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# Presidential Documents

**Title 3—**

## The President

**Proclamation 10279 of October 8, 2021**

## National School Lunch Week, 2021

**By the President of the United States of America**

**A Proclamation**

Since 1946, the National School Lunch Program has provided nutritionally balanced, low-cost or no-cost lunches in our schools, improving our children's health and well-being. School meals are one of the most powerful ways in which our Nation promotes health and ensures children receive the nutritious food they need to be successful in the classroom. Today, tens of millions of children participate in the program. During National School Lunch Week, we recognize the integral role the National School Lunch Program plays in contributing to student health, reducing child hunger, and supporting American agriculture.

The COVID–19 pandemic has amplified the importance of the National School Lunch Program for millions of children who rely on school meals. During the darkest days of the pandemic when businesses closed, people lost their jobs, and millions of Americans turned to food banks to feed their families, school meals remained a consistent source of quality nutrition.

My Administration is dedicated to nutrition, food security, and ensuring that school meals are accessible to all children. This includes a commitment to providing safe, healthy meals free of charge to children, especially as the pandemic continues to compromise the food and nutrition security of our most vulnerable students. To help the millions of families who struggled to provide meals for their children during the pandemic, the American Rescue Plan provided additional emergency food and nutrition assistance for those in need.

School meals would not be possible without the remarkable work of our Nation's farmers and food producers. This year, my Administration awarded $12 million in Farm to School Grants to 176 grantees—the most projects the Federal Government has funded since the program began in 2013. These grants increase access to locally produced foods, enhance agricultural education for students, and support local farmers. Strong partnership with local farmers is key to our efforts to improve nutrition security and increase access to healthy foods in schools. During National School Lunch Week, we show our appreciation to our local farmers who supply the foods that keep our children well-nourished and ready to learn.

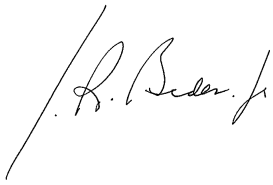
During National School Lunch Week, we also honor the commitment and dedication of the school nutrition professionals who have gone above and beyond to continue providing meals to students despite the continuing challenges of a once-in-a-century pandemic. They have continually found new and creative ways to meet the moment and ensure that students who depend on school meals for nourishment are able to grow and thrive.

The Congress, by joint resolution of October 9, 1962 (Public Law 87–780), as amended, has designated the week beginning on the second Sunday in October each year as ''National School Lunch Week'' and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 10 through

October 16, 2021, as National School Lunch Week. I call upon all Americans to recognize and commemorate all those who operate the National School Lunch Program with activities that raise awareness of the steadfast efforts in supporting the health and well-being of our Nation's children.

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



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# Presidential Documents

**Proclamation 10280 of October 8, 2021**

## Leif Erikson Day, 2021

**By the President of the United States of America**

**A Proclamation**

The voyage of Leif Erikson and his valiant crew—bold explorers from Scandinavia, believed to have been the first Europeans to reach the shores of North America—has been a source of inspiration to Nordic Americans for generations. Although they made landfall more than a millennium ago, their historic journey still embodies the spirit of exploration and the ongoing contributions of Nordic Americans to the diversity of our great Nation.

Eight centuries after Leif Erikson's expedition, on October 9, 1825, six Norwegian families arrived in New York City in search of freedom and opportunity. This first group of organized Norwegian immigrants to the United States blazed a new path that fellow Norwegians—as well as Danes, Finns, Icelanders, and Swedes—soon followed, establishing communities in the Great Lakes States, in the northern Great Plains, in enclaves among northern United States cities, and elsewhere across our country. These Northern European settlers have become part of America's rich tapestry, and through service, sacrifice, and countless contributions they have fortified America's culture, society, and economy.

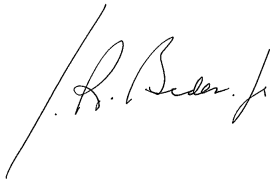
Today, more than 11 million Americans proudly trace their ancestry to Nordic countries. Nordic Americans are leaders in our communities—public officials serving their constituents, law enforcement officers and service members defending our Nation, doctors and nurses, educators, artists, essential workers leading us through the pandemic, visionaries creating new businesses, and so many other important roles. Our Nation is stronger and more dynamic because of the contributions of Nordic Americans. On Leif Erikson Day, we express our appreciation for the many contributions of Nordic Americans, who have enhanced American society and strengthened our cultural diversity.

While the great era of Scandinavian immigration occurred more than a century ago, the legacy of Nordic immigrants endures, along with the values and interests we share with their original homelands—including increasing opportunity for all and recognizing the inherent dignity of every human being. We share mutual commitments to democracy, freedom, human rights, rule of law, security, and prosperity, and Nordic countries remain some of our most reliable military allies and economic partners, helping us meet the shared challenges of our time. The United States greatly values our continued friendship.

To honor Leif Erikson, son of Iceland and grandson of Norway, and to celebrate our Nordic-American heritage, the Congress, by joint resolution (Public Law 88–566) approved on September 2, 1964, has authorized the President of the United States to proclaim October 9th of each year as ''Leif Erikson Day.''

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 9, 2021, as Leif Erikson Day. I call upon all Americans to celebrate the contributions of Nordic Americans to our Nation with appropriate ceremonies, activities, and programs.

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



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# Presidential Documents

**Proclamation 10281 of October 8, 2021**

## Columbus Day, 2021

**By the President of the United States of America**

**A Proclamation**

More than 500 years ago, after securing the support of Queen Isabella I and King Ferdinand II, Christopher Columbus launched the Niña, the Pinta, and the Santa Maria from the coast of Spain in 1492. While he intended to end his quest in Asia, his 10-week journey instead landed him on the shores of the Bahamas, making Columbus the first of many Italian explorers to arrive in what would later become known as the Americas.

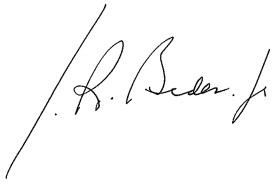
Many Italians would follow his path in the centuries to come, risking poverty, starvation, and death in pursuit of a better life. Today, millions of Italian Americans continue to enrich our country's traditions and culture and make lasting contributions to our Nation—they are educators, health care workers, scientists, first responders, military service members, and public servants, among so many other vital roles.

Today, we also acknowledge the painful history of wrongs and atrocities that many European explorers inflicted on Tribal Nations and Indigenous communities. It is a measure of our greatness as a Nation that we do not seek to bury these shameful episodes of our past—that we face them honestly, we bring them to the light, and we do all we can to address them. For Native Americans, western exploration ushered in a wave of devastation: violence perpetrated against Native communities, displacement and theft of Tribal homelands, the introduction and spread of disease, and more. On this day, we recognize this painful past and recommit ourselves to investing in Native communities, upholding our solemn and sacred commitments to Tribal sovereignty, and pursuing a brighter future centered on dignity, respect, justice, and opportunity for all people.

In commemoration of Christopher Columbus's historic voyage 529 years ago, the Congress, by joint resolution of April 30, 1934, and modified in 1968 (36 U.S.C. 107), as amended, has requested the President proclaim the second Monday of October of each year as ''Columbus Day.'' Today, let this day be one of reflection—on America's spirit of exploration, on the courage and contributions of Italian Americans throughout the generations, on the dignity and resilience of Tribal Nations and Indigenous communities, and on the work that remains ahead of us to fulfill the promise of our Nation for all.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim October 11, 2021, as Columbus Day. I direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of our diverse history and all who have contributed to shaping this Nation.

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



[FR Doc. 2021–22514
Filed 10–13–21; 8:45 am]
Billing code 3395–F2–P

# Presidential Documents

**Proclamation 10282 of October 8, 2021**

## General Pulaski Memorial Day, 2021

**By the President of the United States of America**

**A Proclamation**

On General Pulaski Memorial Day, we honor Brigadier General Casimir Pulaski, a Polish-born hero of the American Revolution, who gave his life 242 years ago in defense of our cause to establish a free and independent Nation. Known as the ''Father of the American Cavalry'' for his leadership and military skills, General Pulaski's service and sacrifice remain a shining example of the countless contributions that immigrants have made to help build our great Nation.

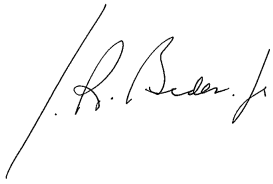
Today, General Pulaski's legacy and contributions to our democracy are honored by more than 9 million Polish-Americans in communities across our country. Polish-Americans have played an integral role in the growth of our Nation—defending our country in uniform, protecting our communities as first responders, starting new businesses and growing our economy, educating the next generation of American leaders, working on the front lines of the pandemic, and creating art that inspires us, to name just a few examples.

In 1929, the Congress recognized General Pulaski's enduring impact on American society by declaring October 11, ''General Pulaski Memorial Day.'' Eighty years later, the Congress granted him honorary United States citizenship. Today, States, cities, and communities all across our Nation celebrate the memory of General Casimir Pulaski at parks, schools, and landmarks that bear his name—serving as a reminder of his heroism and the sacrifice he made in defense of our newly formed Nation.

On this day, we celebrate the life of General Casimir Pulaski and the ideals and democratic values for which he bravely gave his life—values shared by the United States and Poland, which underpin the enduring bond of friendship between our countries.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 11, 2021, as ''General Pulaski Memorial Day.'' I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to General Casimir Pulaski and honoring all those who defend the freedom of our great Nation.

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



[FR Doc. 2021–22522
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# Rules and Regulations

Federal Register

Vol. 86, No. 196

Thursday, October 14, 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.

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 849

**RIN 3206–AO08**

### Representative Payees Under the Civil Service Retirement System and Federal Employees' Retirement System

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing this final rule to promulgate regulations which administer the representative payee program authorized by statute. This final rule is necessary to ensure proper procedures for annuity payments due minors or individuals who are mentally incompetent or under other legal disability and are unable to manage their respective payments.

**DATES:** This rule is effective October 14, 2021.

**FOR FURTHER INFORMATION CONTACT:** Michael Shipley, (202) 606–0299. Email: *Comboxinternet@opm.gov.* Include the RIN in the subject line of the email.

**SUPPLEMENTARY INFORMATION:** On March 8, 2021, OPM issued a proposed rule at 86 FR 13217 for the purpose of promulgating regulations to administer the representative payee program under the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). Under CSRS, the provisions of Public Law 89–554, Sept. 6, 1966, 80 Stat. 582 authorized the United States Civil Service Commission, precursor to the United States Office of Personnel Management (OPM), to make payments due a minor or an individual mentally incompetent, or under other legal disability, to a person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or any person, who in the judgment of the Commission, is responsible for the care of the claimant. Similarly, the FERS Act of 1986, Public Law 99–335, Title I, section 101(a), June 6, 1986, 100 Stat. 575, authorized OPM to make the same payments under FERS. According to these statutes, OPM has historically authorized these payments to individuals, and in some instances, organizations on behalf of the annuitant as representative payees.

On March 18, 2020, Congress enacted Public Law 116–126, 134 Stat. 174–177 (2020), the Representative Payee Fraud Prevention Act of 2019 (the Act), which made numerous changes to existing statutes regarding representative payees. First the Act officially defined the term representative payee under both CSRS and FERS as the ''person (including an organization) designated . . . to receive payment on behalf of a minor or an individual mentally incompetent or under other legal disability'' at 5 U.S.C. 8331(33) and 5 U.S.C. 8401(39), respectively. Ensuring that organization was added to the definition recognizes that other entities, such as agencies, institutions, nursing homes, et al., may serve as representative payees.

Congress also enacted 5 U.S.C. 8345a and 8466a to address the embezzlement or conversion of payments. Congress made it unlawful for a representative payee to use the funds received as a representative payee for any use other than the use and benefit of the individual on whose behalf the payments were received. OPM was given the authority to revoke certification as a representative payee, if we determine that a representative payee has embezzled or converted the annuity payments, and to certify payments to another representative payee or directly to the annuitant. Congress set forth the penalty for misuse of benefits by a representative payee, under title 18 U.S.C., as a fine, imprisonment for not more than 5 years, or both.

Furthermore, in selecting a representative payee, OPM was granted authority to defer or suspend the annuity payment until a representative payee is located, if we determine that paying the annuitant directly would cause substantial harm to the annuitant. Substantial harm exists if both of the following conditions exist:

(1) Direct payment of benefits can be expected to cause serious physical or mental injury to the individual; and

(2) The potential effect of the injury outweighs the effect of having no income to meet the basic needs of the individual.

We have included this language concerning substantial harm to the proposed regulations.

Finally, the Act created limitations on who can be appointed as a representative payee. Individuals that have been convicted of a violation of: (1) 5 U.S.C. 8345a or 8466a; (2) section 208 or 1632 of the Social Security Act (42 U.S.C. 408, 1383a); or (3) section 6101 of title 38, are barred from serving as a representative payee.

OPM is promulgating these regulations to fully implement and administer the representative payee program for CSRS and FERS. The regulations are required to prevent misuse and fraud by representative payees.

The public comment period on the proposed rule ended May 7, 2021. OPM received four substantive comments. Three of the comments voiced general support for the proposed rule in protecting vulnerable individuals from potential misuse by the representative payee. OPM received one comment from the American Association of Nurse Practitioners (AANP). The AANP suggested amending the language in 5 CFR 849.203 from ''medical professional'' to ''licensed health practitioner.'' In addition, the AANP suggested amending 5 CFR 849.602 to include the language ''or other licensed health practitioner's'' when identifying statements that are acceptable to stop representative payments. The AANP reasoned that the term licensed health practitioner is already defined under 5 CFR 339.104, and that these changes more closely align with other regulations at 5 CFR 831.1202 and 844.102 that OPM uses to administer annuity benefits under CSRS and FERS. OPM agrees and has adopted the AANP's recommendations by amending 5 CFR 849.203 and 849.602, to include ''licensed health practitioner'' as appropriate. OPM has also amended 5 CFR 849.102 to include the definition for physicians and practitioners.

**Regulatory Impact Analysis**

OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. This rule is not a ''significant regulatory action,'' under Executive Order 12866 and was not reviewed by the Office of Management and Budget (OMB).

**Regulatory Flexibility Act**

The Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities.

**Federalism**

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

**Civil Justice Reform**

This regulation meets the applicable standard set forth in Executive Order 12988.

**Unfunded Mandates Reform Act of 1995**

This rule will not 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.

**Congressional Review Act**

The Congressional Review Act (5 U.S.C. 801 *et seq.*) requires rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this action before its effective date, as required by 5 U.S.C. 801. This is not a ''major rule'' as defined by the Congressional Review Act (5 U.S.C. 804(2)).

**Paperwork Reduction Act**

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB Control Number. Two currently approved collections are associated with this rulemaking.

- 3206–0140 Representative Payee Application/Information Necessary for a Competency Determination which is comprised of 2 forms—an application form and a separate form for a competency determination. OPM is requesting, for OMB has approval, a change to the competency determination form to add ''other licensed health practitioner'' when identifying the medical information required for the competency determination. An Emergency request will be published shortly after this rule.
- 3206–0208—Representative Payee Survey This information collection will not be impacted due to the changes in this rule.

The systems of record notice for both collections is: *https://www.opm.gov/information-management/privacy-policy/sorn/opm-sorn-central-1-civil-service-retirement-and-insurance-records.pdf.*

**List of Subjects in 5 CFR Part 849**

Claims, Disability benefits, Fraud, Pensions, Retirement.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

■ For the reasons stated in the preamble, the Office of Personnel Management adds 5 CFR part 849 to read as follows:

## PART 849—REPRESENTATIVE PAYEES

### Subpart A—General Provisions

Sec.
849.101 Applicability and purpose.
849.102 Definitions.
849.103 Implementing directives.

