, in all securities traded on the Exchange, the Exchange will accept proposed cross transactions under Rule 76 up to 25 million shares in size.

The Exchange recently amended its rules to add the IDO Order, which is to be traded only in a Direct Listing for a Primary Direct Floor Listing.<sup>4</sup> Rule 7.31(c)(1)(D)(iii) provides that the IDO Order must be for the quantity of shares offered by the issuer, as disclosed in the prospectus in the effective registration statement. To facilitate this requirement, the Exchange proposes to amend Rule 7.32 to specify that the Exchange would not apply order entry size limitations to IDO Orders.

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide specificity in Exchange rules that Exchange systems would be able to accept IDO Orders that comply with the requirement specified in Rule 7.31(c)(1)(D)(iii) that an IDO Order must be for the quantity of shares offered by the issuer, as disclosed in the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.

<sup>4</sup> See Rule 7.31(c)(1)(D).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 17 CFR 200.30–3(a)(12).

prospectus in the effective registration statement.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to provide specificity in Exchange rules that Exchange systems would be able to accept IDO Orders that comply with the requirement specified in Rule 7.31(c)(1)(D)(iii) that an IDO Order must be for the quantity of shares offered by the issuer, as disclosed in the prospectus in the effective registration statement.

#### *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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

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)<sup>9</sup> of the Act to determine whether the proposed rule

change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2021-07 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2021-07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2021-07 and should be submitted on or before February 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-02115 Filed 2-1-21; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[SEC File No. 270-213, OMB Control No. 3235-0220]**

### **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 30b2-1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 30b2-1 (17 CFR 270.30b2-1) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "Investment Company Act") requires a registered management investment company ("fund") to (1) file a report with the Commission on Form N-CSR (17 CFR 249.331 and 274.128) not later than 10 days after the transmission of any report required to be transmitted to shareholders under rule 30e-1 under the Investment Company Act, and (2) file with the Commission a copy of every periodic or interim report or similar communication containing financial statements that is transmitted by or on behalf of such fund to any class of such fund's security holders and that is not required to be filed with the Commission under (1), not later than 10 days after the transmission to security holders. The purpose of the collection of information required by rule 30b2-1 is to meet the disclosure requirements of the Investment Company Act and certification requirements of the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745 (2002)) and to provide investors with information necessary to evaluate an interest in the fund.

The Commission estimates that there are 2,207 funds, with a total of approximately 11,977 portfolios, that are governed by the rule. For purposes

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

of this analysis, the burden associated with the requirements of rule 30b2–1 has been included in the collection of information requirements of rule 30e–1 (17 CFR 270.30e–1) and Form N–CSR, rather than the rule. The Commission has, however, requested a one hour burden for administrative purposes.

The collection of information under rule 30b2–1 is mandatory. The information provided under rule 30b2–1 is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following website, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Lindsay.M.Abate@omb.eop.gov](mailto:Lindsay.M.Abate@omb.eop.gov); and (ii) 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](mailto:PRA_Mailbox@sec.gov). 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](http://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.

Dated: January 27, 2021.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–02126 Filed 2–1–21; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90997; File No. SR–CboeBZX–2021–010]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Amend Its Fee Schedule To Eliminate Certain Routing Fee Codes

January 27, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on January 13, 2021, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members and non-Members of the Exchange pursuant to BZX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its fee schedule applicable to its equities trading platform (“BZX Equities”) by eliminating certain routing fee codes.<sup>3</sup>

The Exchange first notes that it operates in a highly competitive market

in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,<sup>4</sup> no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange assesses fees in connection with orders routed away to various exchanges. As a result of minimal use in the last months, the Exchange proposes to eliminate the following routing fee codes currently under the Fee Codes and Associated Fees section of the Fee Schedule:

- Fee code 8, which is appended to Members’ orders routed to NYSE American that adds liquidity and assesses a charge of \$0.00020 per contract; and
- Fee code MX, which is appended to Members’ orders routed to NYSE American using the TRIM or SLIM<sup>5</sup> routing strategy and assesses a charge of \$0.00020 per contract.

The Exchange has observed a minimal amount of volume in recent months in orders yielding fee codes 8 or MX. In particular, over the last six months the Exchange observed that orders yielding fee code MX accounted for

<sup>4</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (December 29, 2020), available at [https://markets.cboe.com/us/equities/market\\_statistics/](https://markets.cboe.com/us/equities/market_statistics/).

<sup>5</sup> The TRIM and SLIM routing strategies are routing strategies in which an order checks the System for available shares if so instructed by the entering User and then is sent to destinations on the applicable System routing table. See Rule 11.13(b)(3)(G); see also Cboe Routing Strategies, FIX/BOE Routing Tags and Instructions, available at: [https://cdn.cboe.com/resources/features/Cboe\\_USE\\_RoutingStrategies.pdf](https://cdn.cboe.com/resources/features/Cboe_USE_RoutingStrategies.pdf).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> The Exchange initially filed the proposed fee changes January 4, 2021 (SR–CboeBZX–2021–001). On January 13, 2021, the Exchange withdrew that filing and submitted this proposal.

approximately only 0.11% of all routed order volume and orders yielding fee code 8 accounted for approximately only 0.02% of all routed order volume. The Exchange believes that, because so few Users elect to route their orders with specifications to which fee codes 8 or MX, the current demand does not warrant the infrastructure and ongoing Systems maintenance required to support these separate fee codes. Therefore, the Exchange now proposes to delete fee codes 8 and MX in the Fee Schedule.

In light of the proposed fee code deletions, the Exchange also proposes to update the description to which fee code X is applicable. Currently, the description for orders yielding fee code X applies to Members' orders routed to a displayed market to remove liquidity using Parallel D, Parallel 2D, ROUT, ROUX or Post to Away routing strategy. Fee code X assesses a charge of \$0.0030 per contract. Essentially, fee code X is designed to apply, and currently applies, to all other routed orders that are not otherwise specified under other fee codes in the Fee Schedule. However, as currently written, the description of orders that yield fee code X would not encompass those orders that currently yield fee codes 8 and MX. Therefore, the proposed rule change updates the description of orders that yield fee code X to "Routed." The Exchange notes that the corresponding fee will remain unchanged and is the standard rate routing fee assessed pursuant to the Standard Rates section of the Fee Schedule. As a result of the proposed description, Members will continue to be able to choose to route their orders with the same specifications to which fee codes 8 and MX currently apply—such orders will simply be assessed the fee currently in place for orders yielding fee code X (*i.e.*, routed orders not otherwise specified under other fee codes in the Fee Schedule). The Exchange notes that the proposed description for fee code X does not alter any of the routed orders to which fee code X currently applies. The Exchange also notes that the proposed description for fee code X is consistent with the description associated with corresponding fee code X on the Exchange's affiliated equities exchanges, Cboe EDGX Exchange, Inc. ("EDGX") and Cboe EDGA Exchange Inc. ("EDGA").

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>6</sup>

in general, and furthers the objectives of Section 6(b)(4),<sup>7</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule changes are reasonable, equitable and not unfairly discriminatory. The Exchange first notes that routing through the Exchange is optional. The Exchange believes the proposed rule change to remove fee codes 8 and MX is reasonable as the Exchange has observed a minimal amount of volume in orders yielding these fee codes and, therefore, the continuation of these fee codes does not warrant the infrastructure and ongoing Systems maintenance required to support separate fee codes for specific routed orders. As such, the Exchange also believes that is reasonable and equitable to assess routed orders which meet the specifications to which fee codes 8 and MX are currently applicable the slightly higher standard routing fee currently in place for all other routed orders that are not otherwise specified under other fee codes in the Fee Schedule—via fee code X, as amended. The Exchange believes it is reasonable to update the description for orders that yield fee code X in a manner that reflects the intent of fee code X, which is to apply to routed orders not otherwise specified under other fees codes in the Fee Schedule, and will thus apply to routed orders that currently yield fee codes 8 and MX. The Exchange believes that the proposed updated description is reasonable because it does not alter any of the routed orders to which fee code X currently applies and will allow Members to continue to be able to choose to route their orders with the

same specifications to which fee codes 8 and MX currently apply. The Exchange again notes that the proposed description for fee code X is consistent with the description associated with corresponding fee code X on the Exchange's affiliated equities exchanges.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because Members will continue to have the option to elect to route their orders in the same manner (*i.e.*, routed to NYSE American that add liquidity and routed to NYSE American using the TRIM or SLIM routing strategy), which will be automatically and uniformly be assessed the applicable standard rates in place for generally all other routed orders under fee code X. Further, if members do not favor the Exchange's pricing for routed orders, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is optional, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive. The Exchange believes that the updated description for orders that yield fee code X is equitable and not unfairly discriminatory because it does not impact the routed orders that currently yield fee code X; the same orders will continue to yield fee code X and will continue to be automatically and uniformly assessed the corresponding fee.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition because all Members orders that would yield current fee codes 8 or MX, will automatically and uniformly be assessed the fees already in place for all other routed orders generally under fee code X. Fee code X, as amended, will continue to apply to the same routed orders as it currently does, which will continue to be automatically and uniformly assessed the corresponding fee. Ultimately, all routed orders will generally be assessed the same fee.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78f.