### Subpart B—Determining Whether or Not Representative Payment Is Appropriate

849.201 When to make payment to a representative payee.
849.202 Payment of annuity while finding a suitable representative payee.
849.203 Information considered in determining whether to appoint a representative payee.

### Subpart C—Selection of a Representative Payee

849.301 Information considered in selecting a representative payee.
849.302 Order of preference in selecting a representative payee.
849.303 Individuals who may not serve as a representative payee.
849.304 Selecting a representative payee.
849.305 Notice of determination to select a representative payee.

### Subpart D—Responsibility and Accountability of a Representative Payee

849.401 Responsibilities of a representative payee.
849.402 Use of payments.
849.403 Accountability of a representative payee.

### Subpart E—Misuse of Annuity by a Representative Payee

849.501 Misuse of benefits by a representative payee.
849.502 Liability for misused funds.

### Subpart F—Changes to the Representative Payee

849.601 When a new representative payee will be selected.
849.602 When representative payments will be stopped.
849.603 Transfer of conserved or accumulated funds.

**Authority:** 5 U.S.C. 8331; 5 U.S.C. 8345(e)–(f); 5 U.S.C. 8345a; 5 U.S.C. 8401; 5 U.S.C. 8461; 5 U.S.C. 8466(c)–(d); 5 U.S.C. 8466a.

## Subpart A—General Provisions

### § 849.101 Applicability and purpose.

This part contains regulations of the Office of Personnel Management (OPM) to implement the provisions 5 U.S.C. 8345(e)–(f), 8345a, 8466(c)–(d), and 8466a regarding payment of an annuity to a representative payee. This part establishes the criteria OPM uses to determine if representative payments are appropriate, the information OPM uses to select a representative payee, the responsibilities of a representative payee, the accountability of a representative payee, the limitations on the appointment of a representative payee, and the definition of and penalty for misuse of benefits by the representative payee.

### § 849.102 Definitions.

As used in this part:

*Agency* means the Office of Personnel Management (OPM).

*CSRS* means the Civil Service Retirement System as described in subchapter III of chapter 83 of title 5, United States Code.

*FERS* means the Federal Employees' Retirement System as described in chapter 84 of title 5, United States Code.

*Misuse of benefits* means the embezzlement or conversion of all or any part of the amount received by the

representative payee for a use other than for the use and benefit of the minor or individual on whose behalf such payments were received.

*Physician* and *practitioner* have the same meaning given these terms in § 339.104 of this chapter.

*Representative payee* means a person, who is at least 18 years of age, or an organization designated to receive annuity payments on behalf of a minor or an individual mentally incompetent or under other legal disability.

**§ 849.103 Implementing directives.**

The Director may prescribe, in the form he or she deems appropriate, such detailed procedures as are necessary to carry out the purpose of this part.

## Subpart B—Determining Whether or Not Representative Payment is Appropriate

**§ 849.201 When to make payment to a representative payee.**

The agency will make payment to a representative payee—

(a) If payments are due to a minor under the age of 18; or

(b) If payments are due to an annuitant or survivor who is mentally incompetent or under other legal disability; or

(c) If payments are due to an annuitant when the annuitant is physically or mentally incapable of managing or directing the management of his or her benefit.

**§ 849.202 Payment of annuity while finding a suitable representative payee.**

(a) Annuity payments will be made directly to the annuitant or survivor annuitant while a suitable representative payee is located, unless the agency determines that direct payment would cause substantial harm to the individual.

(b) Substantial harm exists if both of the following conditions exist:

(1) Direct payment of benefits can be expected to cause serious physical or mental injury to the individual; and

(2) The potential effect of the injury outweighs the effect of having no income to meet the basic needs of the individual.

(c) If the agency determines that direct payment of benefits would cause substantial harm to the annuitant, annuity payments may be deferred (in the case of initial entitlement to benefits) or suspended (in the case of existing entitlement to benefits) until such time as a representative payee is appointed.

(d) Annuity payments will commence or resume as soon as practicable and will include all retroactive payments due to be paid.

**§ 849.203 Information considered in determining whether to appoint a representative payee.**

In determining whether to appoint a representative payee, the agency will consider the following information:

(a) *Evidence of legal guardianship or other court determinations.* Evidence of the appointment of a legal guardian or other person legally vested with the care of the individual or estate of an incompetent or a minor shall be a certified copy of the court's determination.

(b) *Medical evidence.* The agency will use medical evidence to help determine whether an annuitant is capable of managing or directing the management of benefit payments. For example, a statement by a physician or other licensed health practitioner, based upon his or her recent examination of the annuitant and his or her knowledge of the annuitant's present condition, will be used in the agency's determination, if it includes information concerning the nature of the annuitant's illness or disability, the annuitant's chances for recovery, and the opinion of the physician or other licensed health practitioner as to whether the annuitant is able to manage or direct the management of benefit payments.

(c) *Other evidence.* The agency may also require statements of relatives, friends, or other people in a position to know and observe the annuitant, which contain information helpful to the agency in deciding whether the annuitant is able to manage or direct the management of benefit payments.

## Subpart C—Selection of a Representative Payee

**§ 849.301 Information considered in selecting a representative payee.**

The goal in selecting a payee is to select the person, organization, or institution that will best serve the interest of the annuitant. In making the selection, the agency considers—

(a) The age of the representative payee applicant. An individual must be over the age of 18 to serve as a representative payee, except as listed in § 849.303(a);

(b) The relationship of the person, organization, or institution to the annuitant;

(c) Legal authority, in the form of conservatorship or guardianship, that the person, organization, or institution has to act on behalf of the annuitant;

(d) The amount of concern that the person or organization shows in the annuitant;

(e) Whether the potential payee has custody of the annuitant;

(f) Whether the potential payee is in a position to know of and look after the needs of the annuitant;

(g) Whether the representative payee applicant is currently serving, or has previously served, as a representative payee for other annuitants; and

(h) The potential representative payee's criminal history.

**§ 849.302 Order of preference in selecting a representative payee.**

As a guide in selecting a representative payee, categories of preferred payees are set out in paragraphs (a) through (e) of this section. The primary concern of the agency is to select the payee who will best serve the annuitant's interest. The preferences, in descending order of importance, are:

(a) A legal conservator, guardian, spouse, or other relative who has custody or guardianship of the annuitant or who demonstrates strong concern for the personal welfare of the annuitant;

(b) A friend or neighbor who has custody or guardianship of the annuitant or demonstrates strong concern for the personal welfare of the annuitant;

(c) A public or nonprofit agency or institution having custody or guardianship of the annuitant;

(d) A private institution operated for profit and licensed under State law, which has custody or guardianship of the annuitant; and

(e) Persons other than those listed in paragraphs (a) through (d) of this section who are qualified to carry out the responsibilities of a representative payee and who are able and willing to serve as a payee for an annuitant; *e.g.,* members of community groups or organizations who volunteer to serve as representative payee for an annuitant.

**§ 849.303 Individuals who may not serve as a representative payee.**

A representative payee applicant may not serve as a representative payee if he or she:

(a) Is under the age of 18, unless he or she is the custodial parent of the minor child applying for or receiving the annuity;

(b) Is found by a court to be incompetent or receives benefits under title II or title XVI of the Social Security Act through a representative payee or receives a retirement annuity pursuant to CSRS or FERS through a representative payee;

(c) Has previously served as a representative payee and has been

found by a court of competent jurisdiction to have misused benefits;

(d) Has been convicted of a violation of:

(1) 5 U.S.C. 8345a or 8466a;

(2) Section 208 or 1632 of the Social Security Act (42 U.S.C. 408, 1383a); or

(3) 38 U.S.C 6101; or

(e) Has been convicted of an offense resulting in imprisonment for more than one year. The agency may make exception to the prohibition in this paragraph (e) if the nature of the conviction is such that selection of the applicant poses no risk to the annuitant and the exception is in the best interest of the annuitant.

**§ 849.304 Selecting a representative payee.**

Before selecting an individual or organization to serve as a representative payee, the agency will conduct an investigation. The investigation will:

(a) Require the applicant to submit documented proof of identity.

(b) Verify the applicant's social security number.

(c) Conduct a background check on the applicant to determine if the applicant has been convicted of any crimes as defined in § 849.303(d) or (e).

(d) Determine if the applicant has previously served as a representative payee and if any previous appointments as representative payee were revoked or terminated due to misuse.

**§ 849.305 Notice of the determination to select a representative payee.**

(a) If the agency determines that the annuitant requires a representative payee due to mental incompetence or other legal disability or is physically or mentally unable to manage or direct the management of his or her annuity payments, the agency will issue a written decision to the annuitant. The decision will include a statement of the findings and determinations; specifically, the individual or organization named as the representative payee, and an explanation of the right to appeal the decision under §§ 831.110 and 841.307 of this chapter. If the annuitant appeals the decision, the agency will continue to make direct payments to the annuitant until the due process rights have been exhausted.

(b) A decision by the agency to *not* select an individual or organization as a representative payee is not subject to the due process procedures described in 5 U.S.C. 8347(d) and 8461(e).

## Subpart D—Responsibility and Accountability of a Representative Payee

**§ 849.401 Responsibilities of a representative payee.**

(a) A representative payee shall, subject to review by the agency and subject to such requirements as it may periodically prescribe, apply the payments made on behalf of the annuitant only for the use and benefit of such annuitant, and in a manner or purpose that is in the best interest of the annuitant.

(b) A representative payee shall notify the agency of any event that will affect the amount of benefits the annuitant receives or the right of the annuitant to receive benefits.

(c) A representative payee shall notify the agency of any change in circumstances that would affect performance of the payee's responsibilities.

(d) A representative payee shall keep the annuity paid to him or her on behalf of the annuitant separate from his or her own money in an account that shows that the annuitant is still the owner of the funds. The applicant must show proof of this account when applying to be the representative payee and use this account for direct deposit. Exceptions to this paragraph (d) are joint accounts for spouses, when one spouse applies to be representative payee for the other spouse and they already have an existing joint account.

(e) Any interest earned on the annuity will be the annuitant's property.

(f) A representative payee shall respond to requests, regarding the use of annuity payments, from OPM within a specified period of time.

**§ 849.402 Use of payments.**

(a) *Current maintenance.* Payments certified to a representative payee on behalf of an annuitant shall be considered as having been applied for the use and benefit of the annuitant when they are used for the annuitant's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

(b) *Institutional care.* If an annuitant is receiving care in a Federal, state, or private institution because of mental or physical incapacity, current maintenance includes the customary charges made by the institution in providing care and maintenance, as well as expenditures for those items which will aid in the annuitant's recovery or release from the institution or expenses for personal needs which will improve the annuitant's conditions while in the institution.

(c) *Support of legal dependents.* If the current maintenance needs of the annuitant are met, the representative payee may use part of the payments for the support of the annuitant's legally dependent spouse, child, and/or parent.

(d) *Claims of creditors.* A representative payee may satisfy debts to creditors out of present benefit payments only if the current and reasonably foreseeable needs of the annuitant are met.

(e) *Conservation and investment.* After the representative payee has used the annuity payments consistent with the rules in paragraphs (a) through (d) of this section, any remaining annuity shall be conserved or invested on behalf of the annuitant. Any investment must show clearly that the representative payee holds the property in trust for the annuitant.

**§ 849.403 Accountability of a representative payee.**

(a) An individual, or institution, to whom payments are made as representative payee on behalf of an annuitant is accountable for the use of the payments and shall submit a written report in such form and at such times as the agency may require, accounting for the payments certified to him or her on behalf of the annuitant.

(b) If, however, such payee is a court-appointed fiduciary and, as such, is required to make an annual accounting to the court, a true copy of each such account filed with the court may be submitted in lieu of the accounting form prescribed by the agency.

(c) If any representative payee fails to submit the required accounting within the specified period of time after it is requested, no further payments shall be made to the representative payee on behalf of the annuitant unless for good cause shown, the default of the representative payee is excused by the agency and the required accounting is thereafter submitted.

(d) At any time after the agency has selected a representative payee, the agency may ask such payee to submit information showing a continuing relationship to the annuitant and a continuing responsibility for the care of the annuitant. If the representative payee does not give the agency the requested information within the specified period of time, the agency may stop paying such payee unless the agency determines that the payee had a good reason for not complying with the request, and the agency receives the information requested.

## Subpart E—Misuse of Annuity by a Representative Payee

### § 849.501 Misuse of benefits by a representative payee.

(a) It is unlawful for a representative payee to misuse the payments received on behalf of an annuitant. For purposes of this subpart, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment on behalf of an annuitant and embezzles or converts such payment, or any part thereof, to a use other than for the use and benefit of the annuitant.

(b) The penalty for a representative payee found to be in violation of paragraph (a) of this section is a fine, imprisonment for not more than 5 years, or both.

(c) If the agency determines that a representative payee has misused any payments as described in paragraph (a) of this section, the agency will promptly revoke the certification for payment of benefits to the representative payee, and will make payment to an alternative representative payee or, if the interest of the annuitant would be served thereby, to the annuitant.

(d) The agency will make the annuitant whole by repaying any annuity that was misused by the representative payee once the misused benefits have been repaid to the agency by the representative payee.

### § 849.502 Liability for misused funds.

(a) A representative payee who misuses benefits, as determined in § 849.501(a), is responsible for repayment of the misused benefits.

(b) OPM will seek restitution from the former representative payee.

## Subpart F—Changes of the Representative Payee

### § 849.601 When a new representative payee will be selected.

(a) When the agency learns that the interests of the annuitant are not served by continuing payment to the present representative payee or that the present representative payee is no longer able or willing to carry out the payee responsibilities, the agency will undertake to find a new representative payee.

(b) The agency will select a new representative payee if the agency finds a preferred payee or if the present payee:

(1) Has been found by the agency or a court of competent jurisdiction to have misused the benefits;

(2) Has not used the benefit payments on the annuitant's behalf in accordance with the rules in this part;

(3) Has not carried out the other responsibilities described in this subpart;

(4) Dies;

(5) No longer wishes to be the representative payee;

(6) Is unable to manage the benefit payments; or

(7) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information requested by the agency.

(c) The agency may suspend payment as explained in § 849.202(c) if we determine that making direct payment to the annuitant would cause substantial harm. Payments, including all retroactive amounts due, will resume once a representative payee is located.

### § 849.602 When representative payments will be stopped.

If an annuitant demonstrates that he or she is mentally and physically able to manage or direct the management of benefit payments, the agency will make direct payment to the annuitant. Information which the annuitant may give to the agency to support his or her request for direct payment includes, but is not limited to, the following:

(a) A physician's or other licensed health practitioner's statement regarding the annuitant's condition, or a statement by a medical officer of the institution where the annuitant is or was confined, showing that the annuitant is able to manage or direct the management of his or her funds;

(b) A certified copy of a court order restoring the annuitant's rights in a case where an annuitant was adjudged legally incompetent; or

(c) Other evidence which establishes the annuitant's ability to manage or direct the management of benefits.

### § 849.603 Transfer of conserved or accumulated funds.

A representative payee who has conserved or invested annuity payments shall transfer these funds and any interest earned from the invested funds to either a successor payee, to the annuitant, or to the agency as we will specify. If the funds and the earned interest are returned to the agency, we will recertify them to the successor representative payee or to the annuitant.