The Exchange again notes that orders that meet the specifications to which fee codes 8 or MX would currently apply, will yield the same fee codes and be assessed the same corresponding rates that are already in place in the Fee Schedule for routed orders generally, as previously filed with the Commission. Also, as previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.<sup>9</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, 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.”<sup>10</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>11</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on

competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on 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) of the Act<sup>12</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>13</sup> 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)<sup>14</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-010 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CboeBZX-2021-010. This file number should be included on the subject line if email is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2021-010, and should be submitted on or before February 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-02116 Filed 2-1-21; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-91000; File No. SR-CboeEDGA-2021-003]

**Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule**

January 27, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 13, 2021, Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange

<sup>9</sup> See *supra* note 4.

<sup>10</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>11</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

Commission (the “Commission”) the proposed rule change as described in Items I and II 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**

Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members and non-Members of the Exchange pursuant to EDGA Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/edga/](http://markets.cboe.com/us/equities/regulation/rule_filings/edga/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

### **II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### **A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

The Exchange proposes to amend its fee schedule by (1) eliminating certain routing fee codes and (2) amending an Add/Remove Volume Tier.<sup>4</sup>

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or

incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,<sup>5</sup> no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

#### **Proposal To Remove Certain Routing Fee Codes**

The Exchange assesses fees in connection with orders routed away to various exchanges. As a result of minimal use in the last months, the Exchange proposes to eliminate the following routing fee codes currently under the Fee Codes and Associated Fees section of the Fee Schedule:

- Fee code 8, which is appended to Members’ orders routed to NYSE American that adds liquidity and assesses a charge of \$0.00020 per contract for orders in securities priced at or above \$1.00 and assesses no charge for orders in securities priced below \$1.00;
- Fee code K, which is appended to Members’ orders routed to PSX using the ROUC<sup>6</sup> routing strategy and assesses a charge of \$0.00290 per contract for orders in securities priced at or above \$1.00 and assesses a charge of 30% of the dollar value per contract for orders in securities priced below \$1.00; and
- Fee code MX, which is appended to Members’ orders routed to NYSE

American using the ROBB, ROCO<sup>7</sup> or ROUC routing strategy and assesses a charge of \$0.00020 per contract for orders in securities priced at or above \$1.00 and assesses no charge for orders in securities priced below \$1.00.

The Exchange has observed a minimal amount of volume in recent months in orders yielding fee codes 8, K or MX. In particular, over the last six months the Exchange observed that orders yielding fee code MX accounted for approximately only 0.80% of all routed order volume, orders yielding fee code K accounted for approximately only 0.01% of all routed order volume, and there was only one contract executed from an order yielding fee code 8. The Exchange believes that, because so few Users elect to route their orders with specifications to which fee codes 8, K or MX, the current demand does not warrant the infrastructure and ongoing Systems maintenance required to support these separate fee codes. Therefore, the Exchange now proposes to delete fee codes 8, K and MX in the Fee Schedule. The Exchange notes that Users will continue to be able to choose to route their orders with the same specifications to which fee codes 8, K and MX currently apply—such orders will simply be assessed the fees currently in place for routed orders generally.<sup>8</sup> That is, if any of the routed orders to which fee code K or MX currently apply are submitted in the pre- or post-market sessions that remove liquidity,<sup>9</sup> then fee code 7 will apply, which is appended to Members’ routed orders in the pre- or post-market sessions and assesses a charge of \$0.00300 per contract for orders in securities priced at or above \$1.00 and assesses a charge of 30% of the dollar value per contract for orders in securities priced below \$1.00. Fee code X will be appended to routed orders not

<sup>7</sup> The ROBB and ROCO routing strategies are routing strategies which check the System for available shares and then are sent to destinations on the System routing table. See Rule 11.11(g)(3); see also Cboe Routing Strategies, FIX/BOE Routing Tags and Instructions, available at: [https://cdn.cboe.com/resources/features/Cboe\\_USE\\_RoutingStrategies.pdf](https://cdn.cboe.com/resources/features/Cboe_USE_RoutingStrategies.pdf).

<sup>8</sup> The Exchange notes that there are other fee codes that apply to certain other routing specifications, however, those routed orders not otherwise specified in such other routing fee code descriptions yield the general routing fee codes 7 or X.

<sup>9</sup> Fee code 7 is currently appended to all routed orders in the pre- or post-market session that remove liquidity. The proposed rule change updates the description associated with fee code 7 to clarify in the description that such orders remove liquidity. This update does not alter the orders to which fee code 7 currently applies but merely makes it clear in the Fee Schedule that fee code 7 applies to qualifying routed orders that remove liquidity.

<sup>4</sup> The Exchange initially filed the proposed fee changes January 4, 2021 (SR-CboeEDGA-2021-001). On January 13, 2021, the Exchange withdrew that filing and submitted this proposal.

<sup>5</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (December 29, 2020), available at [https://markets.cboe.com/us/equities/market\\_statistics/](https://markets.cboe.com/us/equities/market_statistics/).

<sup>6</sup> The ROUC routing strategy is a routing strategy under which an order checks the System for available shares and then is sent to destinations on the System routing table, Nasdaq OMX BX, and NYSE. See Rule 11.11(g)(1); see also Cboe Routing Strategies, FIX/BOE Routing Tags and Instructions, available at: [https://cdn.cboe.com/resources/features/Cboe\\_USE\\_RoutingStrategies.pdf](https://cdn.cboe.com/resources/features/Cboe_USE_RoutingStrategies.pdf).



submitted during the pre- or post-market sessions to which fee code K or MX currently apply and to routed orders to which fee code 8 currently applies. Fee code X currently assesses a charge of \$0.00300 per contract for orders in securities priced at or above \$1.00 and assesses a charge of 30% of the dollar value per contract for orders in securities priced below \$1.00. The Exchange notes that rates applicable to orders yielding fee codes 7 and X are the standard routing fees pursuant to the Standard Rates section of the Fee Schedule.

#### Proposal To Amend Add/Remove Volume Tier

In response to the competitive environment described above, the Exchange offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides incremental incentives for Members to strive for higher or different tier levels by offering increasingly higher discounts or enhanced benefits for satisfying increasingly more stringent criteria or different criteria. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides.

The Exchange currently provides for such tiers pursuant to footnote 7 of the fee schedule, which currently offers various different Add/Remove Volume Tiers. Specifically, Tier 2 provides an opportunity for Members to receive reduced fee of \$0.0016 per contract for qualifying liquidity adding orders (*i.e.*, yielding fee codes 3,<sup>10</sup> 4,<sup>11</sup> B,<sup>12</sup> V,<sup>13</sup> and Y<sup>14</sup>), where a Member adds or removes an ADV<sup>15</sup> of greater than or equal to

65% of TCV.<sup>16</sup> The Exchange proposes to amend Add/Remove Volume Tier 2 to reduce the ADV percentage of TCV from 65% to 60%. By reducing the percentage of ADV over TCV that a Member must meet to receive a reduced fee under Tier 2, the proposed change eases the difficulty of the tier's criteria by a modest amount, which, the Exchange believes will incentive Members to increase their overall order flow, both adding and removing orders, in order to achieve the criteria under Tier 2 and receive the current reduced fee, which is remaining unchanged. The Exchange believes this may further incentivize liquidity adding Members on the Exchange to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange to increase transactions and take execution opportunities provided by such increased liquidity. The Exchange believes that this, in turn, benefits all Members by contributing towards a robust and well-balanced market ecosystem. The Exchange notes the proposed tier continues to be available to all Members and is competitively achievable for all Members that submit add and/or remove order flow, in that, all firms that submit the requisite order flow may compete to meet the tier.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>18</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)<sup>19</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect

investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange again notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed rule change to remove fee codes 8, K and MX is reasonable as the Exchange has observed a minimal amount of volume in orders yielding these fee codes and, therefore, the continuation of these fee codes does not warrant the infrastructure and ongoing Systems maintenance required to support separate fee codes for specific routed orders. As such, the Exchange also believes that is reasonable and equitable to assess routed orders which meet the specifications to which fee codes 8, K and MX are currently applicable the slightly higher standard routing fee currently in place for all other routed orders—via fee codes 7 or X, as applicable. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because Members will continue to have the option to elect to route their orders in the same manner (*i.e.*, routed to NYSE American that add liquidity, routed to PSX using the ROUC routing strategy, routed to NYSE American using the ROBB, ROCO or ROUC routing strategy) will be automatically and uniformly assessed the applicable standard rates in place for generally all other routed orders.<sup>20</sup> Further, if members do not favor the Exchange's pricing for routed orders, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is optional, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

The Exchange believes the proposed rule change to amend the criteria in Add/Remove Volume Tier 2 is reasonable, equitable and not unfairly discriminatory. The Exchange believes

<sup>10</sup> Appended to orders that add liquidity to EDGA, pre and post market (Tapes A or C) and assesses a standard fee of \$0.00300.