[FR Doc. 2021–22282 Filed 10–13–21; 8:45 am]

BILLING CODE 6325–38–P

## DEPARTMENT OF AGRICULTURE

## Rural Utilities Service

## 7 CFR Parts 1728 and 1755

## Standards and Specifications for Timber Products Acceptable for Use by Rural Utilities Service Electric and Telecommunications Borrowers

**AGENCY:** Rural Utilities Service, Department of Agriculture (USDA).

**ACTION:** Final rule; response to comments.

**SUMMARY:** The Rural Utilities Service (RUS), a Rural Development agency of U.S. Department of Agriculture, is issuing a final rule to amend its regulations on Electric and Telecommunications Standards and Specifications for Materials, Equipment and Construction, updates to Bulletin 1728F–700, RUS Specification for Wood Poles, Stubs and Anchor Logs; Bulletin 1728H–701, Specification for Wood Crossarms, Transmission Timbers, and Pole Keys; and Bulletin 1728H–702, Specification for Quality Control and Inspection of Timber Products (Wood Bulletins) to keep RUS standards current with the technology advances and consistent with the industry practice. This final rule incorporates most of the changes from the final rule; request for comments published on June 18, 2019, in the **Federal Register**. This rule also addresses and takes into consideration public comments received by the Agency regarding regulation changes in the final rule; request for comments on June 18, 2019, as published in the **Federal Register** and, as a result, incorporates updates and modifications to the final rule.

**DATES:**

*Effective date:* This rule is effective October 14, 2021.

*Incorporation by reference:* The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 14, 2021.

**FOR FURTHER INFORMATION CONTACT:** Chendi Zhang, Mechanical Engineer, Engineering Standards Branch, Electric Programs | Rural Utilities Service | Rural Development, U.S. Department of Agriculture, 1400 Independence Ave. SW | Washington, DC 20250–1567 | Phone: 202–690–9032 | email: *Chendi.Zhang@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This final rule is exempt from the Office of Management and Budget (OMB) review for purposes of Executive

Order 12866 and, therefore, has not been reviewed by OMB.

**Executive Order 12372**

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A notice of final rule entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034) exempted the Rural Utilities Service loans and loan guarantees from coverage under this order.

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Rural Utilities Service has determined that this rule meets the applicable standards provided in section 3 of the Executive order. In addition, all state and local laws and regulations that are in conflict with this final rule will be preempted. No retroactive effect will be given to this final rule and in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

**Executive Order 13132**

This final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this final rule does not have sufficient federalism implications to require preparation of a Federalism Assessment.

**Regulatory Flexibility Act Certification**

The Rural Utilities Service has determined that the Regulatory Flexibility Act is not applicable to this final rule since USDA Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of the law to publish a notice of proposed rulemaking with request to the subject matter of this rule.

**Information Collection and Recordkeeping Requirements**

This final rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0076 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

**Assistance Listings (Formerly the Catalog of Federal Domestic Assistance)**

Assistance Listings (formerly the Catalog of Federal Domestic Assistance (CFDA)) are detailed public descriptions of Federal programs that provide grants, loans, scholarships, insurance, and other types of assistance awards. You may browse assistance listings across all government agencies to learn about potential funding sources. The program described by this final rule is detailed in the Assistance Listings under No. 10.850, Rural Electrification Loans and Loan Guarantees. Visit the following website for further information: *https://sam.gov/content/assistance-listings.*

**Unfunded Mandates**

This final rule contains no Federal Mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995 [2 U.S.C. Chapter 25]) for State, local, and tribal governments, or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

**National Environmental Policy Act**

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies and Procedures''). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

**USDA Non-Discrimination Statement**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed complaint form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410,

(2) *Email: OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

**Background**

**I. General Discussion**

The Rural Utilities Service maintains bulletins that contain construction standards and specifications for materials and equipment and provide regulated specifications to RUS Electric Program borrowers for procurement of electric transmission and distribution line wood materials. These standards and specifications apply to systems constructed by electric and telecommunications borrowers in accordance with the loan contract, and contain standard construction units, materials, and equipment units used on electric and telecommunications borrowers' systems. The following bulletins establish standards for the manufacture and inspection of wood utility poles, crossarms and pole keys: Bulletin 1728F–700, ''RUS Specification for Wood Poles, Stubs and Anchor Logs'' (incorporated by reference at § 1728.97); 7 CFR 1728.201 ''Bulletin 1728H–701, Specification for Wood Crossarms (Solid and Laminate), Transmission Timbers, and Pole Keys;'' and 7 CFR 1728.202 ''Bulletin 1728H–

702, Specification for Quality Control and Inspection of Timber Products.''

## II. Purpose of the Regulatory Action

This final rulemaking adopts most of the changes to Bulletin 1728F–700, ''RUS Specification for Wood Poles, Stubs and Anchor Logs'' (incorporated by reference at § 1728.97); 7 CFR 1728.201 ''Bulletin 1728H–701, Specification for Wood Crossarms (Solid and Laminate), Transmission Timbers, and Pole Keys;'' and 7 CFR 1728.202 ''Bulletin 1728H–702, Specification for Quality Control and Inspection of Timber Products,'' as published in the final rule; request for comments on June 18, 2019 (84 FR 28186), in the **Federal Register**. This final rule also incorporates some of the suggestions received by the Agency through submitted public comments, as well as administrative updates and clarifications based on Agency experience in working with borrowers. A summary of the major changes to these three bulletins are noted in the Agency's responses to the commenters and Summary of Changes section of this document.

## III. Summary of Comments and Responses

As noted above, the Agency invited comments on the final rule; request for comments published on June 18, 2019, in the **Federal Register** on or before August 2, 2019. The Agency received comments from the following organizations: Treated Wood Council (TWC); North American Wood Pole Council (NAWPC); Viance, LLC, a wood preservative chemical manufacturer; McFarland Cascade a Stella-Jones Company, a producer of utility poles; and Brooks Manufacturing Co., which are summarized as follows:

*Comments and Responses Relevant to Bulletin 1728F–700, ''Specification for Wood Poles, Stubs and Anchor Logs (Incorporated by Reference at § 1728.97)''*

*Comment 1:* Two commenters noted that the RUS stated its intent to remove Northern White Cedar from the list of approved species, but one reference to Northern White Cedar in paragraph 8d(1)(b) was not removed.

*Agency Response:* The Agency agrees and in this final rule we removed northern white cedar as an acceptable pole species in that paragraph and also added ''Alaska Yellow Cedar.'' The use of Alaska Yellow Cedar is a viable choice for poles and crossarms.

*Comment 2:* Three commenters requested that the Agency update all the references to the ''latest version of the American Wood Protection Association (AWPA) Book of Standards'' in the Bulletin 1728F–700.

*Agency Response:* The Agency agrees to use the ''latest version of the AWPA Book of Standards'' that is available at the time the bulletin is updated.

*Comment 3:* Three commenters asked that RUS should allow shipment of material(s) greater than two years after initial treatment, so long as it has been retreated and reinspected to ensure it continues to meet the RUS specifications.

*Agency Response:* The two-year time is confirmed by a result of survey of industry experts and is a balance of interest of RUS borrowers and pole suppliers.

*Comment 4a:* Four commenters urged RUS to delete references to specific preservatives.

*Agency Response:* In general, the Agency does not agree with deleting references to specific preservatives. However, given that the Ammoniacal Copper Arsenate (ACA) is no longer listed in the AWPA Standards in Pole Specifications and Crossarm Specifications, the Agency is no longer referencing ACA in Bulletin 1728F–700.

*Comment 4b:* Four commenters asked the Agency to allow RUS Borrowers to choose from ''any of the preservatives approved in the AWPA Standards for the commodities being purchased''.

*Agency Response:* RUS maintains an approved List of Material. For borrowers desiring to use materials that are not on the List, there is a process where approval to use such materials can be requested from RUS on a case-by-case basis. The same process would apply to any AWPA approved preservative that is not listed in this RUS specification.

RUS reviewed DCOI (Dichloro-2-n-octyl-4-isothiazolin-3) application package and focused on Treatability and field pole stub/post-test. It is determined to include AWPA approved DCOI in RUS bulletins as a new preservative to address the discontinuation of penta.

*Comment 5:* Three commenters stated that there is no basis for providing compliance to the requirement for sterilization, described as heating the pith center to 150 °F for one hour as the standard; rule concerning heat transfer taking one hour for each inch of diameter has been removed from the specification.

*Agency Response:* The Agency believes that there may be a misunderstanding on how the statement, as published in the final rule that ''Heat transfer usually requires 1 hour for each inch of diameter at 150 °F,'' has been interpreted. Citing the statement was not intended to be a requirement but rather included as an informational statement. The Agency's position is supported by the USDA Agriculture Handbook #40, printed in 1952 and the current ANSI 05.1 pole specification (Paragraph 5.2.1.6), where there is no basis for compliance.

*Comment 6:* Three commenters requested that in addition to a calibrated recording chart, RUS acknowledge that electronic or digital storage of temperatures and pressures during the treating cycle is also acceptable.

*Agency Response:* The Agency agrees and includes the digital storage in this final rule to keep up with the industry practice.

*Comment 7:* Two commenters recommended that the information in the present 8d(3)(b)(3) concerning re-treatment should be removed and be combined with the information in the present 8e(3) as they are presently duplicative.

*Agency Response:* The Agency agrees and in this final rule we removed the duplicated info in 8d(3)(b)(3) and combined with Item 8e(3) in the final rule.

*Comment 8:* Two commenters noted that the tables should be re-numbered to be in a continuous sequence with all references to the tables being adjusted to reflect the changes.

*Agency Response:* The Agency agrees with the commenters and in this final rule we renumbered the tables numbers in a continuous sequence and all references to the tables are updated accordingly.

*Comment 9:* Two commenters noted that the word ''cedar'' is used in the bulletin without clarifying whether it is Western Red Cedar or Alaskan Yellow Cedar or both.

*Agency Response:* The Agency does not see a need to clarify the word ''cedar'' when specifications are applicable to both. They are normally not separated from one another during the production process.

*Comment 10:* Three commenters recommended that in Appendix A paragraph 4b(3) Kiln Drying, Red Pine should be added to the species allowed to be dried at above 170 °F.

*Agency Response:* The Agency agrees with the comment and in this final rule we added Red Pine to the species allowed to be dried at above 170 °F in this final rule.

*Comment 11:* Two commenters noted that Table 10, in the middle section should be labeled as ''Thermal Process'' not ''Pressure and Thermal process.''

*Agency Response:* The Agency agrees and in this final rule we deleted ''Pressure and'' and keep ''Thermal

Process'' in the table. Note that the table is now Table 8 after the table renumbering.

*Comment 12:* Two commenters noted that Table 10 in the revised specification has a new Note ''M'' which concerns a second (inner) assay zone for Douglas Fir transmission poles. There is no footnote M referenced in the body of the table. The assay zone specified in Note M would be the zone 1.0 to 1.5 inches from the surface which disagrees with the requirements found in AWPA T–1 which the RUS specification references. All Douglas Fir transmission poles are required by the RUS specification to be deep incised or radial drilled to 2½ inches in depth and AWPA would specify the inner assay zone as the zone 2.0 to 2.5 inches from the surface. The requirement in the note to Table 10 is far less stringent than the AWPA requirements which may indicate an error has been made in Note M. A superscript M should be added to the Douglas Fir line in the Table.

*Agency Response:* In this final rule, the Agency incorporated the corrections of Note M to the Table and an inner assay zone 2.0″–2.5″ is used as in the AWPA. A superscript M is added to the Douglas Fir line in the Table.

*Comment 13:* Two commenters requested that the Poles Framing Guide in Figure 2 should be modified to include the additional holes that are ''very frequently'' being requested by RUS Borrowers. ''RUS should survey the RUS Borrowers to identify the size and placement of these additional holes and add them to the drawing as allowed optional holes. The lack of framing uniformity by the RUS Borrowers makes it impossible to maintain a single reserve treated stock that could be shipped to all RUS Borrowers. Addition of these additional holes to the framing drawing as acceptable optional holes would allow a supplier, at his own expense, to provide the additional holes on all poles and have them be accepted by all RUS Borrowers.''

*Agency Response:* Most RUS borrowers continue to use standard M–20 framing. At the current time, RUS will not make changes to the M–20 framing pattern nor adding a note, as it would take a codified revision of another bulletin to do so. In the future, should the majority of cooperative borrowers across the country begin requesting special framing, RUS will consider making such a change during the next regulation revision cycle.

*Comment 14:* One commenter noted that additional language on an alternate referee method on ring count is not necessary.

*Agency Response:* Agency disagrees. As an additional volume of lower density timber moves into the pole market, accurate determination of ring count becomes very important. The Agency has added the following ANSI O5.1 language in the rule per the commenter: ''For poles that exhibit a non-uniform growth rate around the circumference, the average growth rate shall be determined at the midpoint of the shortest arc between the point showing the fewest growth rings in the required zone and the point showing the most growth rings in the required zone.''

*Comments and Responses Relevant to 7 CFR 1728.201, Bulletin 1728F–701, Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys*

*Comment 1:* Three commenters noted that the word ''round'' should be changed back to the original word ''sound'' in the appropriate places.

*Agency Response:* The typo is corrected, and the word ''sound'' replaced the word ''round'' to correct the typo.

*Comment 2:* Three commenters requested that die-stamping must be returned as an allowable means to mark crossarms as the largest crossarm manufacturer no longer burn brands the arms due to fire safety issues in the plant.

*Agency Response:* The Agency agrees and in this final rule added back in two places Die-stamping, however, Dye-stamping is not allowed as it will not last long (<18 months).

*Comment 3:* Four commenters asked to allow RUS Borrowers to choose from ''any of the preservatives approved in the AWPA Standards for the commodities being purchased''.

*Agency Response:* RUS maintains an approved List of Materials. For borrowers desiring to use materials that are not on the List, there is a process where approval to use such materials can be requested from RUS on a case-by-case basis. The same process would apply to any AWPA approved preservative that is not listed in this RUS specification. RUS reviewed DCOI application package focusing on Treatability and field pole stub/post-test and determined to include AWPA approved DCOI in RUS bulletins as a new preservative to address the discontinuation of Pentachlorophenol (penta).

*Comments and Responses Relevant Only 7 CFR 1728.202, Bulletin 1728H–702, Specification for Quality Control and Inspection of Timber Products*

*Comment 1:* Two commenters noted that the referee methods shown in Table 1 to Paragraph (b)(10) do not agree in all cases with the referee methods shown in AWPA Standard A15–19.

*Agency Response:* The listing of X-ray spectroscopy as the referee method for water-borne preservatives instead of the previous wet ash chemistry method was due to the complexity of the method itself and the fact that few companies currently have the necessary experience or facilities required to run a wet ash. The Agency in this final rule revised the table as follows, which includes the methods for DCOI:

| Preservative | Analytical method | Referee method |
|---|---|---|
| Pentachlorophenol | XRF, Lime Ignition, Copper Pyridine | Lime Ignition, Copper Pyridine. |
| Creosote | Toluene Extraction | Toluene Extraction. |
| Waterborne | XRF | XRF. |
| Copper Naphthenate | XRF | ICP, GC. |
| DCOI | XRF, HPLC | HPLC. |

XRF—X-ray fluorescence.
HPLC—High Performance Liquid Chromatography.
ICP—Inductively coupled plasma.
GC—Gas Chromatography.

*Comment 2:* Two commenters requested to allow the use of a set of graduated treated wood samples for calibration of an XRF used for penta analysis. Table 1 to Paragraph (b)(10) should be amended to show XRF also as an allowable method for penta and the text should be amended to add AWPA A9 to the present reference to AWPA A83.

*Agency Response:* A change is made to allow the use of a set of graduated

treated wood samples for calibration of an XRF used for penta analysis. The Agency wants to note that this is for calibration of XRF units and does not relieve the inspection agencies from the requirement that they maintain laboratories that are properly equipped to run the listed referee methods. As listed in the table above, XRF will be an allowable method for penta. ''AWPA A83'' in the paragraph will be replaced with ''AWPA A83 or AWPA A9''.

## IV. Summary of Changes

In addition to the final rule changes published in the **Federal Register** on June 18, 2019, the following is a summary of other changes to these three bulletins as a result of public comments and Agency clarifications:

1. All references cited in these bulletins are updated to the latest edition in 7 CFR 1728.201, Bulletin 1728H–701 and 1728.202 Bulletin 1728H–702 or ''the latest version'' is used in Bulletin 1724F–700 (incorporated by reference at § 1728.97).