<sup>11</sup> Appended to orders that add liquidity to EDGA, pre and post market (Tape B) and assesses a standard fee of \$0.00300.

<sup>12</sup> Appended to orders that add liquidity to EDGA (Tape B) and assesses a standard fee of \$0.00300.

<sup>13</sup> Appended to orders that add liquidity to EDGA (Tape A) and assesses a standard fee of \$0.00300.

<sup>14</sup> Appended to orders that add liquidity to EDGA (Tape C) and assesses a standard fee of \$0.00300.

<sup>15</sup> ADV means daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

<sup>16</sup> TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

<sup>17</sup> 15 U.S.C. 78f.

<sup>18</sup> 15 U.S.C. 78f(b)(4).

<sup>19</sup> 15 U.S.C. 78f.(b)(5).

<sup>20</sup> See *supra* note 8.



that easing the difficulty in reaching the criteria by a modest amount is reasonably designed to provide further incentive for Members to submit both adding and removing order flow to the Exchange in order to receive the reduced fee currently offered under Tier 2. The Exchange notes that the amount of the reduced fee offered is not changing. The Exchange believes the slight decrease in criteria difficulty under Tier 2 may further incentivize liquidity adding Members on the Exchange to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange to increase transactions and take execution opportunities provided by such increased liquidity. The Exchange believes that this, in turn, benefits all Members by contributing towards a robust and well-balanced market ecosystem. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all Members will continue to be eligible for the Add/Remove Volume Tier 2 and will continue to have the opportunity to meet the tier's criteria and receive the current reduced fee if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for Add/Remove Volume Tier 2, as amended. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange does not anticipate that the proposed criteria would impact any of the Members that are currently able to compete for and reach Tier 2 and would merely provide the opportunity for additional Members to be able to compete for and reach the proposed tier. The Exchange also notes that proposed Add/Remove Volume Tier 2 will not adversely impact any Member's pricing or their ability to qualify for other reduced fee or enhanced rebate tiers. Should a Member not meet the proposed criteria under the proposed tier, the Member will merely not receive that reduced fee. As stated, the reduced fee offered under Tier 2 remains unchanged and it will continue to uniformly apply to all Members that meet the required criteria, as amended, under Tier 2.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The

Exchange does not believe the proposed rule change to remove fee codes 8, K or MX will impose any burden on intramarket competition because all Members orders that would yield current fee codes 8, K or MX, will automatically and uniformly be assessed the fees already in place for routed orders generally,<sup>21</sup> as applicable (*i.e.*, fee codes 7 or X). Further, the Exchange does not believe that the proposed rule change to amend Add/Remove Volume Tier 2 will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies to all Members equally in that all Members will continue to be eligible for the proposed Add/Remove Volume Tier 2, have a reasonable opportunity to meet the tier's criteria, as amended, and will all receive the current reduced fee if such criteria is met. As describe above, the proposed Tier 2 criteria is designed to attract additional order flow to the Exchange, incentivizing market participants to direct liquidity and executing order flow to the Exchange, bringing with it improved price transparency and more trading opportunities to the benefit of all market participants on the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange again notes that orders that meet the specifications to which fee codes 8, K or MX would currently apply, will yield the same fee codes and be assessed the same corresponding rates that are already in place in the Fee Schedule for routed orders generally, as previously filed with the Commission. In addition to this, the Exchange also notes again that competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange. Also, as previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.<sup>22</sup> Therefore, no exchange

possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, 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."<sup>23</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."<sup>24</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on 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)<sup>25</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>26</sup> thereunder, because it establishes a due,

<sup>23</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>24</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b-4(f)(2).

<sup>21</sup> See *supra* note 8.

<sup>22</sup> See *supra* note 5.

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) <sup>27</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGA-2021-003 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-CboeEDGA-2021-003. 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-CboeEDGA-2021-003, and should be submitted on or before February 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-02118 Filed 2-1-21; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270-177, OMB Control No. 3235-0177]**

#### 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 6e-2 and Form N-6EI-1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 6e-2 (17 CFR 270.6e-2) under the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a) is an exemptive rule that provides separate accounts formed by life insurance companies to fund certain variable life insurance products, exemptions from certain provisions of the Act, subject to conditions set forth in the rule.

Rule 6e-2 provides a separate account with an exemption from the registration provisions of section 8(a) of the Act if the account files with the Commission Form N-6EI-1 (17 CFR 274.301), a notification of claim of exemption.

The rule also exempts a separate account from a number of other sections of the Act, provided that the separate

account makes certain disclosure in its registration statements (in the case of those separate accounts that elect to register), reports to contract holders, proxy solicitations, and submissions to state regulatory authorities, as prescribed by the rule.

Since 2008, there have been no filings of Form N-6EI-1 by separate accounts. Therefore, there has been no cost or burden to the industry since that time. The Commission requests authorization to maintain an inventory of one burden hour for administrative purposes.

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

The public may view the background documentation for this information collection at the following website, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Lindsay.M.Abate@omb.eop.gov](mailto:Lindsay.M.Abate@omb.eop.gov); and (ii) 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](mailto:PRA_Mailbox@sec.gov). 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](http://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.

Dated: January 27, 2021.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-02123 Filed 2-1-21; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

**[Release No. 10923/January 28, 2021; Release No. 91004/January 28, 2021]**

**Securities Act of 1933; Securities Exchange Act of 1934; Order Regarding Review of Financial Accounting Standards Board (FASB) Accounting Support Fee for 2021 Under Section 109 of the Sarbanes-Oxley Act of 2002**

The Sarbanes-Oxley Act of 2002 ("SOX" or the "Act") provides that the

<sup>27</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

Securities and Exchange Commission (the “Commission”) may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard-setting body that meets certain criteria. Section 109 of SOX provides that all of the budget of such a standard-setting body shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard-setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under Section 109(f) of the Act, the amount of fees collected for a fiscal year shall not exceed the “recoverable budget expenses” of the standard-setting body. Section 109(h) of SOX amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (“FASB”) and its parent organization, the Financial Accounting Foundation (“FAF”), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB’s financial accounting and reporting standards as “generally accepted” under Section 108 of the Act.<sup>1</sup> Accordingly, the Commission undertook a review of the FASB’s accounting support fee for calendar year 2021.<sup>2</sup> In connection with its review, the Commission also reviewed the budget for the FAF and the FASB for calendar year 2021.

Section 109 of SOX provides that, in addition to the accounting support fee, the standard-setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB, and the Governmental Accounting Standards Board (“GASB”), the FASB’s sister organization, which sets accounting standards used by state and local government entities. The

Commission has been advised by the FAF that neither the FAF, the FASB, nor the GASB accept contributions from the accounting profession.

The Commission understands that the Office of Management and Budget (“OMB”) has determined the FASB’s spending of the 2021 accounting support fee is sequestrable under the Budget Control Act of 2011.<sup>3</sup> So long as sequestration is applicable, we anticipate that the FAF will work with the Commission and Commission staff as appropriate regarding its implementation of sequestration.

After its review, the Commission determined that the 2021 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

*It is ordered*, pursuant to Section 109 of SOX, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

**Vanessa A. Countryman,**  
*Secretary.*

[FR Doc. 2021-02171 Filed 2-1-21; 8:45 am]

#### BILLING CODE P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90999; File No. SR-CboeBYX-2021-003]

#### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Eliminate Certain Routing Fee Codes

January 27, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 13, 2021, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>3</sup> See “OMB Report Pursuant to the Sequestration Transparency Act of 2012” (Pub. L. 112-155), page 16 of 17 at: [https://www.whitehouse.gov/wp-content/uploads/2020/02/JC-sequestration\\_report\\_FY21\\_2-10-20.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/02/JC-sequestration_report_FY21_2-10-20.pdf)

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members and non-Members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/byx/](http://markets.cboe.com/us/equities/regulation/rule_filings/byx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its fee schedule by eliminating certain routing fee codes.<sup>3</sup>

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly

<sup>3</sup> The Exchange initially filed the proposed fee changes January 4, 2021 (SR-CboeBYX-2021-001). On January 13, 2021, the Exchange withdrew that filing and submitted this proposal.

<sup>1</sup> Financial Reporting Release No. 70.

<sup>2</sup> The Financial Accounting Foundation’s Board of Trustees approved the FASB’s budget on November 17, 2020. The FAF submitted the approved budget to the Commission on November 23, 2020.

available information,<sup>4</sup> no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange assesses fees in connection with orders routed away to various exchanges. As a result of minimal use in the last months, the Exchange proposes to eliminate the following routing fee codes currently under the Fee Codes and Associated Fees section of the Fee Schedule:

- Fee code 8, which is appended to Members' orders routed to NYSE American that adds liquidity and assesses a charge of \$0.00020 per contract; and
- Fee code MX, which is appended to Members' orders routed to NYSE American using the SLIM<sup>5</sup> routing strategy and assesses a charge of \$0.00020 per contract.