2. AWPA approved 4,5 Dichloro-2-n-octyl-4-isothiazolin-3 one (DCOI) is included in 1728F–700 (incorporated by reference at § 1728.97), 7 CFR 1728.201 Bulletin 1728H–701, and 7 CFR 1728.202 Bulletin 1728H–702 as a new preservative to address the discontinuation of Pentachlorophenol, another preservative.

3. AWPA A30–18, Standard Method for the Determination of 4,5 Dichloro-2-n-octyl-4-isothiazolin-3 one (DCOI) in Wood and Solutions by High Performance Liquid Chromatography, is incorporated by reference in § 1728.97 to support the inclusion of DCOI as a RUS approved preservative in Bulletin 1724F–700 (incorporated by reference at § 1728.97) and 7 CFR 1728.202 Bulletin 1728H–702.

4. ANSI O5.1 language on ring count is added as an alternate referee method to determine a non-uniform growth rate in Bulletin 1728F–700.

5. Table 8 in Bulletin 1728F–700 is updated to be consistent with the upcoming AWPA Standards, 2021.

6. An Analytical Method column is added in Table 1 to Paragraph (b)(10) for those preservatives in 7 CFR 1728.202 Bulletin 1728F–702.

7. In Bulletin 1728F–700, Section 8.d.(3).(a), to clarify the dimension from (b) For Group B poles (Those poles with a circumference of more than 37.5 inches at 6 feet from butt); will now read (b) For Group B poles (Those poles with a circumference of 37.5 inches or greater at 6 feet from butt).

8. In 7 CFR 1728.202 Bulletin 1728H–702, a supplemental correction is made to include a paragraph on quality marks on crossarms. This is not a new requirement. The quality marks have been applied as an industry practice. The paragraphs in Section (g), have been renumbered with the addition of a new clarifying paragraph below.

''Third-party inspectors shall verify their acceptance of untreated crossarms that have been offered by the producer as conforming by marking each accepted piece in one end with a clear, legible hammer stamp. Following treatment, inspectors shall verify their acceptance of treated crossarms that have been offered by the producer as conforming by marking each accepted piece in the opposing end with a clear, legible hammer stamp. The inspector shall personally mark each piece for acceptance and shall not delegate this responsibility to any other individual.''

9. Changes relevant to Bulletin 1728F–700 (incorporated by reference at § 1728.97), 7 CFR 1728.201 Bulletin 1728H–701, and 7 CFR 1728.202 Bulletin 1728H–702:

Specifications requiring that all third-party agencies involved in the inspection of RUS products must, on an annual basis, provide RUS Technical Standards Committee ''A'' with proof that the agency does have: (1) The required insurance coverage, and (2) the required, fully equipped laboratory capable of running each of the referee methods of analysis.

While these two requirements themselves are not new, providing proof of such to RUS on an annual basis is new. The reason for making this change is that in recent years, there apparently have been several instances where third-party agencies involved in RUS inspection did not have the required insurance or the required lab facilities. Given that RUS currently does not have the ability to provide an active overview of these third-party agencies, this change simply provides RUS with a method for checking the basic legitimacy of any company involved in the inspection of RUS treated wood products. It also provides both RUS and the cooperative borrower with some possible source of fiscal recovery if problems with product service in line can be traced back to performance issues involving the third-party agency being utilized.

## Incorporation by Reference

Bulletin 1728F–700, RUS Specification for Wood Poles, Stubs and Anchor Logs. This specification describes the minimum acceptable quality of wood poles, stubs, telephone pedestal stubs, and anchor logs (hereinafter called poles, except where specifically referred to as stubs or anchor logs) purchased by or for RUS borrowers. The requirements of this specification implement contractual provisions between RUS and borrowers receiving financial assistance from RUS.

RUS provides free online public access to view and download copies of Bulletin 1728–F 700. The RUS website to view and download this bulletin is: *https://www.rd.usda.gov/resources/regulations/bulletins.*

ANSI O5.2–2020, Structural Glued Laminated Timber for Utility Structures, covers requirements for manufacturing and quality control of structural glued laminated timber of Southern Pine, Coastal Region Douglas Fir, Hem Fir and other species of similar treatability for electric power and communication structures.

ANSI standards are reasonably available to obtain by calling 212–642–4980 or by online access at their web address: *https://webstore.ansi.org/* for a fee. ANSI O5.2–2020 is also available for a fee in ANSI O5.—Wood Poles Package.

AWPA A6–20, Method for the Determination of Oil-Type Preservatives and Water in Wood. This method is suitable for the determination of creosote, petroleum, and their solutions in treated wood when the sample contains at least 5.0 grams of wood and one gram of oil. Preservatives, such as copper naphthenate, ~~or~~ pentachlorophenol or DCOI, may not be quantitatively extracted by this method. The method can also be used for the determination of water in treated or untreated wood, but when it is so used, the directions on handling the sample in Standard M2 must be followed carefully.

AWPA A9–20, Standard Method for Analysis of Treated Wood and Treating Solutions By X-Ray Spectroscopy. This method provides for the non-destructive analysis of treated wood and treating solutions by X-ray fluorescence spectroscopy and is applicable to the determination of elements of atomic number 5 or higher that are present in significant quantity in the wood (usually above 0.05%). The elements covered in this method are specified for use in preservative and fire-retardant treatment of wood.

AWPA A15–19, Referee Methods. Referee methods are given to assist in the resolution of disputes over the acceptability of the active(s) in treated wood products.

AWPA A30–18, Standard Method for the Determination of 4,5 Dichloro-2-n-octyl-4-isothiazolin-3 one (DCOI) in Wood and Solutions by High Performance Liquid Chromatography. This describes the method useful for the

chemical analysis of DCOI in wood and solutions.

AWPA A69–18, Standard Method to Determine the Penetration of Copper Containing Preservatives, is employed to determine the penetration depth of copper containing preservatives into treated wood to decide whether the treated product meets acceptance levels as prescribed in treatment standards.

AWPA A70–18, Standard Method to Determine the Penetration of Pentachlorophenol Using a Silver-Copper Complex Known as Penta-Check. This standard is employed to determine the penetration depth of pentachlorophenol containing preservatives where the wood has been treated with pentachlorophenol dissolved in light-colored Hydrocarbon Solvent Type A or Hydrocarbon Type C of AWPA Standard P9 into treated wood to decide whether the treated product meets acceptance levels as prescribed in treatment standards.

AWPA A71–18, Standard Methods for Determining Penetration of Solvent Used with Oil-Soluble Preservatives. This standard is provided exclusively for determining the penetration of oil-soluble organic biocides in wood where the wood has been treated with the oil-soluble organic biocide dissolved in light-colored Hydrocarbon Solvent Type A of AWPA Standard P9.

AWPA M2–19, Standard for the Inspection of Preservative Treated Products for Industrial Use. This Standard provides procedures for inspection at wood preserving plants of industrial products including but not limited to poles, crossarms, piling, ties, timbers, round posts and composite wood products. This Standard also contains detailed procedures and test methods for determining the conformance of treated wood products with specified standards or other written product quality specifications.

AWPA T1–20, Use Category System: Processing and Treatment Standard. This Processing and Treatment Standard contains the minimum requirements and process limitations for treating wood products under the AWPA Standards. This includes conditioning of material for treatment, treatment processes and limitations, end-results of treatment, post treatment handling, and quality control applicable to all commodities treated under the AWPA Use Category System.

AWPA U1–20, Use Category System: User Specification for Treated Wood. The Use Category System (UCS) of the American Wood Protection Association (AWPA) designates what preservative systems and retentions have been determined to be effective in protecting wood products under specified exposure conditions.

AWPA standards are reasonably available to obtain for a fee by calling 1–855–999–9870 or by online access at the web address: *https://www.techstreet.com/standards/awpa-book-2020?product_id=2110160%20h* for a fee. AWPA standards are also available for a fee in 2020–AWPA Book of Standards at *https://awpa.com/standards.*

AWPA A83–18, which appears in the regulatory text, was previously approved for § 1728.202 June 18, 2019.

**List of Subjects**

*7 CFR Part 1728*

Electric power, Incorporation by reference, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

*7 CFR Part 1755*

Incorporation by reference, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

## PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

■ 1. The authority citation for part 1728 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

■ 2. Amend § 1728.97 by:

■ a. In the introductory text, remove the text ''call (202) 741–6030'' and add in its place the text ''email *fr.inspection@nara.gov*''; and

■ b. Revising paragraphs (a)(21), (c)(1), and (e).

The revisions read as follows:

**§ 1728.97 Incorporation by reference of electric standards and specifications.**

* * * * *

(a) * * *

(21) Bulletin 1728F–700, RUS Specification for Wood Poles, Stubs and Anchor Logs, September 9, 2021, incorporation approved for §§ 1728.98 and 1728.202.

* * * * *

(c) * * *

(1) ANSI O5.2–2020, Structural Glued Laminated Timber for Utility Structures, approved January 10, 2020, incorporation by reference approved for §§ 1728.201 and 1728.202.

* * * * *

(e) American Wood Protection Association (AWPA), P.O. Box 361784, Birmingham, AL 35236–1784, telephone 205–733–4077, *www.awpa.com.*

(1) AWPA A6–20, Standard for the Determination of Retention of Oil-Type Preservatives from Small Samples, Revised 2020, incorporation by reference approved for § 1728.202.

(2) AWPA A9–20, Standard Method for Analysis of Treated Wood and Treating Solutions By X-Ray Spectroscopy, Revised 2020, incorporation by reference approved for § 1728.202.

(3) AWPA A15–19, Referee Methods, Revised 2019, incorporation by reference approved for § 1728.202.

(4) AWPA A30–18, Standard Method for the Determination of 4,5 Dichloro-2-n-octyl-4-isothiazolin-3 one (DCOI) in Wood and Solutions by High Performance Liquid Chromatography (HPLC), Revised 2018, incorporation by reference approved for § 1728.202.

(5) AWPA A69–18, Standard Method to Determine the Penetration of Copper Containing Preservatives, Reaffirmed 2018, incorporation by reference approved for § 1728.202.

(6) AWPA A70–18, Standard Method to Determine the Penetration of Pentachlorophenol Using a Silver-Copper Complex Known as Penta-Check, Reaffirmed in 2018, incorporation by reference approved for § 1728.202.

(7) AWPA A71–18, Standard Method to Determine the Penetration of Solvent Used with Oil-Soluble Preservatives, Reaffirmed 2018, incorporation by reference approved for § 1728.202.

(8) AWPA A83–18, Standard Method for Determination of Chloride for Calculating Pentachlorophenol in Solution or Wood, Reaffirmed 2018, incorporation by reference approved for § 1728.202.

(9) AWPA M2–19, Standard for the Inspection of Preservative Treated Products for Industrial Use, Revised 2019, incorporation by reference approved for § 1728.202.

(10) AWPA T1–20, Use Category System: Processing and Treatment Standard, Revised 2020, incorporation by reference § 1728.201.

(11) AWPA U1–20, Use Category System: User Specification for Treated Wood, Revised 2020, incorporation by reference approved for §§ 1728.201 and 1728.202.

* * * * *

■ 3. Amend § 1728.98 by revising paragraph (a)(21) to read as follows:

**§ 1728.98 Electric standards and specifications.**

(a) * * *

(21) Bulletin 1728F–700, RUS Specification for Wood Poles, Stubs and Anchor Logs, September 9, 2021.

* * * * *

■ 4. Amend § 1728.201 by:
■ a. Adding paragraph (b)(11);
■ b. Revising paragraphs (d)(3) introductory text, (d)(3)(i), (h)(1), (i)(2)(ii), and (j)(4)(ii);
■ c. Adding paragraph (j)(4)(v); and
■ d. Revising paragraphs (k)(1), (k)(3) introductory text, and (k)(3)(iv) and (v).

The additions and revisions read as follows:

**§ 1728.201 Bulletin 1728H–701, Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys.**

* * * * *

(b) * * *

(11) Arm producers shall have and maintain liability insurance in the amount of $1 million. Evidence of compliance to this requirement shall be forwarded to the RUS annually. The evidence shall be in the form of a certificate of insurance or a bond signed by a representative of the insurance company or Surety Bonding company and include a provision that no change in, or cancellation of, will be made without the prior written notice to the Chairman, Technical Standards Committee ''A'' (Electric), 1400 Independence Ave. SW, Stop 1569, Washington, DC 20250–1569.

* * * * *

(d) * * *

(3) *Knots.* Well-spaced sound, firm, and tight knots are permitted.

(i) Slightly decayed knots are permitted, except on the top face, provided the decay extends no more than ¾ of an inch into the knot and provided the cavities will drain water when the arm is installed. For knots to be considered well-spaced, the sum of the sizes of all knots in any 6 inches of length of a piece shall not exceed twice the size of the largest knot permitted. More than one knot of maximum permissible size shall not be in the same 6 inches of length. Slightly decayed, firm, or sound ''pin knots'' (⅜ of an inch or less) are not considered in size, spacing, or zone considerations.

* * * * *

(h) * * *

(1) Creosote, water-borne preservatives, pentachlorophenol, DCOI, and copper naphthenate shall conform to the requirements of AWPA U1 (incorporated by reference at § 1728.97). Oxide formulations of waterborne preservatives shall be supplied. If CCA is the selected preservative, CCA–C shall be the type required.

* * * * *

(i) * * *

(2) * * *

| | Max. time (hours) | Temperature |
|---|---|---|
| * * * * * * * | | |
| (ii) Heating in Preservative | 3 | 210 °F |

* * * * *

(j) * * *

(4) * * *

| Preservative | Retention (pcf) |
|---|---|
| * * * * * | |
| (ii) Pentachlorophenol | [1] 0.4/0.36 |
| * * * * * | |
| (v) DCOI | 0.13 |

[1] If the copper pyridine method is used when timbers may have been in contact with salt water, a penta retention of 0.36 pcf is required for all species native to the Pacific Coast region.

* * * * *

(k) * * *

(1) Before treatment, arms shall be legibly branded (hot brand) or die-stamped to a depth of approximately 1/16 of an inch, with the top of the brand oriented to the top of the arm. The brand shall be placed on either of the wide surfaces of the arm, approximately one foot from the midpoint of the piece.

* * * * *

(3) The brand or die-stamp shall include:

* * * * *

(iv) Preservative (C for creosote, DA for DCOI, PA for penta, SK for CCA, SZ for ACZA, N for Copper Naphthenate); and

(v) Required retention. An example of required retention is: M–6–16 Manufacturer—Month—Year and DF–PA–.4 Douglas-fir–penta treated—.40 pcf retention.

* * * * *

■ 5. Amend § 1728.202 by:
■ a. Revising paragraphs (b)(10) and (d);
■ b. In paragraph (e)(5):
■ i. Removing the superscript ''1'' in the fifth table heading; and
■ ii. Redesignating footnote 1 to table 2 as note 2 to table 2 and revising newly redesignated note 2;
■ c. Revising paragraph (e)(7); and
■ d. Redesignating paragraph (g)(2) as paragraph (g)(3) and adding a new paragraph (g)(2).

The revisions and addition read as follows:

**§ 1728.202 Bulletin 1728H–702, Specification for Quality Control and Inspection of Timber Products.**

* * * * *

(b) * * *

(10) Inspection agencies shall maintain their own properly equipped laboratory that, at a minimum, is able to run the referee methods listed in table 1 to this paragraph (b)(10) for retention analysis for all preservatives being inspected. This laboratory shall be independent from any treating plant laboratory. Inspection Agencies may use one central laboratory. All XRF units maintained by third party inspection agencies as part of their RUS required laboratories shall be calibrated at least quarterly by said agency utilizing the referee method for each preservative treatment being analyzed or via comparison with a set of graduated treated wood standards. Each agency shall keep an up-to-date written record of these quarterly calibration results. AWPA A83 or AWPA A9 (incorporated by reference at § 1728.97) shall be followed for Pentachlorophenol testing, AWPA–A30 or AWPA A9 (incorporated by reference at § 1728.97) shall be followed for DCOI testing, AWPA A6 (incorporated by reference at § 1728.97) shall be followed for Creosote testing, and AWPA A9 (incorporated by reference at § 1728.97) shall be followed for XRF, as illustrated in the following table:

TABLE 1 TO PARAGRAPH (b)(10)

| Preservative | Analytical method | Referee method |
|---|---|---|
| Pentachlorophenol | XRF, Lime Ignition, Copper Pyridine | Lime Ignition, Copper Pyridine. |
| Creosote | Toluene Extraction | Toluene Extraction. |
| Waterborne | XRF | XRF. |
| Copper Naphthenate | XRF | ICP, GC. |
| DCOI | XRF, HPLC | HPLC. |

**Note 1 to table 1 to paragraph (b)(10):** XFR means X-ray fluorescence; HPLC means High Performance Liquid Chromatography; ICP means Inductively coupled plasma; and GC means Gas Chromatography.

* * * * *

(d) *Preservatives.* Creosote, waterborne preservatives, pentachlorophenol, DCOI, and copper naphthenate shall conform to current AWPA U1 (incorporated by reference in § 1728.97).

(e) * * *

(5) * * *

**Note 2 to table 2 to paragraph (e)(5):** Retention and penetration requirements for each different species and preservative are listed in Table 8 of Appendix A, RUS Bulletin 1728F–700, Specification for Wood Poles, Stubs and Anchor Logs (incorporated by reference at § 1728.97).

* * * * *

(7) Penetration compliance of both poles and crossarms shall be determined in accordance with the standard AWPA A15 (incorporated by reference at § 1728.97). Chrome Azurol S shall be used to determine the penetration of copper containing preservatives AWPA A69 (incorporated by reference at § 1728.97), Penta-Check shall be used to determine the penetration of penta AWPA A70 (incorporated by reference at § 1728.97), and Red-O dye for penetration of DCOI AWPA A71 (incorporated by reference at § 1728.97), respectively.

* * * * *

(g) * * *

(2) Third-party inspectors shall verify their acceptance of untreated crossarms that have been offered by the producer as conforming by marking each accepted piece in one end with a clear, legible hammer stamp. Following treatment, inspectors shall verify their acceptance of treated crossarms that have been offered by the producer as conforming by marking each accepted piece in the opposing end with a clear, legible hammer stamp. The inspector shall personally mark each piece for acceptance and shall not delegate this responsibility to any other individual.

* * * * *

## PART 1755—TELECOMMUNICATIONS POLICIES ON SPECIFICATIONS, ACCEPTABLE MATERIALS, AND STANDARD CONTRACT FORMS

■ 6. The authority citation for part 1755 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

■ 7. Amend § 1755.97 by revising paragraph (b)(13) to read as follows:

**§ 1755.97 Telephone standards and specifications.**

* * * * *

(b) * * *

(13) Bulletin 1728F–700, RUS Specification for Wood Poles, Stubs and Anchor Logs, September 9, 2021.

* * * * *

■ 8. Amend § 1755.98 by revising paragraph (a) to read as follows:

**§ 1755.98 List of telecommunications specifications included in other 7 CFR parts.**

* * * * *

| Section | Issue date | Title |
|---|---|---|
| (a) 1728.202 | 9.9.2021 | RUS Specification for Quality Control and Inspection of Timber Products. |
| * * | * | * * * * |

**Christopher A. McLean,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2021–22255 Filed 10–13–21; 8:45 am]

**BILLING CODE 3410–15–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0569; Project Identifier MCAI–2020–01692–T; Amendment 39–21752; AD 2021–20–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Aviation Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 7X, FALCON 900EX, and FALCON 2000EX airplanes. This AD was prompted by a report of a manufacturing issue involving misalignment of a cabin seat pin and plate that can prevent the recline locking mechanism from properly engaging when the seat is in taxi, take-off, or landing position. This AD requires an inspection of certain cabin seats for discrepancies and corrective action, as specified in European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 18, 2021.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of November 18, 2021.

**ADDRESSES:** For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0569.

## Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0569; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0284, dated December 18, 2020 (EASA AD 2020–0284) (also referred to as the MCAI), to correct an unsafe condition for Dassault Aviation Model FALCON 7X, FALCON 900EX, and FALCON 2000EX airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Dassault Aviation Model FALCON 7X, FALCON 900EX, and FALCON 2000EX airplanes. The NPRM published in the **Federal Register** on July 15, 2021 (86 FR 37255). The NPRM was prompted by a report of a manufacturing issue involving misalignment of a cabin seat pin and plate that can prevent the recline locking mechanism from properly engaging when the seat is in taxi, take-off, or landing position. The NPRM proposed to require an inspection of certain cabin seats for discrepancies and corrective action, as specified in EASA AD 2020–0284.

The FAA is issuing this AD to address cabin seats having improper or no engagement of the recline locking mechanism during taxi, take-off, or landing, which could result in reduced seat performance under crash loads and possible injury to seat occupants. See the MCAI for additional background information.

## Discussion of Final Airworthiness Directive

### Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

### Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

### Related Service Information Under 1 CFR Part 51

EASA AD 2020–0284 specifies procedures for an inspection of certain cabin seats for discrepancies (a gap between the seat pin and plate), and corrective action (adjustment, deactivation, or repair), as applicable. EASA AD 2020–0284 also prohibits installation of certain cabin seats. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

### Costs of Compliance

The FAA estimates that this AD affects 565 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 1 work-hour × $85 per hour = $85 | None | $85 | $48,025 |

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

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

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this AD.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska, and

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

## List of Subjects in 14 CFR Part 39

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

## The Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2021–20–14 Dassault Aviation:** Amendment 39–21752; Docket No. FAA–2021–0569; Project Identifier MCAI–2020–01692–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective November 18, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Dassault Aviation Model FALCON 7X, FALCON 900EX, and FALCON 2000EX airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

**(e) Reason**

This AD was prompted by a report of a manufacturing issue involving misalignment of a seat pin and plate that can prevent the recline locking mechanism from properly engaging when the seat is in taxi, take-off, or landing position. The FAA is issuing this AD to address cabin seats having improper or no engagement of the recline locking mechanism during taxi, take-off, or landing, which could result in reduced seat performance under crash loads and possible injury to seat occupants.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0284, dated December 18, 2020 (EASA AD 2020–0284).

**(h) Exceptions to EASA AD 2020–0284**

(1) Where EASA AD 2020–0284 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2020–0284.

(3) Where paragraph (2) of EASA AD 2020–0284 specifies action if ''any discrepancy'' is detected for this AD, a discrepancy is a gap between the seat pin and plate.

**(i) No Reporting Requirement**

Although the service information referenced in EASA AD 2020–0284 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Additional AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

**(k) Related Information**

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

**(l) Material Incorporated by Reference**

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0284, dated December 18, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0284, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

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

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

Issued on September 21, 2021.

**Gaetano A. Sciortino,**

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

[FR Doc. 2021–22294 Filed 10–13–21; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2021–0350; Project Identifier MCAI–2020–01633–T; Amendment 39–21746; AD 2021–20–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A318, A319, A320, A321, A330–200, A330–200 Freighter, A330–300, A330–800, A330–900, A340–200, A340–300, A340–500, A340–600, and A380–800 series airplanes. This AD was prompted by a report that repetitive disconnection and reconnection of certain batteries during airplane parking or storage could lead to a reduction in capacity of those batteries. This AD requires replacing certain nickel-cadmium (Ni-Cd) batteries with serviceable Ni-Cd batteries, or maintaining the electrical storage capacity of those Ni-Cd batteries during airplane storage or parking, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 18, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 18, 2021.

**ADDRESSES:** For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0350.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0350; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0274, dated December 10, 2020 (EASA AD 2020–0274) (also referred to as the MCAI), to correct an unsafe condition for all:

- Airbus SAS Model A318–111, –112, –121, and –122 airplanes;
- Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes;
- Airbus SAS Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes;
- Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes;
- Airbus SAS Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –743L, –841, and –941 airplanes;
- Airbus SAS Model A340–211, –212, –213, –311, –312, –313, –541, –542, –642, and –643 airplanes; and
- Airbus SAS Model A380–841, –842, and –861 airplanes.

Model A320–215, A330–743L, A340–542, and A340–643 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A318, A319, A320, A321, A330–200, A330–200 Freighter, A330–300, A330–800, A330–900, A340–200, A340–300, A340–500, A340–600, and A380–800 series airplanes.

The NPRM published in the **Federal Register** on May 11, 2021 (86 FR 25810). The NPRM was prompted by a report that repetitive disconnection and reconnection of certain Ni-Cd batteries during airplane parking or storage could lead to a reduction in capacity of those batteries. The NPRM proposed to require replacing certain Ni-Cd batteries with serviceable Ni-Cd batteries, or maintaining the electrical storage capacity of those Ni-Cd batteries during airplane storage or parking, as specified in EASA 2020–0274.

The FAA is issuing this AD to address reduced capacity of certain Ni-Cd batteries, which could lead to reduced battery endurance performance and possibly result in failure to supply the minimum essential electrical power during abnormal or emergency conditions. See the MCAI for additional background information.

### Discussion of Final Airworthiness Directive

### Comments

The FAA received comments from the Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

The FAA received additional comments from one commenter, Delta Air Lines. The following presents the comments received on the NPRM and the FAA's response to each comment.

### Request for Clarification on the Method of Compliance

Delta Air Lines stated that it included the procedures for on-wing preservation of the batteries specified in the service information into its maintenance program work cards. Paragraph 5.2 of the service information referenced in EASA AD 2020–0274 describes the on-wing preservation procedure and the procedures are detailed in Appendix 2 of the referenced service information. Delta Air Lines noted that the procedure was not directly marked as Required for Compliance (RC) in either paragraph 5.2 or Appendix 2, but is referenced in another paragraph marked as ''RC.'' Delta Air Lines asked that the AD clarify the method of compliance with the preservation procedures, specifically, if incorporation of the procedures into routine maintenance program work cards is acceptable for AD compliance.

The FAA agrees that the incorporation of the procedures into routine maintenance program work cards does meet the intent of the AD and is, therefore, an acceptable means of

compliance. The FAA has not changed this AD as a result of this comment.

**Conclusion**

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

**Related Service Information Under 1 CFR Part 51**

EASA AD 2020–0274 specifies procedures for replacing certain affected Ni-Cd batteries with serviceable Ni-Cd batteries, or maintaining the electrical storage capacity of those Ni-Cd batteries during airplane storage or parking. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

The FAA estimates that this AD affects 1,814 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 5 work-hours × $85 per hour = $425 | $0 | $425 | $770,950 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

(2) Will not affect intrastate aviation in Alaska, and

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2021–20–08 Airbus SAS:** Amendment 39–21746; Docket No. FAA–2021–0350; Project Identifier MCAI–2020–01633–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective November 18, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (7) of this AD, certificated in any category.

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

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

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

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

(5) Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841, and –941 airplanes.

(6) Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes.

(7) Model A380–841, –842, and –861 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 24, Electrical Power.

**(e) Reason**

This AD was prompted by a report that repetitive disconnection and reconnection of certain nickel-cadmium (Ni-Cd) batteries during airplane parking or storage could lead to a reduction in capacity of those batteries. The FAA is issuing this AD to address reduced capacity of certain Ni-Cd batteries, which could lead to reduced battery endurance performance and possibly result in failure to supply the minimum essential electrical power during abnormal or emergency conditions.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0274, dated December 10, 2020 (EASA AD 2020–0274).

**(h) Exceptions to EASA AD 2020–0274**

(1) Where EASA AD 2020–0274 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2020–0274 defines a ''reconnection cycle'' as ''repeated disconnection and connection of a battery . . . ,'' this AD defines it as ''one instance of disconnection and connection of a battery. . . .''

(3) The ''Remarks'' section of EASA AD 2020–0274 does not apply to this AD.

**(i) No Reporting Requirement**

Although the service information referenced in EASA AD 2020–0274 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information referenced in EASA AD 2020–0274 that contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

**(k) Related Information**

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

**(l) Material Incorporated by Reference**

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0274, dated December 10, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0274, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

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

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

Issued on October 6, 2021.

**Ross Landes,**

*Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–22225 Filed 10–13–21; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0261; Project Identifier MCAI–2020–01502–T; Amendment 39–21753; AD 2021–20–15]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2019–19–06, which applied to certain Airbus SAS Model A330–202, –243, –243F, –302, –323, and –343 airplanes. AD 2019–19–06 required an inspection to determine the part number and serial number of the slat geared rotary actuators (SGRAs), and replacement of each affected SGRA with a serviceable part. This AD continues to require replacement of each affected SGRA with a serviceable part, expands the applicability to include all airplanes on which the affected part may be installed, and also prohibits installation of an affected part; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by a report that cracks have been found within the ring gears of the SGRAs due to a change in the manufacturing process and inadequate post-production non-destructive testing for potential cracking, and a determination that the requirements of AD 2019–19–06 may not ensure the permanent removal from service of affected SGRAs. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 18, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 18, 2021.

**ADDRESSES:** For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0261.

### Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0261; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0245, dated November 9, 2020 (EASA AD 2020–0245) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A330–743L, A330–841, and A330–941 airplanes. EASA AD 2020–0245 supersedes EASA AD 2019–0093 (which corresponds to FAA AD 2019–19–06, Amendment 39–19742 (84 FR 51960, October 1, 2019) (AD 2019–19–06)). Model A330–743L airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019–19–06. AD 2019–19–06 applied to certain Airbus SAS Model A330–202, –243, –243F, –302, –323, and –343 airplanes. The NPRM published in the **Federal Register** on April 7, 2021 (86 FR 17995). The NPRM was prompted by a report that cracks have been found within the ring gears of the SGRAs due to a change in the manufacturing process and inadequate post-production non-destructive testing for potential cracking, and a determination that the requirements of AD 2019–19–06 may not ensure the permanent removal from service of affected SGRAs. The NPRM proposed to continue to require replacement of each affected SGRA with a serviceable part, would expand the applicability to include all airplanes on which the affected part may be installed, and would also prohibit installation of an affected part, as specified in EASA AD 2020–0245.

The FAA is issuing this AD to address cracking of an SGRA, which, in combination with an independent failure on the second SGRA of the same slat surface, could lead to an uncontrolled movement of the affected slat surface in flight, or detachment of the slat surface, and could possibly result in damage to the stabilizers and reduced controllability of the airplane. See the MCAI for additional background information.

**Comments**

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment. The Air Line Pilots Association, International (ALPA) expressed support for the NPRM.

**Request To Clarify Service Bulletin Reference**

Delta Air Lines (DAL) requested clarification of the reference to ''the SB'' in the statement ''in accordance with the instructions of the SB'' in EASA AD 2020–0245. DAL gave no justification for the request.

The FAA agrees to clarify. The Definitions section of EASA AD 2020–0245 clearly defines ''The SB'' and ''The Liebherr SB.'' Therefore, ''the SB'' in the specified statement refers to Airbus Service Bulletin A330–27–3233, dated March 7, 2019. This AD has not been changed as a result of this comment.

**Request To Add Paragraph Identifying Certain Parts as Not Affected**

DAL requested that paragraph (h)(5) be added to the proposed AD to specify that ''units listed [in] Liebherr SB 926C–27–01 Table 1 are not considered an affected part.'' DAL refers to the Note that accompanies Table 1 in the Liebherr Service Bulletin 926C–27–01, dated December 18, 2018 (Liebherr SB 926C–27–01), as justification for the request.