The Exchange has observed a minimal amount of volume in recent months in orders yielding fee codes 8 or MX. In particular, over the last six months the Exchange observed that orders yielding fee code MX accounted for approximately only 0.12% of all routed order volume, and no orders yielding fee code 8 have been submitted since 2014. The Exchange believes that, because so few Users elect to route their orders with specifications to which fee codes 8 or MX, the current demand does not warrant the infrastructure and ongoing Systems maintenance required to support these separate fee codes. Therefore, the Exchange now proposes to delete fee codes 8 and MX in the Fee Schedule.

In light of the proposed fee code deletions, the Exchange also proposes to update the description to which fee code X is applicable. Currently, the description for orders yielding fee code X applies to Members' orders routed to a displayed market to remove liquidity using Parallel D, Parallel 2D, ROUT, ROUX or Post to Away routing strategy. Fee code X assesses a charge of \$0.0030 per contract. Essentially, fee code X is designed to apply, and currently applies, to all other routed orders that are not otherwise specified under other fee codes in the Fee Schedule. However, as currently written, the description of orders that yield fee code X would not encompass those orders that currently yield fee codes 8 and MX. Therefore, the proposed rule change updates the description of orders that yield fee code X to "Routed." The Exchange notes that the corresponding fee will remain unchanged and is the standard rate routing fee assessed pursuant to the Standard Rates section of the Fee Schedule. As a result of the proposed description, Members will continue to be able to choose to route their orders with the same specifications to which fee codes 8 and MX currently apply—such orders will simply be assessed the fee currently in place for orders yielding fee code X (*i.e.*, routed orders not otherwise specified under other fee codes in the Fee Schedule). The Exchange notes that the proposed description for fee code X does not alter any of the routed orders to which fee code X currently applies. The Exchange also notes that the proposed description for fee code X is consistent with the description associated with corresponding fee code X on the Exchange's affiliated equities exchanges, Cboe EDGX Exchange, Inc. ("EDGX") and Cboe EDGA Exchange Inc. ("EDGA").

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>7</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule changes are reasonable, equitable and not unfairly discriminatory. The Exchange first notes that routing through the Exchange is optional. The Exchange believes the proposed rule change to remove fee codes 8 and MX is reasonable as the Exchange has observed a minimal amount of volume in orders yielding these fee codes and, therefore, the continuation of these fee codes does not warrant the infrastructure and ongoing Systems maintenance required to support separate fee codes for specific routed orders. As such, the Exchange also believes that is reasonable and equitable to assess routed orders which meet the specifications to which fee codes 8 and MX are currently applicable the slightly higher standard routing fee currently in place for all other routed orders that are not otherwise specified under other fee codes in the Fee Schedule—via fee code X, as amended. The Exchange believes it is reasonable to update the description for orders that yield fee code X in a manner that reflects the intent of fee code X, which is to apply to routed orders not otherwise specified under other fees codes in the Fee Schedule, and will thus apply to routed orders that currently yield fee codes 8 and MX. The Exchange believes that the proposed updated description is reasonable because it does not alter any of the routed orders to which fee code X currently applies and will allow Members to continue to be able to choose to route their orders with the same specifications to which fee codes 8 and MX currently apply. The Exchange again notes that the proposed description for fee code X is consistent with the description associated with corresponding fee code X on the Exchange's affiliated equities exchanges.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because Members will continue to have the option to elect to route their orders in the same manner (*i.e.*, routed to NYSE American that add liquidity and routed to NYSE American using the SLIM

<sup>4</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (December 29, 2020), available at [https://markets.cboe.com/us/equities/market\\_statistics/](https://markets.cboe.com/us/equities/market_statistics/).

<sup>5</sup> The SLIM routing strategy is a routing strategy in which an order checks the System for available shares if so instructed by the entering User and then is sent to destinations on the applicable System routing table. See Rule 11.13(b)(3)(G); see also Cboe Routing Strategies, FIX/BOE Routing Tags and Instructions, available at: [https://cdn.cboe.com/resources/features/Cboe\\_USE\\_RoutingStrategies.pdf](https://cdn.cboe.com/resources/features/Cboe_USE_RoutingStrategies.pdf).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

routing strategy), which will be automatically and uniformly be assessed the applicable standard rates in place for generally all other routed orders under fee code X. Further, if members do not favor the Exchange's pricing for routed orders, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is optional, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive. The Exchange believes that the updated description for orders that yield fee code X is equitable and not unfairly discriminatory because it does not impact the routed orders that currently yield fee code X; the same orders will continue to yield fee code X and will continue to be automatically and uniformly assessed the corresponding fee.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition because all Members orders that would yield current fee codes 8 or MX, will automatically and uniformly be assessed the fees already in place for all other routed orders generally under fee code X. Fee code X, as amended, will continue to apply to the same routed orders as it currently does, which will continue to be automatically and uniformly assessed the corresponding fee. Ultimately, all routed orders will generally be assessed the same fee.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange again notes that orders that meet the specifications to which fee codes 8 or MX would currently apply, will yield the same fee codes and be assessed the same corresponding rates that are already in place in the Fee Schedule for routed orders generally, as previously filed with the Commission. Also, as previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges and off-exchange venues.

Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.<sup>9</sup> Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, 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."<sup>10</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."<sup>11</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

<sup>9</sup> See *supra* note 4.

<sup>10</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>11</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

### **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)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b–4<sup>13</sup> 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)<sup>14</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–CboeBYX–2021–003 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–CboeBYX–2021–003. 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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b–4(f)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2021-003, and should be submitted on or before February 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**J. Matthew DeLesDernier**  
Assistant Secretary.

[FR Doc. 2021-02117 Filed 2-1-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-240, OMB Control No. 3235-0216]

### 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 19a-1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), 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.

Section 19(a) (15 U.S.C. 80a-19(a)) of the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a) makes it unlawful for any registered investment company to pay any dividend or similar distribution from any source other than the company's net income, unless the payment is accompanied by a written statement to the company's

shareholders which adequately discloses the sources of the payment. Section 19(a) authorizes the Commission to prescribe the form of such statement by rule.

Rule 19a-1 (17 CFR 270.19a-1) under the Act, entitled "Written Statement to Accompany Dividend Payments by Management Companies," sets forth specific requirements for the information that must be included in statements made pursuant to section 19(a) by or on behalf of management companies.<sup>1</sup> The rule requires that the statement indicate what portions of distribution payments are made from net income, net profits from the sale of a security or other property ("capital gains") and paid-in capital. When any part of the payment is made from capital gains, rule 19a-1 also requires that the statement disclose certain other information relating to the appreciation or depreciation of portfolio securities. If an estimated portion is subsequently determined to be significantly inaccurate, a correction must be made on a statement made pursuant to section 19(a) or in the first report to shareholders following the discovery of the inaccuracy.

The purpose of rule 19a-1 is to afford fund shareholders adequate disclosure of the sources from which distribution payments are made. The rule is intended to prevent shareholders from confusing income dividends with distributions made from capital sources. Absent rule 19a-1, shareholders might receive a false impression of fund gains.

Based on a review of filings made with the Commission, the staff estimates that approximately 12,019 series of registered investment companies that are management companies may be subject to rule 19a-1 each year,<sup>2</sup> and that each portfolio on average mails two statements per year to meet the requirements of the rule.<sup>3</sup> The staff further estimates that the time needed to make the determinations required by the rule and to prepare the statement

<sup>1</sup> Section 4(3) of the Act (15 U.S.C. 80a-4(3)) defines "management company" as "any investment company other than a face amount certificate company or a unit investment trust."

<sup>2</sup> This estimate is based on statistics compiled by Commission staff as of September 21, 2020. The number of management investment company portfolios that make distributions for which compliance with rule 19a-1 is required depends on a wide range of factors and can vary greatly across years. Therefore, the calculation of estimated burden hours is based on the total number of management investment company portfolios, each of which may be subject to rule 19a-1.

<sup>3</sup> A few portfolios make monthly distributions from sources other than net income, so the rule requires them to send out a statement 12 times a year. Other portfolios never make such distributions.

required under the rule is approximately 1 hour per statement. The total annual burden for all portfolios therefore is estimated to be approximately 24,038 burden hours.<sup>4</sup>

The staff estimates that approximately one-third of the total annual burden (8,013 hours) would be incurred by a paralegal with an average hourly wage rate of approximately \$219 per hour,<sup>5</sup> and approximately two-thirds of the annual burden (16,026 hours) would be incurred by a compliance clerk with an average hourly wage rate of \$71 per hour.<sup>6</sup> The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately \$2,892,693 (8,013 hours × \$219 = \$1,754,847) + (16,026 hours × \$71 = \$1,137,846)).