The FAA disagrees with the request to add the specified paragraph because it is an incorrect statement. Table 1 in Liebherr SB 926C–27–01 is titled ''Affected Serial Numbers'' and contains the list of three different serial number ranges. Parts with serial numbers included in those ranges are considered affected parts, except for parts mentioned in the Note, that is, parts already inspected during the final assembly line that are specifically marked as ''WOI–01'' on the identification plate. This is consistent with the definition of ''Affected part'' in the MCAI, which identifies the serial numbers in the table as affected parts ''except those that have passed (no defects found) an inspection, or have been repaired, as applicable, in accordance with the instructions of the Liebherr SB.'' This AD has not been changed with regard to this request.

**Change to This Final Rule**

The FAA has revised the format of paragraph (h)(2) of this AD.

**Conclusion**

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

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

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

**Related Service Information Under 1 CFR Part 51**

EASA AD 2020–0245 describes procedures for replacing each affected SGRA, and specifies a prohibition against installation of an affected part.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

The FAA estimates that this AD affects 123 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Retained action from AD 2019–19–06. | 17 work-hours × $85 per hour = $1,445 | *$0 | $1,445 | $177,735. |
| New actions | Up to 15 work-hours × $85 per hour = Up to $1,275 | *0 | Up to $1,275 | Up to $156,825. |

*The FAA has received no definitive data on which to base the cost estimates for the parts specified in this AD.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska, and

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2019–19–06, Amendment 39–19742 (84 FR 51960, October 1, 2019); and

■ b. Adding the following new AD:

**2021–20–15 Airbus SAS:** Amendment 39–21753; Docket No. FAA–2021–0261; Project Identifier MCAI–2020–01502–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective November 18, 2021.

**(b) Affected ADs**

This AD replaces AD 2019–19–06, Amendment 39–19742 (84 FR 51960, October 1, 2019) (AD 2019–19–06).

**(c) Applicability**

This AD applies to all Airbus SAS airplanes specified in paragraphs (c)(1) through (5) of this AD, certificated in any category.

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

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

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

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 27, Flight controls.

**(e) Reason**

This AD was prompted by a report that cracks have been found within the ring gears of the slat geared rotary actuators (SGRAs) due to a change in the manufacturing process and inadequate post-production non-destructive testing for potential cracking, and a determination that the requirements of AD 2019–19–06 may not ensure the permanent removal from service of affected SGRAs. The FAA is issuing this AD to address cracking of an SGRA, which, in combination with an independent failure on the second SGRA of the same slat surface, could lead to an uncontrolled movement of the affected slat surface in flight, or detachment of the slat surface, and could possibly result in damage to the stabilizers and reduced controllability of the airplane.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0245, dated November 9, 2020 (EASA AD 2020–0245).

**(h) Exceptions to EASA AD 2020–0245**

(1) Where EASA AD 2020–0245 refers to May 10, 2019 (the effective date of EASA AD 2019–0093), this AD requires using November 5, 2019 (the effective date of AD 2019–19–06).

(2) Where paragraph (1) of EASA AD 2020–0245 specifies a method of accomplishment of certain actions, replace the text ''replace each affected part with a serviceable part in accordance with the instructions of the SB,'' with ''removal of each affected part and installation of a serviceable part in accordance with paragraphs 3.C. (2) and 3.C. (3) of the SB.''

(3) Where EASA AD 2020–0245 refers to its effective date, this AD requires using the effective date of this AD.

(4) The ''Remarks'' section of EASA AD 2020–0245 does not apply to this AD.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

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

**(j) Related Information**

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200

South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@faa.gov.*

**(k) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on November 18, 2021.

(i) European Union Aviation Safety Agency (EASA) AD 2020–0245, dated November 9, 2020.

(ii) [Reserved]

(4) For EASA AD 2020–0245, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(5) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0261.

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

Issued on September 22, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–22293 Filed 10–13–21; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0312; Project Identifier MCAI–2020–01376–T; Amendment 39–21729; AD 2021–19–11]**

**RIN 2120–AA64**

## Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–201 and –202 airplanes; Model DHC–8–301, –311, and –315 airplanes; and Model DHC–8–400, –401, and –402 airplanes. This AD was prompted by reports that mounting nuts attaching the rudder actuator bracket to the vertical stabilizer have been found cracked or missing due to hydrogen embrittlement. This AD requires a one-time inspection of the rudder actuator bracket mounting nuts, and corrective actions if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 18, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 18, 2021.

**ADDRESSES:** For service information identified in this final rule, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0312.

### Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0312; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Aziz Ahmed, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–34, dated October 6, 2020 (TCCA AD CF–2020–34) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–201 and –202 airplanes; Model DHC–8–301, –311, –314, and –315 airplanes; and Model DHC–8–400, –401, and –402 airplanes. Model DHC–8–314 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0312.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain De Havilland Aircraft of Canada Limited Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–201 and –202 airplanes; Model DHC–8–301, –311, and –315 airplanes; and Model DHC–8–400, –401, and –402 airplanes. The NPRM published in the **Federal Register** on April 20, 2021 (86 FR 20459). The NPRM was prompted by reports that mounting nuts attaching the rudder actuator bracket to the vertical stabilizer have been found cracked or missing due to hydrogen embrittlement. The NPRM proposed to require a one-time inspection of the rudder actuator bracket mounting nuts, and corrective actions if necessary. The FAA is issuing this AD to address the possible loss of the rudder actuator bracket, which could result in a dormant disconnection between the rudder actuator and the vertical stabilizer. This condition, if not addressed, could result in a loss of directional control of the aircraft. See the MCAI for additional background information.

### Comments

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

### Support for the NPRM

The Air Line Pilots Association, International (ALPA), indicated its support for the NPRM.

**Request To Require Procedure Only**

Horizon Air requested that paragraph (g) of the proposed AD be changed to require only paragraph 3.B. (Procedure) of the Accomplishment Instructions of the applicable service information. Horizon stated that requiring paragraph 3.A. (Job Set-up) and paragraph 3.C. (Close-Out) restricts an operator's ability to perform other maintenance in conjunction with the required actions.

The FAA agrees with the request. Paragraph (g) of this AD has been changed to require only paragraph 3.B. (Procedure) of the Accomplishment Instructions of De Havilland Service Bulletin 8–27–123, Revision A, dated September 8, 2020; or Service Bulletin 84–27–74, Revision B, dated September 8, 2020; as applicable.

**Request To Remove and Replace All Suspect Hardware**

A commenter suggested removal and replacement of ''all suspect hardware.'' The commenter asserted that hydrogen embrittlement would not be evident by way of visual inspection. The FAA infers a request to change the requirements of the proposed AD to replace all affected rudder actuator bracket mounting nuts instead of relying on an inspection to determine which mounting nuts need replacement.

The FAA disagrees with the request. The FAA notes that the rudder actuator bracket mounting nuts were installed as required by AD 2012–04–08, Amendment 39–16964 (77 FR 13193, March 6, 2012), which has a compliance time of within 6,000 flight hours or 3 years after April 10, 2012, whichever occurs first. Viking confirmed that mounting nuts with hydrogen embrittlement can show cracking as soon as one week after being torqued. However, these airplanes have been flying for several years with the mounting nuts installed and without reports of loss of directional control of the airplane caused by the mounting nuts. TCCA and Viking therefore determined, and the FAA agrees, that a one-time visual inspection and replacement if necessary is sufficient to address the unsafe condition. This AD has not been changed with regard to this request.

**Conclusion**

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

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

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

**Related Service Information Under 1 CFR Part 51**

De Havilland has issued Service Bulletin 8–27–123, Revision A, dated September 8, 2020; and Service Bulletin 84–27–74, Revision B, dated September 8, 2020. This service information specifies procedures for doing a detailed visual inspection of the nuts attaching the rudder actuator brackets to the rear spar. If the nuts are corroded, cracked, or otherwise damaged, or if they are missing, they are replaced. These documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

The FAA estimates that this AD would affect 69 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 3 work-hours × $85 per hour = $255 | $0 | $255 | $17,595 |

The FAA estimates the following costs to do any necessary replacement that would be required based on the results of the inspection. The agency has no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Nut replacement | 2 work-hours × $85 per hour = $170 | Minimal | $170 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

(2) Will not affect intrastate aviation in Alaska, and

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2021–19–11 De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.):** Amendment 39–21729; Docket No. FAA–2021–0312; Project Identifier MCAI–2020–01376–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective November 18, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to De Havilland Aircraft of Canada Limited (type certificate previously held by Bombardier, Inc.) airplanes, certificated in any category, and identified in paragraphs (c)(1) through (4) of this AD.

(1) Model DHC–8–102, –103, and –106 airplanes, as identified in De Havilland Service Bulletin 8–27–123, Revision A, dated September 8, 2020.

(2) Model DHC–8–201 and –202 airplanes, as identified in De Havilland Service Bulletin 8–27–123, Revision A, dated September 8, 2020.

(3) Model DHC–8–301, –311, and –315 airplanes, as identified in De Havilland Service Bulletin 8–27–123, Revision A, dated September 8, 2020.

(4) Model DHC–8–400, –401, and –402 airplanes, as identified in De Havilland Service Bulletin 84–27–74, Revision B, dated September 8, 2020.

**(d) Subject**

Air Transport Association (ATA) of America Code 27, Flight controls.

**(e) Unsafe Condition**

This AD was prompted by reports that mounting nuts attaching the rudder actuator bracket to the vertical stabilizer have been found cracked or missing due to hydrogen embrittlement. The FAA is issuing this AD to address the possible loss of the rudder actuator bracket, which could result in a dormant disconnection between the rudder actuator and the vertical stabilizer. This condition, if not addressed, could result in a loss of directional control of the aircraft.

**(f) Compliance**

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

**(g) Required Actions**

Within 8,000 flight hours or 4 years, whichever is earlier, after the effective date of this AD: Do a detailed visual inspection of the rudder actuator bracket mounting nuts for missing nuts or corrosion, cracking, or other damage, in accordance with paragraph 3.B. of the Accomplishment Instructions of De Havilland Service Bulletin 8–27–123, Revision A, dated September 8, 2020; or De Havilland Service Bulletin 84–27–74, Revision B, dated September 8, 2020; as applicable. If any missing nuts or corrosion, cracking, or other damage is found, replace the nuts before further flight, in accordance with paragraph 3.B. of the Accomplishment Instructions of De Havilland Service Bulletin 8–27–123, Revision A, dated September 8, 2020; or De Havilland Service Bulletin 84–27–74, Revision B, dated September 8, 2020; as applicable.

**(h) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using De Havilland Service Bulletin 8–27–123, dated December 20, 2019; De Havilland Service Bulletin 84–27–74, dated December 20, 2019; or De Havilland Service Bulletin 84–27–74, Revision A, dated January 20, 2020; as applicable.

**(i) No Reporting Requirement**

Although De Havilland Service Bulletin 8–27–123, Revision A, dated September 8, 2020; and De Havilland Service Bulletin 84–27–74, Revision B, dated September 8, 2020, specify to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(k) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–34, dated October 6, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0312.

(2) For more information about this AD, contact Aziz Ahmed, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

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

**(l) Material Incorporated by Reference**

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

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

(i) De Havilland Service Bulletin 8–27–123, Revision A, dated September 8, 2020.

(ii) De Havilland Service Bulletin 84–27–74, Revision B, dated September 8, 2020.

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.com.*

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

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

Issued on September 7, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–22292 Filed 10–13–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0462; Project Identifier MCAI–2020–01714–T; Amendment 39–21751; AD 2021–20–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc., Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes. This AD was prompted by multiple reports of cracking of the main landing gear (MLG) shock strut lower pin. This AD requires repetitive lubrication and repetitive detailed visual inspections (DVI) and non-destructive test (NDT) inspections of the MLG shock strut lower pins, and replacement if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 18, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 18, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0462.

### Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0462; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–54R1, dated December 23, 2020 (TCCA AD CF–2020–54R1) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0462.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes. The NPRM published in the **Federal Register** on June 14, 2021 (86 FR 31453). The NPRM was prompted by multiple reports of cracking of the MLG shock strut lower pin part number (P/N) 19146–3. The subsequent investigation concluded that the friction torque when the shock strut is under compression loading, causes the pin anti-rotation tangs to become loaded beyond their load carrying capability. This overload condition can result in pin fracture originating at the base of the pin anti-rotation tang. Inadequate lubrication aggravates the condition. The NPRM proposed to require repetitive lubrication and repetitive DVI and NDT inspections of the MLG shock strut lower pins, and replacement if necessary. The FAA is issuing this AD to address cracking of the MLG shock strut lower pin. If not addressed, this condition could result in structural failure of one or both MLG. See the MCAI for additional background information.

### Comments

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

### Conclusion

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

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

### Related Service Information Under 1 CFR Part 51

Bombardier, Inc., has issued the following service information:

- Service Bulletin 604–32–030, dated June 30, 2020.
- Service Bulletin 605–32–007, dated June 30, 2020.
- Service Bulletin 650–32–004, dated June 30, 2020.

This service information describes procedures for lubricating, inspecting (DVI and NDT inspections for cracking and damage, including fracture of the MLG shock strut lower pin at the pin rotation tang location), and replacing the MLG shock strut lower pin. These documents are distinct since they apply to different airplane configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

### Costs of Compliance

The FAA estimates that this AD affects 433 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 7 work-hours × $85 per hour = $595 | $0 | $595 | $257,635 |

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| 6 work-hours × $85 per hour = $510 | $2,435 | $2,945 |

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska, and

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2021–20–13 Bombardier, Inc.:** Amendment 39–21751; Docket No. FAA–2021–0462; Project Identifier MCAI–2020–01714–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective November 18, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes, serial numbers (S/N) 5301 through 5665 inclusive, 5701 through 5988 inclusive, and 6050 through 6999 inclusive, certificated in any category.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by multiple reports of cracking of the main landing gear (MLG) shock strut lower pin. The FAA is issuing this AD to address cracking of the MLG shock strut lower pin. If not addressed, this condition could result in structural failure of one or both MLG.

**(f) Compliance**

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

**(g) Repetitive Lubrication**

Within 200 flight hours (FH) or 12 months after the effective date of this AD, whichever occurs first, lubricate the left-hand (LH) and right-hand (RH) MLG shock strut lower pins having part number (P/N) 19146–3, in accordance with paragraph 2.B., ''Part A,'' of the Accomplishment Instructions of the applicable service bulletin, as specified in paragraphs (g)(1) through (3) of this AD. Repeat thereafter at intervals not to exceed 200 FH or 12 months, whichever occurs first.

(1) For airplanes having S/N 5301 through 5665 inclusive: Bombardier Service Bulletin 604–32–030, dated June 30, 2020.

(2) For airplanes having S/N 5701 through 5988 inclusive: Bombardier Service Bulletin 605–32–007, dated June 30, 2020.

(3) For airplanes having S/N 6050 through 6999 inclusive: Bombardier Service Bulletin 650–32–004, dated June 30, 2020.

**(h) Repetitive Detailed Visual Inspections (DVI)**

At the applicable compliance time specified in paragraphs (h)(1) through (3) of this AD, perform the DVI for cracking and damage of the LH and RH MLG shock strut lower pins having part number (P/N) 19146–3, in accordance with paragraph 2.C., ''Part B,'' of the Accomplishment Instructions of the applicable service bulletin, as specified in paragraphs (g)(1) through (3) of this AD. Repeat thereafter at intervals not to exceed 400 FH or 24 months, whichever occurs first. If the DVI coincides with a non-destructive testing (NDT) inspection required by paragraph (i) of this AD, the NDT inspection supersedes the DVI for that interval only. If the accumulated flight cycles (FC) of the MLG shock strut lower pin are not known, use the related MLG assembly accumulated FC to determine when to accomplish the actions required by this paragraph.

(1) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD and on which an MLG shock strut lower pin has accumulated fewer than 600 total FC on the pin as of the effective date of this AD: Before the accumulation of 750 total FC on the pin.

(2) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD and on which an MLG shock strut lower pin has accumulated 600 total FC or more on the pin as of the effective date of this AD: Within 150 FC after the effective date of this AD.

(3) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after the effective date of this AD: Before the accumulation of 750 total FC.

**(i) Repetitive NDT Inspection**

At the applicable compliance time specified in paragraphs (i)(1) through (4) of this AD: Perform the NDT inspection for cracking and damage of the LH and RH MLG shock strut lower pins having P/N 19146–3, in accordance with paragraph 2.D., ''Part C,'' of the Accomplishment Instructions of the applicable service bulletin, as specified in paragraphs (g)(1) through (3) of this AD. Repeat thereafter at intervals not to exceed 900 FC. If the accumulated FC of the MLG shock strut lower pin is not known, use the related MLG assembly accumulated FC to determine when to accomplish the actions required by this paragraph.

(1) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD and on which an MLG shock strut lower pin has accumulated fewer than 1,200 total FC on the pin as of the effective date of this AD: Before the accumulation of 1,500 total FC on the pin.

(2) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD and on which an MLG shock strut lower pin has accumulated 1,200 total FC or more but fewer than 2,000 total FC on the pin as of the effective date of this AD: Within 300 FC after the effective date of this AD, or before the accumulation of 2,200 total FC on the pin, whichever occurs first.

(3) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD and on which an MLG shock strut lower pin that has accumulated 2,000 total FC or more on the pin as of the effective date of this AD: Within 200 FC after the effective date of this AD.

(4) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after the effective date of this AD: Before the accumulation of 1,500 total FC.

**(j) Replacement**

If, during any inspection required by this AD, any crack or damage of the MLG shock strut lower pin is detected, before further flight, replace the affected MLG shock strut lower pin with a new part in accordance with paragraph 2.E., ''Part D,'' of the Accomplishment Instructions of the applicable service bulletin, as specified in paragraphs (g)(1) through (3) of this AD.

**(k) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(l) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–54R1, dated December 23, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0462.

(2) For more information about this AD, contact Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

**(m) Material Incorporated by Reference**

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

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

(i) Bombardier Service Bulletin 604–32–030, dated June 30, 2020.

(ii) Bombardier Service Bulletin 605–32–007, dated June 30, 2020.

(iii) Bombardier Service Bulletin 650–32–004, dated June 30, 2020.

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.*

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

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

Issued on September 21, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

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## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Part 1

**[Docket No. PTO–P–2020–0032]**

**RIN 0651–AD48**

## Electronic Submission of a Sequence Listing, a Large Table, or a Computer Program Listing Appendix in Patent Applications

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (USPTO or Office) is amending the rules of practice to permit higher-capacity physical media to be submitted to the USPTO. Patent applications for certain inventions require significant data in American Standard Code for Information Interchange (ASCII) plain text format to be submitted to the USPTO in order to determine whether the invention described in the patent application is patentable. When submission of such data exceeds the USPTO's patent electronic filing system capacity, submission of large data submission in ASCII plain text format can be made on physical media. To that end, the rules of practice are amended to provide applicants with the ability to use physical media larger than compact discs (CDs) for submission of data in ASCII plain text format, such as an electronic version of amino acid and nucleotide sequence information, information compiled in a large table, or

information related to a computer program listing. Additionally, extraction of compressed data files, which had not been permitted in the past for certain submissions, will be permitted if the compressed data files are compliant with the requirements of the rules. Other rules related to certain obsolete and non-secure methods of presenting data are eliminated.

**DATES:** This rule is effective on November 15, 2021.

**FOR FURTHER INFORMATION CONTACT:** Mary C. Till, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at *Mary.Till@uspto.gov;* or Ali Salimi, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at *Ali.Salimi@uspto.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

In order to permit the submission of large amounts of data in patent applications where such a submission exceeds the capacity for filing via the USPTO patent electronic filing system, this rulemaking expands the types of physical media that can be used for such a submission to include read-only optical discs. The volume of applications in which such large amounts of data may need to be submitted is a small fraction of the total number of applications that the USPTO receives every year. Expanding the types of physical media that can be used by these applicants achieves the intent with minimal changes to the USPTO's processing of such large amounts of data.

With respect to the submission of data related to biotechnology inventions, the rules of practice no longer permit an applicant to rely on a previously submitted computer readable form (CRF) of required sequence information. The rules thus ensure the robustness of the data by requiring the applicant to confirm that the data presented is the correct information for the examiner to consider during the examination process. Since the rules will also permit an ASCII plain text file (.txt) to serve as both the sequence listing itself and the CRF of the sequence listing, these changes are expected to have a minimal impact on applicants in general.

The USPTO encourages applicants to file their patent applications via its USPTO patent electronic filing system and imposes a surcharge for non-electronic filing of an original patent application (excluding reissue, design, plant, and provisional applications), as mandated by section 10(h) of Public Law 112–29, September 16, 2011 (Leahy-Smith America Invents Act). The USPTO provides information (Legal Framework for Patent Electronic System) concerning electronic filing via the USPTO patent electronic filing system on its website at *www.uspto.gov/patents-application-process/filing-online/legal-framework-efs-web* and in section 502.05 of the Manual of Patent Examining Procedure (MPEP, Ninth Edition, Revision 10.2019). In particular, the USPTO patent electronic filing system permits submission of ASCII plain text files for submission of a ''Sequence Listing,'' a CRF of a ''Sequence Listing,'' ''Large Tables,'' and a ''Computer Program Listing Appendix.'' Although a USPTO patent electronic filing system submission of such ASCII plain text files is preferred, it is possible that the system limitations of the USPTO patent electronic filing system may not accommodate large ASCII plain text files. The changes to the rules of practice pertaining to a ''Sequence Listing,'' a CRF of a ''Sequence Listing,'' ''Large Tables,'' and a ''Computer Program Listing Appendix'' incorporate the requirements and conditions for such submissions set forth in the Legal Framework for Patent Electronic System into the rules of practice for filing such documents in electronic form and expand the types of physical media acceptable for submissions that exceed the USPTO patent electronic filing system limits. The changes do not alter the requirements and conditions set forth in the Legal Framework for Patent Electronic System.

*Submission of ASCII plain text files:* Electronic documents in ASCII file format that are to become part of the permanent USPTO records in the file of a patent application, reexamination, or supplemental examination proceeding that exceed the USPTO patent electronic filing system limits may be submitted on a compact disc. However, due to the limited storage capacity of compact discs, the USPTO is revising the rules to permit the use of Digital Video Disc-Recordable (DVD–R or DVD+R) as an alternative to a compact disc. These higher-capacity read-only optical discs, on which data is permanently recorded and cannot be changed or erased, significantly reduce the number of physical media required to accommodate large files.

In the case of a ''Sequence Listing,'' MPEP section 2422.03 indicates that if a new application is filed via the USPTO patent electronic filing system with an ASCII plain text file of a ''Sequence Listing'' that complies with the requirements of 37 CFR 1.824(a)(2) through (6) and (b), and if the applicant has not filed a ''Sequence Listing'' in a Portable Document Format (PDF) image file, the text file will serve as both the paper copy required by 37 CFR 1.821(c) and the CRF required by 37 CFR 1.821(e). This procedure is expressly incorporated into these changes to the rules of practice. The current size limitation for an ASCII plain text file of a ''Sequence Listing'' submitted via the USPTO patent electronic filing system is 100 megabytes (MB). Thus, if an applicant files an ASCII plain text file of a ''Sequence Listing'' that is 100 MB or less, that ASCII plain text file serves as both the ''Sequence Listing'' under 37 CFR 1.821(c) and the CRF of the ''Sequence Listing'' under 37 CFR 1.821(e). With respect to ''Large Tables'' and a ''Computer Program Listing Appendix,'' if ASCII plain text files are filed through the USPTO patent electronic filing system, then no separate submission of disc copies of ASCII plain text files are needed. However, the current system limit on ASCII plain text file submissions of ''Large Tables'' and a ''Computer Program Listing Appendix'' is 25 MB per submission. This limit, however, may not prevent an entirely electronic submission. According to the Legal Framework for Patent Electronic System, cited *supra,* a user may be able to break up a ''Computer Program Listing Appendix'' or ''Large Tables'' file that is larger than 25 MB into multiple files that are no larger than 25 MB each and submit those smaller files via the USPTO patent electronic filing system. If the user chooses to break up a large ''Computer Program Listing Appendix'' or ''Large Tables'' file so it may be submitted electronically, the file names must indicate their order (*e.g.,* ''1 of X,'' ''2 of X''). Files above the 25 MB limit for ''Large Tables'' and a ''Computer Program Listing Appendix'' (unless capable of being divided) and above 100 MB for a ''Sequence Listing'' must be submitted on read-only optical discs. Submission of a ''Sequence Listing'' as an ASCII plain text file, if it exceeds 100 MB, cannot be divided like a submission of a ''Large Table'' or a ''Computer Program Listing Appendix.'' Thus, any ''Sequence Listing'' greater than 100 MB must be submitted on read-only optical discs. Prior to this rulemaking, such files could not be compressed; thus, necessitating the use of multiple CD–ROMs or CD–Rs. The changes to the rules of practice will permit higher-capacity media as well as non-self-extracting file compression. By permitting file compression, material submitted on a read-only optical disc

can fit on a single disc with the data integrity remaining intact.

Prior to this rulemaking, the rules of practice (37 CFR 1.52(e), 1.96(c), and 1.824) recited the use of certain obsolete computer and operating system formats. Updated computer and operating system formats are now added, and references to obsolete media are eliminated. Changes to 37 CFR 1.58 recite the updated computer and operating system compatibilities.

When a patent application relies on subject matter from an ASCII plain text file submitted on physical media or via the USPTO patent electronic filing system, the patent specification must contain an incorporation by reference statement pursuant to 37 CFR 1.77(b)(5) or the Legal Framework for Patent Electronic System. The rules related to the arrangement of the specification clarify the required incorporation by reference statement. The granted patent or pre-grant publication of an application that includes an ASCII plain text file, whether submitted on optical read-only discs or via the USPTO patent electronic filing system, may not include the actual contents of the ASCII plain text file in the printed document. The incorporation by reference is necessary to treat the material in the ASCII plain text file as part of the patent or publication and to alert the public that the granted patent or the pre-grant publication includes additional material that constitutes part of the patent or publication. Although the present changes to the rules of practice permit a cross-reference to related applications to be included in the specification, in accordance with 37 CFR 1.76, it should be noted that the USPTO does not recognize a benefit or priority claim presented only in the specification for patent applications filed on or after September 16, 2012. For these applications or patents issued from such applications, a benefit claim (37 CFR 1.78) or priority claim (37 CFR 1.55) must be presented on an Application Data Sheet for an original application in order to be recognized by the USPTO.

*Submission of data related to disclosures of amino acids and/or nucleotides:* Any patent application that contains unbranched nucleotide sequences with 10 or more nucleotide bases or unbranched, non-D amino acid sequences with 4 or more amino acids, provided that there are at least 10 ''specifically defined'' nucleotides or 4 ''specifically defined'' amino acids, must contain a submission of such data referred to as a ''Sequence Listing'' and a CRF of the ''Sequence Listing.'' Prior to this rulemaking, a ''Sequence Listing'' exceeding the USPTO patent electronic filing system submission limit had to be submitted with a total of three disc copies to the USPTO to comply with the ''Sequence Listing'' regulation requirements. The three disc copies included (1) a first disc copy of the ASCII plain text file on a compact disc to comply with 37 CFR 1.821(c), (2) a second identical disc copy of the ASCII plain text file on compact disc to comply with the duplicate submission requirement in 37 CFR 1.52(e)(4) when submitting the 37 CFR 1.821(c) sequence listing, and (3) a CRF copy of the ASCII plain text file on compact disc, identical to the 37 CFR 1.821(c) submission. The present rule changes permit that a single read-only optical disc copy of a ''Sequence Listing'' as an ASCII plain text file can be submitted, and that such submission will comply with both the listing requirement (37 CFR 1.821(c)) and the CRF requirement (37 CFR 1.821(e)). For submission via the USPTO patent electronic filing system, the ASCII plain text file, not the PDF version, will serve to comply with both 37 CFR 1.821(c) and 1.821(e). The following table summarizes the mechanics of submitting a ''Sequence Listing'' under the changes to the rules of practice in applications, except for international applications during the international stage, based on the current USPTO patent electronic filing system limit of 100 MB for an ASCII plain text file and a system limit of 25 MB for PDF files.

| Size of ''Sequence Listing'' | Preferred submission | Acceptable submission | Specification statement requirements | Surcharge under 37 CFR 1.21(o) for submission of a ''Sequence Listing'' in electronic form |
|---|---|---|---|---|
| 100 MB or less ..... | ASCII plain text file submitted via the USPTO patent electronic filing system, complies with both 37 CFR 1.821(c) and 1.821(e), no separate CRF needed. | The ''Sequence Listing'' in physical paper copies or submitted via the USPTO patent electronic filing system as a PDF image file and a CRF on a read-only optical disc along with a statement that the CRF and the physical paper/PDF image file submission are the same. | Incorporation by reference of the ASCII plain text file into the specification (see MPEP 502.05). | None. |
| 101 MB to 299 MB .... | ASCII plain text file submitted on a read-only optical disc in a single copy, the single copy complies with both 37 CFR 1.821(c) and 1.821(e), no separate CRF needed. | The ''Sequence Listing'' in physical paper copies and a CRF on a read-only optical disc along with a statement that the CRF and the physical paper submission are the same. | Incorporation by reference of the ASCII plain text file into the specification (37 CFR 1.52(e)(8) as added in these rules). | None. |
| 300 MB to 799 MB .... | ASCII plain text file submitted on a read-only optical disc in a single copy, the single copy complies with both 37 CFR 1.821(c) and 1.821(e), no separate CRF needed. | The ''Sequence Listing'' in physical paper copies and a CRF on a read-only optical disc along with a statement that the CRF and the physical paper submission are the same. | Incorporation by reference of the ASCII plain text file into the specification (37 CFR 1.52(e)(8) as added in these rules). | 37 CFR 1.21(o)(1): Currently $1,060 for an undiscounted entity, $530 for a small entity, and $265 for a micro entity. |

| Size of "Sequence Listing" | Preferred submission | Acceptable submission | Specification statement requirements | Surcharge under 37 CFR 1.21(o) for submission of a "Sequence Listing" in electronic form |
|---|---|---|---|---|
| 800 MB or above ..... | ASCII plain text file submitted on a read-only optical disc in a single copy, the single copy complies with both 37 CFR 1.821(c) and 1.821(e), no separate CRF needed. Should more than one disc be needed, then only a single copy of the additional disc(s) would be needed, no additional CRF needed since the read-only optical discs (if multiple are needed) need NOT be submitted in duplicate. | The "Sequence Listing" in physical paper copies and a CRF on a read-only optical disc along with a statement that the CRF and the physical paper submission are the same. | Incorporation by reference of the ASCII plain text file into the specification (37 CFR 1.52(e)(8) as added in these rules). | 37 CFR 1.21(o)(2): Currently $10,500 for an undiscounted entity, $5,250 for a small entity, and $2,625 for a micro entity. |

Prior to this rulemaking, the rules of practice related to the form, content, and submission requirements of "Sequence Listings" complied with World Intellectual Property Organization (WIPO) Standard ST.25. The rule changes and modifications in this document also conform to WIPO Standard ST.25.