To comply with state law, many investment companies already must distinguish the different sources from which a shareholder distribution is paid and disclose that information to shareholders. Thus, many investment companies would be required to distinguish the sources of shareholder dividends whether or not the Commission required them to do so under rule 19a-1.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collection of information required by rule 19a-1 is mandatory for management companies that make statements to shareholders pursuant to section 19(a) of the Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive

<sup>4</sup> This estimate is based on the following calculation: 12,019 management investment company portfolios × 2 statements per year × 1 hour per statement = 24,038 burden hours.

<sup>5</sup> Hourly rates are derived from the Securities Industry and Financial Markets Association ("SIFMA"), Management and Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

<sup>6</sup> Hourly rates are derived from SIFMA's Office Salaries in the Securities Industry 2013, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

Office Building, Washington, DC 20503, or by sending an email to: [Lindsay.M.Abate@omb.eop.gov](mailto:Lindsay.M.Abate@omb.eop.gov); and (ii) 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](mailto:PRA_Mailbox@sec.gov). 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](http://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.

Dated: January 27, 2021.

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-02124 Filed 2-1-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-185, OMB Control No. 3235-0238]

### 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-6F

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is "Form N-6F (17 CFR 274.15), Notice of Intent to Elect to be Subject to Sections 55 through 65 of the Investment Company Act of 1940." The purpose of Form N-6F is to notify the Commission of a company's intent to file a notification of election to become subject to Sections 55 through 65 of the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("1940 Act"). Certain companies may have to make a filing with the Commission before they are ready to elect to be regulated as a business development company.<sup>1</sup> A

company that is excluded from the definition of "investment company" by Section 3(c)(1) because it has fewer than one hundred shareholders and is not making a public offering of its securities may lose such an exclusion solely because it proposes to make a public offering of securities as a business development company. Such company, under certain conditions, would not lose its exclusion if it notifies the Commission on Form N-6F of its intent to make an election to be regulated as a business development company. The company only has to file a Form N-6F once.

The Commission estimates that on average approximately 4 companies file these notifications each year. Each of those companies need only make a single filing of Form N-6F. The Commission further estimates that this information collection imposes burden of 0.5 hours, resulting in a total annual PRA burden of 2 hours. Based on the estimated wage rate, the total cost to the industry of the hour burden for complying with Form N-6F would be approximately \$736.

The collection of information under Form N-6F is mandatory. The information provided under the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following website, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Lindsay.M.Abate@omb.eop.gov](mailto:Lindsay.M.Abate@omb.eop.gov); and (ii) 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](mailto:PRA_Mailbox@sec.gov). 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](http://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.

compensation plan is not yet in compliance with the requirements of those sections.

Dated: January 27, 2021.

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-02122 Filed 2-1-21; 8:45 am]

BILLING CODE 8011-01-P

## SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 16811 and # 16812; Alabama Disaster Number AL-00116]

### Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Alabama

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA-4573-DR), dated 12/10/2020.

*Incident:* Hurricane Zeta.

*Incident Period:* 10/28/2020 through 10/29/2020.

**DATES:** Issued on 01/27/2021.

*Physical Loan Application Deadline Date:* 02/08/2021.

*Economic Injury (EIDL) Loan Application Deadline Date:* 09/10/2021.

**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:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Alabama, dated 12/10/2020, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Lowndes

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Cynthia Pitts,**  
Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021-02142 Filed 2-1-21; 8:45 am]

BILLING CODE 8026-03-P

<sup>1</sup> A company might not be prepared to elect to be subject to Sections 55 through 65 of the 1940 Act because its capital structure or management



**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration # 16828 and # 16829;  
Louisiana Disaster Number LA-00108]

**Presidential Declaration Amendment of  
a Major Disaster for Public Assistance  
Only for the State of Louisiana**

**AGENCY:** U.S. Small Business  
Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Louisiana (FEMA-4570-DR), dated 12/23/2020.

*Incident:* Hurricane Delta.

*Incident Period:* 10/06/2020 through 10/10/2020.

**DATES:** Issued on 01/27/2021.

*Physical Loan Application Deadline Date:* 02/22/2021.

*Economic Injury (EIDL) Loan Application Deadline Date:* 09/23/2021.

**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:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Louisiana, dated 12/23/2020, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Parishes:* Acadia, Caldwell, Cameron, Catahoula, East Feliciana, Evangeline, Jefferson Davis, Richland, Union.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Cynthia Pitts,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2021-02143 Filed 2-1-21; 8:45 am]

**BILLING CODE 8026-03-P**

Thursday, February, 25, 2021, from 11:00 a.m. until approximately 2:30 p.m. Based on federal and state guidance in response to the Covid-19 pandemic this meeting will be held virtually. The meeting will be made available to the public; see below.

The Overseas Schools Advisory Council works closely with the U.S. business community on improving those American-sponsored schools overseas that are assisted by the Department of State and attended by dependents of U.S. government employees, and the children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. There will be a report and discussion about the status of the Council-sponsored Child Protection Project and discussion on the most recent project addressing school based mental health issues. Moreover, the Regional Education Officers in the Office of Overseas Schools will make presentations on the activities and initiatives in the American-sponsored overseas schools.

Members of the public may attend the meeting virtually and join in the discussion, subject to the instructions of the Chair. Members of the public who plan to virtually attend should advise the office of Mr. Thomas Shearer, Department of State, Office of Overseas Schools, telephone 202-261-8200, prior to February 18, 2021. Any requests for reasonable accommodation should also be made by that date. Interested members of the public will be asked to provide their name and preferred email address, and a valid link will be sent prior to the meeting. The link provided to attendees should not be shared with other individuals.

**Thomas P. Shearer,**

*Executive Secretary, Overseas Schools Advisory Council.*

[FR Doc. 2021-02157 Filed 2-1-21; 8:45 am]

**BILLING CODE 4710-24-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration**

[Docket No. 2120-0076]

**Agency Information Collection  
Activities: Requests for Comments;  
Clearance of Renewed Approval of  
Information Collection: Renewal of  
AVIATOR Customer Satisfaction  
Survey**

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

**ACTION:** Notice and request for  
comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves on-line, electronic applicant (customer) answers to standard survey questions. The questions are presented as multiple choice selections and free-form text areas where applicants can choose their desired answer and, if they wish, add additional comments. The information to be collected will be used to and is necessary to gauge the level of user satisfaction with the AVIATOR system. Additionally, the surveys are used to obtain benchmarking and feedback to ensure quality.

**DATES:** Written comments should be submitted by April 5, 2021.

**ADDRESSES:** Please send written comments:

*By Electronic Docket:*  
[www.regulations.gov](http://www.regulations.gov) (Enter docket number into search field).

*By mail:* Toni Main-Valentin, Federal Aviation Administration, AHP-100, 6500 S MacArthur Blvd., Oklahoma City, OK 73169.

*By email:* [toni.main-valentin@faa.gov](mailto:toni.main-valentin@faa.gov).

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**FOR FURTHER INFORMATION CONTACT:** Toni Main-Valentin by email at: [Toni.Main-Valentin@faa.gov](mailto:Toni.Main-Valentin@faa.gov); phone: 405-954-0870.

**DEPARTMENT OF STATE**

[Public Notice 11341]

**Overseas Schools Advisory Council  
Notice of Meeting**

The Overseas Schools Advisory Council, Department of State, will hold its Winter Committee Meeting on



**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0076.

*Title:* AVIATOR Customer

Satisfaction Survey.

*Form Numbers:* N/A (electronic).

*Type of Review:* Renewal of an information collection.

*Background:* The Government Performance and Results Act of 1993 (GPRA) Section 2(b)(3) requires agencies to “improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction”. In addition, as stated in the White House “Memorandum for Heads of Executive Departments and Agencies” regarding Executive Order No. 12862, “the actions the order prescribes, such as surveying customers, surveying employees, and benchmarking, shall be continuing agency activities”. This collection supports the above directives as well as the DOT strategic goal of Organizational Excellence.

In compliance with the Government Paperwork Elimination Act (GPEA), all of our data collection will be 100% electronic using an online form; Applicants will be asked to complete the survey just before they exit the system. This survey is designed to identify potential problems with FAA’s automated staffing solutions, as well as to evaluate customer satisfaction with the on-line application process. The information is not gathered by any other collection. It will be difficult, if not impossible to improve our overall performance and customer satisfaction without using this survey.

*Respondents:* Completion of the Survey is completely optional. It is presented electronically to all individuals who apply on job vacancy announcements for FAA employment. If the applicant chooses *not* to complete the Survey at the time of application the Survey will be available if/when the individual returns to the AVIATOR system to update their job application or when they elect to review their application status.

*Frequency:* On every job vacancy announcement for each individual applicant (unless the individual completes the Survey on an announcement; in this situation, the Survey is no longer presented to the applicant for this vacancy announcement).

*Estimated Average Burden per Response:* We estimate that it will take each of our 138,953 (total for 2019) applicants three minutes to complete one survey for a total of 416,859 hours if all applicants choose to complete the survey. Statistics show that an average

of 21.3% of the applicants (13,019 for 2019) complete a survey resulting in an estimate of 651 total hours.

The survey is presented in three sections; USAJobs portion of the application process, FAA portion of the application process, and the Overall Application Process. Both the AVIATOR and USAJobs Process sections begin with a question to determine if the applicant is a first-time user of the particular system (“Was this your first time applying for a job using the USAJOBS application process?” and “Was this your first time applying for a FAA job?”), followed by “Yes” and “No” optional answers.

In the USAJobs section, applicants are presented the set of statements below. They will be asked to give their level of agreement with each statement by selecting one of the following five choices: Strongly agree, agree, disagree, strongly disagree, or no basis to judge.

*Applicant Statements:*

(1) Overall, my satisfaction with the USAJOBS portion of this application process was positive.

(2) I was able to navigate around the USAJOBS website with little or no difficulty.

(3) I was able to complete and/or upload my resume in USAJOBS with little or no difficulty.

(4) I was able to get assistance with USAJOBS as needed.

Applicants will also be given the opportunity to add additional comments in two separate text areas provided in this section.

In the AVIATOR section, applicants are presented the set of statements below. They will be asked to give their level of agreement with each statement by selecting one of the following five choices: Strongly agree, agree, disagree, strongly disagree, or no basis to judge.

*Applicant Statements:*

(1) Overall, my satisfaction with the FAA AVIATOR portion of this application process was positive.

(2) I was able to navigate around the FAA AVIATOR website with little or no difficulty.

(3) I was able to complete and submit the application with no difficulty (only applicable to applicants whose responses met the eligibility requirements of the position).

(4) The FAA AVIATOR system notified me when there was a problem with my application (applicable to applicants whose responses did NOT meet the eligibility requirements of the position).

(5) I was able to get assistance with the FAA AVIATOR system as needed.

Applicants will also be given the opportunity to add additional comments in two separate text areas provided in this section.

In the Overall Process section, applicants are presented the set of statements below. They will be asked to give their level of agreement with each statement by selecting one of the following five choices: Strongly agree, agree, disagree, strongly disagree, or no basis to judge.

*Applicant Statements:*

(1) The steps required to apply for the position were clear to me.

(2) The transition between USAJOBS and FAA AVIATOR system was seamless.

(3) I like being able to store my resumes and documents and attach them to my FAA job application(s).

(4) This online process will make it easier for me to apply to future jobs for the FAA.

Applicants will also be given the opportunity to add additional comments in a single text area in this section.

**Estimated Total Annual Burden**

*Cost of the time burden for respondents:* 13,019 respondents × 0.05 hours × \$25.72/hour \* = \$16,742.43. (\* Source: BLS Mean Hourly Wage for All Occupations, [http://www.bls.gov/oes/current/oes\\_nat.htm#00-0000](http://www.bls.gov/oes/current/oes_nat.htm#00-0000)).

Issued in Washington, DC, on January 27, 2021.

**Alpha Woodson-Smith,**

*Computer Scientist, Program Manager, Federal Aviation Administration, Office of Finance and Management (AFN), Information Technology Division (AIT), Enterprise Program Management Service, Business Management Portfolio (AEM-320).*

[FR Doc. 2021–02130 Filed 2–1–21; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF VETERANS AFFAIRS**

[OMB Control No. 2900–0675]

**Agency Information Collection**

**Activity: (Vetbiz Vendor Information Pages Verification Program)**

**AGENCY:** Center for Verification and Evaluation, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Center for Verification and Evaluation (CVE), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to

publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before April 5, 2021.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov) or to Terrence Moultrie (00VE), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to [Terrence.moultrie@va.gov](mailto:Terrence.moultrie@va.gov). Please refer to “OMB Control No. 2900–0675” in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Terrence Moultrie at (202) 461–4300 or FAX (202) 495–5805.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, CVE invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of CVE’s functions, including whether the information will have practical utility; (2) the accuracy of CVE’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

**Authority:** Public Law 104–13; 44 U.S.C. 3501–3521.

**Title:** Vetbiz Vendor Information Pages Verification Program, VA Form 0877.

**OMB Control Number:** 2900–0675.

**Type of Review:** Extension of a currently approved collection.

**Abstract:** Vetbiz Vendor Information Pages Verification Program is used to assist federal agencies in identifying small businesses owned and controlled by veterans and service-connected disabled veterans. The information is necessary to ensure that veteran owned businesses are given the opportunity to participate in Federal contracts and

receive contract solicitations information automatically. VA will use the data collected to verify small businesses as veteran-owned or service-disabled veteran-owned.

**Affected Public:** Business or other for-profit.

**Estimated Annual Burden:** 10,000 hours.

**Estimated Average Burden per Respondent:** 30 minutes.

**Frequency of Response:** On occasion.

**Estimated Number of Respondents:** 20,000.

By direction of the Secretary.

**Danny S. Green,**

*Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.*

[FR Doc. 2021–02166 Filed 2–1–21; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Draft Criteria for Section 203 of the VA MISSION Act of 2018

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Secretary of Department of Veterans Affairs (VA) is responsible for establishing a procedure for making recommendations in reviewing assets and infrastructure. This notice provides the selection criteria to guide this process in order to meet this this responsibility.

**ADDRESSES:** Written comments may be submitted through [www.regulations.gov](http://www.regulations.gov). Comments should indicate that they are submitted in response to “Notice of Intent and request for comments.” During the comment period, comments may also be viewed online through the Federal Docket Management System at [www.regulations.gov](http://www.regulations.gov).

**DATES:** Comments must be received on or before May 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Valerie Mattison Brown, Chief Strategy Officer, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington DC 20420, (202) 461–7100 or [VAMissionActSection203@va.gov](mailto:VAMissionActSection203@va.gov).

**SUPPLEMENTARY INFORMATION:** Section 1703C of 38 U.S.C., as added by Section 203 of the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks (MISSION) Act of 2018 requires VA to establish criteria to be used in assessing and making recommendations regarding the

modernization or realignment of facilities of the Veterans Health Administration (VHA) under the subtitle Selection Criteria. In 2019, VHA began working with various stakeholders and experts to identify factors to be considered in developing the criteria. VHA solicited feedback from Veterans Service Organizations, Veteran Engagement Boards and a wide range of interdisciplinary VA leaders. Six criteria and associated sub-criteria were developed through these robust engagements. VHA proposes to use these criteria to evaluate potential market opportunities for submission to the Asset and Infrastructure Review Commission.

### Foreword

VA is honored to deliver excellent health care for the more than 9 million Veterans who entrust us with their care and is proud to serve as the backstop to the Nation’s health care system. VA was in the midst of a tremendous transformation before the COVID–19 pandemic, working to empower Veterans with more excellent choices while modernizing our systems to enable an optimal experience of care and services. As the impacts of this unprecedented public health challenge have moved across the Nation and the globe, we have continued to demonstrate the strength of our nationwide, integrated system, positioning VA at the leading edge of U.S. health care on behalf of those we serve. We have employed each of our four missions—health care, education, research and emergency response—to lead the Nation forward beside our interagency and strategic partners. Each of these missions will be a vital element of the next step in our transformation journey: Designing the future of VA around the Veterans we serve.

VA works each day to serve and honor America’s Veterans and seeks to ensure each individual Veteran feels they are cared for uniquely, wherever they are and however they need. As Veteran needs, preferences and demographics shift over the coming decades, decisions about health care delivery and infrastructure need to be made by the Secretary to ensure Veterans can continue to access a sustainable, flexible and high-quality health care system well into the future. In line with our missions, VA proposes the following set of criteria for making decisions on health care improvement, as required by Section 203 of the MISSION Act of 2018. The criteria are designed to keep Veterans’ needs at the center of the decision-making process,

assuring that each Veteran can receive the care they have earned and deserve.

### Criteria

VA is conducting Market Assessments to design high-performing networks of care to provide high quality, readily accessible cost-effective care through VHA, Federal partners, academic affiliates and other private sector providers. This design provides VA with the ability to plan for the continuing evolution of Veteran health care, incorporating major trends and events in the national and global health ecosystem (e.g., the COVID-19 pandemic and telehealth). Each assessment will create opportunities to position the VA health care system to increase health equity, enhance Veteran experience, account for social determinants and serve as the coordinator of health care provided by VA. Through thoughtful and constructive engagements with internal and external stakeholders, the following criteria were developed for the evaluation of VHA realignment and modernization opportunities.

The Secretary will use the criteria to make recommendations to the Asset and Infrastructure Review (AIR) Commission, established by the MISSION Act for the modernization and realignment of VHA facilities and to improve Veteran access to high-quality health care across the country. Recommendations submitted to the AIR Commission will focus on creating Veteran-centric outcomes that retain or improve health care services for Veterans through the most equitable modalities and through services and locations that most benefit those we serve. The recommendations will then go through the AIR Commission review process as outlined in the MISSION Act.

Each criterion begins with a commitment statement, outlining VA's philosophy and commitment to current and future Veterans, followed by the criterion statement, sub-criteria and explanatory statement:

#### *Veterans' Need for Care & Services (Demand)*

**Commitment Statement:** VA is committed to providing Veterans the full range of care and services needed and desired throughout their lifetimes, to include preventive, acute and chronic care. These services will be carefully balanced to meet Veterans' needs and preferences. We intend to ensure Veterans receive the personalized care they have earned. We will do this by matching the services and support they may need with our ability to provide those services in a timely manner,

through VA's direct care system, through our Community Care Network and through government, academic and strategic partners.

**Demand Criterion:** The recommendation aligns VA's high performing network resources to effectively meet the future health care demand of the Veteran enrollee population.

#### **Demand Sub-Criteria:**

The recommendation:

- Aligns the quality and delivery of care and services with projected Veteran demand across demographics and geography;
- Retains or improves VA's ability to meet projected demand;
- Considers health equity (i.e., demographics);
- Reflects consideration of factors underpinning observed utilization patterns (e.g., rurality and other social determinants of health); and
- Incorporates trends in the evolution of U.S. health care.

**When applying the 'demand' criterion, VA will consider how a recommendation will impact VA's ability to meet the needs of Veterans in the future. VA will consider what Veterans may need through understanding the services that Veterans have accessed in the past and are projected to need and prefer in the future. VA will also consider how and where Veterans wish to receive services, including in ambulatory settings, hospitals, in the community, through telehealth, and through innovative models and modalities.**

#### *Accessibility of Care for Veterans (Access)*

**Commitment Statement:** We intend to provide Veterans with an accessible, whole health experience, with services thoughtfully designed to meet their needs. We will do this by making the services and support Veterans need accessible through locations, models and modalities that most benefit them and match their needs and preferences.

**Access Criterion:** The recommendation maintains or improves Veteran access to care.

#### **Access Sub-Criteria:**

The recommendation:

- Aligns VA points of care and services with projected Veteran need across demographics and geography;
- Retains or improves Veterans' ability to access VA care;
- Ensures Veterans are provided a range of health care options and the opportunity to choose care they trust, based on their preferences, throughout their lifetime;
- Enables VA to serve as the coordinator of each Veteran's health

care whether provided within or beyond VA;

- Considers health equity (i.e., demographics);
- Reflects consideration of factors underpinning observed access patterns (e.g., rurality and other social determinants of health); and
- Incorporates trends in the evolution of U.S. health care.

**When applying the 'access' criterion, VA will consider how a recommendation will impact the convenience of care provided to Veterans in the future. Key components of access include the time it takes to receive care and the barriers and accelerators to receiving care, such as distance or availability of technology.**

#### *Impact on Mission*

**Commitment Statement:** VA is committed to delivering best-in-class care throughout Veterans' lifetimes. This means positioning the VA health care system at the leading edge of the health care industry in education, research and national emergency preparedness.

**Impact on Mission Criterion:** The recommendation provides for VA's second, third and fourth statutory missions of education, research and emergency preparedness.

#### **Impact on Mission Sub-Criteria:**

The recommendation:

- Aligns resources to VA's education, research and emergency preparedness missions across demographics and geography;
- Education: Maintains or augments VA's ability to execute its education mission;
- Research: Maintains or augments VA's ability to execute its research mission;
- Emergency Preparedness: Maintains or augments VA's ability to execute its emergency preparedness mission;
- Considers health equity (i.e., demographics);
- Reflects consideration of factors underpinning observed mission impacts of education, research and emergency preparedness efforts (e.g., rurality and other social determinants of health); and
- Incorporates trends in the evolution of U.S. health care.

**The 'impact on mission' criterion allows VA to consider how a recommendation will impact our ability to execute our statutory missions of education, research and emergency preparedness in support of Veterans and the nation.**

### *Providing the Highest Quality Whole Health Care (Quality)*

**Commitment Statement:** VA is committed to providing Veterans with a high-quality, whole health care system that delivers an excellent experience of care and optimal health outcomes. VA will deliver the same high quality, evidence-based standards of care regardless of where, or by which modality, their care is received.

**Quality Criterion:** The recommendation considers the quality and delivery of health care services available to Veterans, including the experience, safety and appropriateness of care.

#### **Quality Sub-Criteria:**

The recommendation:

- Ensures the highest possible quality of care across demographics and geography;
- Promotes recruitment of top clinical and non-clinical talent;
- Maintains or enhances Veteran experience;
- Considers health equity (*i.e.*, demographics);
- Reflects consideration of factors underpinning observed quality patterns (*e.g.*, rurality and other social determinants of health); and
- Incorporates trends in the evolution of U.S. health care.

*When applying the ‘quality’ criterion, VA will consider how a recommendation will impact the quality of care for Veterans. Quality in health care is measured through metrics and ratings assessed by federal and commercial health care entities. VA will consider the care needs and preferences of Veterans in order to provide optimal experience, safety, and outcomes.*

### *Effective Use of Resources for Veteran Care (Cost Effectiveness)*

**Commitment Statement:** VA is committed to optimizing our health care system through the effective use and sharing of resources, including staffing, space, infrastructure and funding, with the goal of providing Veterans with the best health care and outcomes. We will actively and mindfully manage our resources, allowing us to provide services and support that effectively match Veterans’ needs and preferences while putting their health and empowerment at the center of system design.

**Cost Effectiveness Criterion:** The recommendation provides a cost-effective means by which to provide Veterans with modern health care.

#### **Cost Effectiveness Sub-Criteria:**

The recommendation:

- Reflects stewardship of taxpayer dollars by optimizing investments and resources for Veterans;
- Recognizes potential savings or efficiencies that may free resources for more impactful investment for Veterans;
- Considers the value of Veteran and employee experience, innovation, and other intangible elements of value;
- Considers health equity (*i.e.*, demographics);
- Reflects consideration of factors underpinning observed cost patterns (*e.g.*, rurality and other social determinants of health); and
- Incorporates trends in the evolution of U.S. health care.

*When applying the ‘cost effectiveness’ criterion, VA will consider whether a recommendation optimizes funding for Veteran care.*

### *Ensuring a Safe Environment of Care (Sustainability)*

**Commitment Statement:** VA is committed to providing Veterans a safe and welcoming environment of care. Our goal is for Veterans to feel safe physically, mentally, socially and emotionally when in our care. We commit to providing standard and complementary types of care for our unique Veteran population in an equitable and inclusive environment. We will do this by ensuring points of care are modern and inviting, with an expert workforce and care options designed to meet them where they are in their health journey.

**Sustainability Criterion:** The recommendation creates a sustainable health care delivery system for Veterans.

#### **Sustainability Sub-Criteria:**

The recommendation:

- Aligns investment in care and services with Veteran need across demographics and geography;
- Reflects stewardship of taxpayer dollars by creating a sustainable infrastructure system for Veterans;
- Enables recruitment and retention of top clinical and non-clinical talent;
- Considers health equity (*i.e.*, demographics);
- Reflects consideration of factors underpinning observed access patterns (*e.g.*, rurality and other social determinants of health); and
- Incorporates trends in the evolution of U.S. health care.

*When applying the ‘sustainability’ criterion, VA will consider how a recommendation impacts our ability to offer Veterans a welcoming and safe care environment that meets modern health care standards and ensures sustainability for future generations of Veterans.*

### Signing Authority

Dat P. Tran, Acting Secretary of Veterans Affairs, approved this document on January 26, 2021, 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.

**Jeffrey M. Martin,**

*Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

[FR Doc. 2021-02138 Filed 2-1-21; 8:45 am]

**BILLING CODE 8320-01-P**

## **DEPARTMENT OF VETERANS AFFAIRS**

### **Privacy Act of 1974; System of Records**

**AGENCY:** Office of Small & Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA).

**ACTION:** Notice of a modified system of records.

**SUMMARY:** VA personnel will access the system to find resources available to veteran entrepreneurs and to register those resources that they provide. They may also utilize the database to counsel and assist veteran entrepreneurs in starting a small business or expanding an existing small business. The Office of Small & Disadvantaged Business Utilization (OSDBU) will use the records and reports derived from the database to manage their responsibilities under the Veterans Entrepreneurship and Small Business Development Act of 1999. Federal, State, and local government personnel will access the system to find resources available to veteran entrepreneurs and to register those resources that they provide. They may also utilize the database to counsel and assist veteran entrepreneurs in starting a small business or expanding an existing small business. The general public, including private sector companies and corporate entities, will access the system, via internet, to review the information, register those resources that they provide, and to locate potential resources for Veteran entrepreneurs.

**DATES:** Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified

system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

**ADDRESSES:** Comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov) or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to VA VetBiz Assistance Program Pages-132VAOSDBU. Comments received will be available at [regulations.gov](http://regulations.gov) for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** For general questions about the system contact Carol Cleveland, Office of Small & Disadvantaged Business Utilization at 1-866-584-2344 or [osdbu@va.gov](mailto:osdbu@va.gov).

**SUPPLEMENTARY INFORMATION:** OSDBU provides numerous services for veterans and service-disabled veterans who seek to open or expand a business. The OSDBU staff coordinates the tasks required of the U.S. Department of Veterans Affairs by several Federal laws, including:

- Public Law 108-183 (December 2003), the Veterans Benefits Act of 2003, Sections 301, 305, 308.
- Public Law 106-554 (December 2000), Sections 803 and 808.
- Public Law 106-50 (August 1999), the Veterans Entrepreneurship and Small Business Development Act of 1999.
- Public Law 105-135 (December 1997), Title VII, Service-Disabled Veterans Program.
- Public Law 93-237 (January 1974), "Special Consideration for Veterans".

Public Law 106-50, Section 302, Entrepreneurial Assistance, subsection (5) requires VA to support the "establishment of an information clearinghouse to collect and distribute information, including electronic means, on the assistance programs of Federal, state, and local governments, and of the private sector, including information on office locations, key personnel, telephone numbers, mailing and email addresses, and contracting and sub-contracting opportunities."

The parts of the Veterans Benefits Act of 2003 (Pub. L. 108-183) that pertain to veteran entrepreneurship are contained in Title III—Education Benefits, Employment Provisions, and Related Matters. They are as follows:

- Section 301—Expand the Montgomery GI Bill program by authorizing educational assistance for

on-job training in certain self-employment training programs.

- Section 305—Authorize the use of VA education benefits to pay for nondegree/non-credit entrepreneurship courses at approved institutions:

- Small Business Development Centers, and
- National Veterans Business Development Corporation (also known as Veterans Corporation).

- Section 308—Furnish Federal agencies discretionary authority to:

- Restrict certain contracts to disabled veteran-owned small businesses if at least two such concerns are qualified to bid on the contract, and
- Create "sole-source" contracts for disabled veteran-owned small businesses—up to \$5 million for manufacturing contract awards and up to \$3 million for nonmanufacturing contract awards.

A Web-based application is used to allow Governmental and support sector organizations to "register" their services. This clearinghouse allows any user to search for business support services at the Federal, State, and local government levels and private providers in their respective category of business development, management, financial, technical or procurement assistance.

The site allows support organizations to update their business information as well as give the Department the ability to upload data from other sources to populate the proposed database. Contact information is also kept and a means to extract this information to satisfy the Department's need to send out information is available.

This modified system of records, known as the VA VetBiz Assistance Program Pages (APP)—VA, is used to maintain and access an automated database containing the information on veteran owned businesses resources set forth in the law (section 302, paragraph (5) and section 604, paragraph (b)). Because some information may be retrieved by the name or other personal identifiers of individuals acting in an entrepreneurial capacity, such as a sole proprietor of a small business, VA is using this system of records.

The information in this system is maintained in electronic form. The information in these records are available to government agencies, companies, and the general public via the internet.

The name of this SORN has been changed from 132VA00VE, with "VE" representing Veteran Experience, to 132VAOSDBU, with "OSDBU" representing the Office of Small & Disadvantaged Business Utilization, to

reflect the office that is responsible for this SORN.

### Signing Authority

The Senior Agency Official for Privacy, 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. James P. Gfrerer, Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on September 14, 2020 for publication.

Dated: January 21, 2021.

**Amy L. Rose,**

*Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.*

### SYSTEM NAME AND NUMBER:

VA VetBiz Assistance Program Pages-132VAOSDBU.

### SECURITY CLASSIFICATION:

Information in this SORN is not classified information.

### SYSTEM LOCATION:

The system is hosted on the Veterans Affairs (VA) Enterprise Cloud (EC), Microsoft Azure Government (MAG). The VAEC MAG is located in Azure Government Region 1 (USGOV VIRGINIA) and 2 (USGOV TEXAS) and is designed to allow U.S. government agencies, contractors and customers to move sensitive workloads into the cloud for addressing specific regulatory and compliance requirements.

### SYSTEM MANAGER(S):

Ray Dockery, Director, Information Technology Systems Integration, Department of Veterans Affairs (VA), Office of Small & Disadvantaged Business Utilization (OSDBU), 810 Vermont Ave. NW, Room 1064, Washington, DC 20420. 1-866-584-2344.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 106-50, as amended.

### PURPOSE(S) OF THE SYSTEM:

1. VA personnel will access the system to find resources available to Veteran entrepreneurs and to register those resources that they provide. They may also utilize the database to counsel and assist Veteran entrepreneurs in starting a small business or expanding an existing small business.

2. The Office of Small & Disadvantaged Business Utilization will use the records and reports derived from the database to manage their

responsibilities under the Veterans Entrepreneurship and Small Business Development Act of 1999.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The system of records will cover programs of Federal, State, and local governments, and private sector organizations and companies offering business or business assistance services to Veteran entrepreneurs that wish to be a part of the information clearinghouse.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The records will contain data on the assistance programs of Federal, state, and local governments, and of the private sector, including information on office locations, key personnel, telephone numbers, mailing and email addresses, and contracting and subcontracting opportunities available to Veteran entrepreneurs. The data will come from both governments and private sector organizations who have contacted the Center for Veterans Enterprise, registered their products or services online in the database, or have been extracted from e-government databases to which the companies have voluntarily submitted the data. The records may include business addresses and other contact information, information concerning products or services offered, and information pertaining to the business, such as federal contracts, and certifications.

**RECORD SOURCE CATEGORIES:**

The information in this system of records is obtained from the following sources:

- a. Information voluntarily submitted by Federal, State, and local governments;
- b. Information voluntarily submitted by the private sector; and
- c. Information extracted from other business and resource databases.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

1. *Congress*: VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
2. *Data breach response and remedial efforts*: VA may disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and

operations), and (3) the Federal Government, or national security; and the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. *Data breach response and remedial efforts with another Federal agency*: VA may disclose information from this system to another Federal agency or Federal entity, when VA 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.

4. *Law Enforcement*: VA may, on its own initiative, disclose information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

5. *Litigation*: VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal

proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

6. *Contractors*: VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

7. *Equal Employment Opportunity Commission (EEOC)*: VA may disclose information from this system to the EEOC when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

8. *Federal Labor Relations Authority (FLRA)*: VA may disclose information from this system to the FLRA, including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Service Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

9. *Merit Systems Protection Board (MSPB)*: VA may disclose information from this system to the MSPB, or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

10. *National Archives and Records Administration (NARA) and General Services Administration (GSA)*: VA may disclose information from this system to NARA and GSA in records management inspections conducted under title 44, U.S.C.

11. *Federal, State, and local government personnel* will access the system to find resources available to Veteran entrepreneurs and to register

those resources that they provide. They may also utilize the database to counsel and assist Veteran entrepreneurs in starting a small business or expanding an existing small business.

12. The general public, including private sector companies and corporate entities, will access the system, via internet, to review the information register those resources that they provide, and to locate potential resources for Veteran entrepreneurs.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

The VetBiz APP is stored in an automated, computerized database. The system operates on servers located on the VAEC. Data backups reside on appropriate media according to normal system backup plans. The system is managed by the Center for Veterans Enterprise in VA Headquarters, Washington, DC.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Automated records may be retrieved by:

1. Organization Name.
2. Contact Name.
3. Email Address.
4. Web Address.
5. Area Code and Phone Number.
6. Zip Code.
7. County Code (NaCO).
8. State(s).
9. Type of Organization: Government (Federal; State; County; Municipal;

Other); Nongovernmental Organization; Commercial.

10. Type of Assistance: (Paperwork packaging; grants/loans; procurement assistance; management/technical assistance; mentoring/incubator; contract opportunities; other).

11. Service Area Limits (if any).

12. Service limited to Veterans.

13. Fees.

14. Organization Funding Limits: (None; term—funding expires on a specific date).

15. Year Established.

16. Full-time/part-time.

17. Days and Hours of Service.

18. Other Professional Staff Available.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedule No. 20, Electronic Records.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Read access to the system is via internet access. VA Information Service Center and CVE personnel will have access to the system via VA Intranet and local connections for management and maintenance purposes and tasks.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this

system of records may access the records via the internet or submit a written request to the system manager.

**CONTESTING RECORD PROCEDURES:**

An individual who wishes to contest records maintained under his or her name or other personal identifier may write or call the system manager. VA's rules for accessing records and contesting contents and appealing initial agency determinations are published in regulations set forth in the Code of Federal Regulations. See 38 CFR 1.577, 1.578.

**NOTIFICATION PROCEDURES:**

Individuals wishing to inquire whether this system of records contains information about themselves should contact the Deputy Director, IT Systems Integration (00SB), 810 Vermont Ave. NW, Washington, DC 20420.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

There are no exemptions for the system.

**HISTORY:**

VA VetBiz Assistance Program Pages—VA (132VA00VE), published as 69 FR 62936, 10/28/2004, was the last full publication of OSDDBU's SORN 132VA00VE which provided updated information regarding OSDDBU's records.

[FR Doc. 2021-01647 Filed 2-1-21; 8:45 am]

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# Reader Aids

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