To simplify and streamline the processing of patent applications with sequences of amino acids and nucleotides, as defined in 37 CFR 1.821(a), submission of a "Sequence Listing" in ASCII plain text file format, either directly via the USPTO patent electronic filing system or on a read-only optical disc, will be sufficient to comply with the listing requirement and the CRF requirement (37 CFR 1.821(c) and 1.821(e)). That is, if a "Sequence Listing" in ASCII plain text file format is filed either directly via the USPTO patent electronic filing system or on a read-only optical disc, then no additional CRF copy will be needed. In such a situation, an incorporation by reference statement in the specification, in accordance with 37 CFR 1.77(b)(5), would still be required, except such a statement will not be required in an international application during the international stage. As with the rules prior to this rulemaking, the present changes continue to permit the submission of a "Sequence Listing" on physical sheets of paper or as a PDF image file. Furthermore, like the previous rules, the present rules will require payment of the application size fee (37 CFR 1.16(s)) for physical sheets of paper of a "Sequence Listing" or a PDF of a "Sequence Listing" that results in an application size that exceeds 100 sheets of paper. Submission of the "Sequence Listing" as a PDF or on physical sheets of paper will still require a separate CRF of the "Sequence Listing." Similarly, should the ASCII plain text file of the "Sequence Listing" exceed the system limits of the USPTO patent electronic filing system (currently at 100 MB), then a single copy of an ASCII plain text file of the "Sequence Listing" submitted on a read-only optical disc will not require a separate electronic copy of a CRF of the "Sequence Listing." In circumstances in which a separate CRF is filed, the statement, in accordance with 37 CFR 1.821(e)(1)(ii) and 1.821(e)(2)(ii), that the CRF is identical to either the PDF or the physical paper version of the "Sequence Listing" is required.

The rule changes no longer permit the transfer of a CRF from a parent or related application to another application. In light of the ability to download a "Sequence Listing" from granted U.S. patents and U.S. patent application publications via Public Patent Application Information Retrieval (PAIR) in the Supplemental Content tab, there is no longer a need for a CRF transfer. Such electronic copies of a "Sequence Listing" may also be available on another intellectual property office's website or on the WIPO—PATENTSCOPE website. In the extremely rare circumstance in which the "Sequence Listing" exceeds the download capability (currently 650 MB), then a request for the content of a granted U.S. patent or U.S. patent application publication (including the "Sequence Listing" submitted on disc) can be made to the Patent and Trademark Copy Fulfillment Branch. Therefore, these changes to the rules of practice eliminate the practice of CRF transfers.

As noted earlier, the present changes will continue to permit the submission of a "Sequence Listing" on physical sheets of paper or as a PDF image file. However, WIPO Standard ST.26 is currently scheduled to take effect on January 1, 2022, and will replace WIPO Standard ST.25. WIPO Standard ST.26 will require that a "Sequence Listing" must be presented as a single file in eXtensible Markup Language (XML). Presentation in XML file format cannot be accomplished on paper or as a PDF image file. As a result, in an original application filed on or after WIPO Standard ST.26 takes effect (currently scheduled to happen on January 1, 2022), the "Sequence Listing" part will not be accepted on physical sheets of paper or as a PDF image file. To prepare for the changes under WIPO Standard ST.26, the USPTO is revising the rules of practice to facilitate "Sequence Listing" submissions by permitting a single ASCII plain text file submission to both meet the "Sequence Listing" requirement and serve as the CRF of the "Sequence Listing." That is, under these rule changes, a single ASCII plain text file submission of a "Sequence Listing" will comply with both 37 CFR 1.821(c) and (e).

Prior to this rulemaking, 37 CFR 1.821(a) incorporated by reference six tables from Appendix 2 of WIPO Standard ST.25 that provide the nucleotide and amino acid symbols and feature tables. For convenience, the present rulemaking adds these tables as Appendices A–F of subpart G of part 1 (explicitly incorporating the text of the WIPO tables into the CFR). Prior to this rulemaking, 37 CFR 1.823(b) also included a table containing all numeric identifiers. To improve the readability of the regulations, this table is moved to Appendix G.

*Updates to amendment practice for "Large Tables," a "Computer Program Listing Appendix," and "Sequence Listings":* In general, the manner of making amendments in applications requires that the text of any added subject matter must be shown by underlining the added text and that the text of any deleted matter must be shown by strike-through. However, computer listings (37 CFR 1.96) and "Sequence Listings" (37 CFR 1.825)

were exempted from these general requirements (37 CFR 1.121(b)) prior to this rulemaking. The present changes to the rules of practice will require a description of the amendments made in ''Large Tables,'' a ''Computer Program Listing Appendix,'' and ''Sequence Listings'' to more easily and accurately identify any changes made to the information contained in such submissions (37 CFR 1.121(b)(6)).

This rule includes requirements for amendments to an ASCII plain text file containing ''Large Tables'' (37 CFR 1.58(g)) or a ''Computer Program Listing Appendix'' (37 CFR 1.96(c)(5)(i)) that are accomplished by a replacement of the ASCII plain text file. Providing a replacement may be required if, for example, the information on the disc is corrupted. A replacement ASCII plain text file must be submitted, either via the USPTO patent electronic filing system or on a read-only optical disc, together with an incorporation by reference of the material in the replacement ASCII plain text file in a separate paragraph of the specification; a statement that identifies the location of all deletions, replacements, or additions to the ASCII plain text file; and a statement that the replacement ASCII plain text file contains no new matter.

**Discussion of Specific Rules**

The following is a discussion of the amendments to 37 CFR part 1.

*Section 1.52*

The heading of § 1.52 is revised to read: Language, paper, writing, margins, read-only optical disc specifications.

Section 1.52(e) is amended to reference electronic documents ''submitted on a read-only optical disc,'' with additional conforming changes made throughout. Since § 1.52(e) only governs electronic documents submitted on discs, in particular, read-only optical discs, the heading is more specific to the types of electronic documents covered by the regulation.

Section 1.52(e)(1) is updated to specifically refer to a ''Computer Program Listing Appendix,'' as provided for in § 1.96(c), and to require that the ''Sequence Listing'' on a read-only optical disc submitted under § 1.821(c) must be in compliance with § 1.824. Section 1.52(e)(1) is revised to indicate that ''Large Tables,'' as described in § 1.58(c), may be submitted on a read-only optical disc to become part of the permanent USPTO record.

Section 1.52(e)(2) is revised to replace ''compact'' with ''read-only optical'' and to incorporate conformity to the International Organization for Standardization (ISO) 9660 standard, which was previously located in § 1.52(e)(3). Additionally, § 1.52(e)(2) maintains the availability of CD–ROM and CD–R as options for physical media (§ 1.52(e)(2)(i)) but also expands the types of media options to include DVD–R or DVD+R (§ 1.52(e)(2)(ii)).

Section 1.52(e)(3) is reorganized for improved readability. The computer compatibility (§ 1.52(e)(3)(i)) and operating system compatibility (§ 1.52(e)(3)(ii)) are expressly provided. Furthermore, the changes to the rules of practice indicate that the use of ASCII plain text is required when submitting files on physical media (§ 1.52(e)(3)(iii)). The changes permit file compression for ASCII plain text files, which must be done in accordance with §§ 1.58, 1.96, and 1.824, as applicable (§ 1.52(e)(3)(iii)).

Section 1.52(e)(4) is revised to eliminate its requirements for a duplicate copy and accompanying statement that the two discs are identical. References to ''Copy 1'' and ''Copy 2'' are deleted, and references to ''compact disc'' are updated to ''read-only optical disc.'' However, duplicate copies of read-only optical discs for ''Large Tables'' or a ''Computer Program Listing Appendix'' will still be required, and §§ 1.58 and 1.96 are amended to provide for such duplicate copies. Duplicate copies for ''Large Tables'' and a ''Computer Program Listing Appendix'' will still be required to be submitted since the Office of Patent Application Processing (OPAP) keeps a first copy for record retention purposes and a second copy in an artifact folder for use by the examiner during the patent examination process. A ''Sequence Listing,'' however, is not processed in the same manner. Accordingly, only a single copy of a read-only optical disc containing the ''Sequence Listing'' in ASCII plain text is needed, as such copy will serve as both the listing, as required by 37 CFR 1.821(c), and the CRF copy, as required by 37 CFR 1.821(e). Section 1.52(e)(4) is also revised to require that the read-only optical discs are enclosed in a hard case within an unsealed, padded, and protective mailing envelope and that such submission is accompanied by a transmittal letter. The information regarding the read-only optical disc to be included in the transmittal letter is expressly enumerated in items (i)–(vi) of this rule.

Section 1.52(e)(5) is revised to enumerate the labeling requirements for the read-only optical disc that had previously been enumerated in § 1.52(e)(6). The incorporation by reference found in the current § 1.52(e)(5) is deleted and moved to § 1.52(e)(8).

Section 1.52(e)(6) is revised to state that the read-only optical discs may not be retained as part of the patent application file and will not be returned to the applicant. The current USPTO processing of compact discs will equally apply to read-only optical discs. For ''Large Tables'' or a ''Computer Program Listing Appendix,'' the process involves the OPAP receiving the read-only optical discs, creating an artifact sheet for inclusion in the Office file wrapper, and reviewing the ASCII plain text file. A first copy of the read-only optical disc is kept for record retention purposes, and a second copy is maintained in an artifact folder for use by the examiner during the patent examination process. For a ''Sequence Listing,'' the present rule change requires the submission of a single read-only optical disc. Once the ''Sequence Listing'' is loaded into the USPTO's Supplemental Complex Repository for Examiners system, the physical media may be retained by the Patent Legal Research Center. A ''Sequence Listing'' from granted U.S. patents and U.S. patent application publications is available via Public PAIR in the Supplemental Content tab. Such electronic copies of a ''Sequence Listing'' may also be available on another intellectual property office's website or on the WIPO—PATENTSCOPE website. In the extremely rare circumstance in which the ''Sequence Listing'' exceeds the download capability (currently 650 MB), then a request for the content of a granted U.S. patent or U.S. patent application publication (including the ''Sequence Listing'' submitted on disc) can be made to the Patent and Trademark Copy Fulfillment Branch.

Section 1.52(e)(7) is revised to state that any amendment to the information on a read-only optical disc must be made in accordance with specified provisions, in compliance with § 1.58(g) for ''Large Tables,'' § 1.96(c)(5) for a ''Computer Program Listing Appendix,'' and § 1.825(b) for a ''Sequence Listing'' or a CRF of a ''Sequence Listing.''

Section 1.52(e)(8) is added to state that the specification must contain an incorporation by reference (§ 1.77(b)(5)) of the material contained on each read-only optical disc in a separate paragraph, except for an international application in the international stage. Additionally, the USPTO may require the applicant to amend the specification to include the material incorporated by reference.

Section 1.52(e)(9) is added to indicate that should a file be unreadable, then the USPTO will treat the submission as

not ever having been submitted. A file is unreadable if, for example, it is of a format that does not comply with the requirements of § 1.52(e)(2), it is corrupted, or it is written onto a defective read-only optical disc. In such a case, the OPAP will issue a notice indicating that the file is unreadable, and a replacement will be required.

Section 1.52(f) is amended to include the subtitle ''Determining application size fees for applications containing electronic documents submitted on a read-only optical disc or via the USPTO patent electronic filing system.''

Section 1.52(f)(1) is amended to clarify the determination of application size fees for application components submitted on a read-only optical disc in compliance with § 1.52(e), where an electronic form of any ''Sequence Listing,'' in compliance with either § 1.821(c) or (e), and any ''Computer Program Listing Appendix,'' in compliance with § 1.96(c), are specifically excluded from the application size fee determination. As stated in 35 U.S.C. 41(a)(1)(G), ''any sequence listing'' or a ''computer program listing'' submitted in electronic form is expressly excluded from any application size fee calculation. A ''Computer Program Listing Appendix'' is considered a ''computer program listing.''

Section 1.52(f)(2) is amended to clarify the determination of application size fees for applications submitted in whole or in part via the USPTO patent electronic filing system and to also clarify that any electronic form of a ''Sequence Listing,'' in compliance with either § 1.821(c) or (e), and any ''Computer Program Listing Appendix,'' in compliance with § 1.96(c), are specifically excluded from the application size fee determination. As stated in 35 U.S.C. 41(a)(1)(G), ''any sequence listing'' or a ''computer program listing'' submitted in electronic form is expressly excluded from any application size fee calculation. A ''Computer Program Listing Appendix'' is considered a ''computer program listing.''

Section 1.52(f)(3) is added to provide a cross-reference to existing § 1.21(o), which sets forth a surcharge for the submission of a ''Sequence Listing'' in electronic form in an application under 35 U.S.C. 111 or 371 that is 300 MB or larger in size. This means that a ''Sequence Listing'' submitted in electronic form on read-only optical discs, in compliance with either §§ 1.821(c) or 1.821(e), that is 300 MB or larger in size will incur a surcharge under § 1.21(o). When the electronic form of the ''Sequence Listing'' is between 300 MB and 800 MB, a surcharge under § 1.21(o)(1) will be required. If the electronic form of the ''Sequence Listing'' exceeds 800 MB, a surcharge under § 1.21(o)(2) will be imposed.

*Section 1.58*

Section 1.58(b) is revised to delete references to §§ 1.96(c) and 1.821(c) regarding tables submitted in electronic form and to set forth format requirements, from former § 1.58(c), that apply generally to chemical and mathematical formulas and tables.

Section 1.58(c) is rewritten to define ''Large Tables'' that may be submitted in electronic form in ASCII plain text via the USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e), excluding an international application during the international stage.

Section 1.58(d) is added to list the format requirements of ''Large Tables'' submitted in electronic form in ASCII plain text. The format requirements address the spatial relationship of table elements, computer compatibility, operating system compatibility, the use of ASCII plain text, the naming conventions for the *.txt file, and an incorporation by reference statement to be included in the specification, as per § 1.77(b)(5).

Section 1.58(e) is added to state that ''Large Tables'' submitted via the USPTO patent electronic filing system must not exceed 25 MB, and file compression is not permitted. It is noted that when submitting via the USPTO patent electronic filing system, it is possible to submit multiple files that are 25 MB or less in size, as per the Legal Framework for Patent Electronic System cited *supra.*

Section 1.58(f) is added to specify the technical requirements for ''Large Tables'' submitted on read-only optical discs, in compliance with § 1.52(e), and that compression is permitted. Section 1.58(f) also specifies the permitted manner of file compression.

Section 1.58(g) is added to provide the procedure that will be applicable should an amendment of one or more ''Large Tables'' be required. If an amendment is required to be made to a ''Large Table,'' then a replacement submission via the USPTO patent electronic filing system or on duplicate read-only optical discs will be necessary. An updated incorporation by reference statement will be required, along with the necessary statement regarding any deletions, replacements, or additions to the ASCII plain text file. Additionally, a statement that the replacement ASCII plain text file contains no new matter will also be required.

Section 1.58(h) is added to specify that should ''Large Tables'' be submitted as an ASCII plain text file on the application filing date, but no incorporation by reference of the material contained therein has been made, an amendment containing a separate paragraph incorporating by reference the material contained in the ASCII plain text file, as per § 1.77(b)(5), will be required.

Section 1.58(i) is added to require that any read-only optical disc for a ''Large Table'' be submitted in duplicate. Section 1.58(i) sets forth the criteria for labeling and necessary statements as to the identity of the read-only optical discs. This section indicates how the USPTO will treat the submission of the two read-only optical disc copies that are not identical to each other. Two discs would be considered not identical when, *e.g.,* the files contained on those discs are not the same. Duplicate copies for ''Large Tables'' are required to be submitted since the OPAP keeps a first copy for record retention purposes and a second copy in an artifact folder for use by the examiner during the patent examination process.

Section 1.58(j) is added to require that any amendment to the information on a read-only optical disc must be by way of duplicate replacement read-only optical discs, in compliance with § 1.58(g), where the replacement read-only optical disc and copy must be labeled ''COPY 1 REPLACEMENT MM/DD/YYYY'' (with the month, day, and year of creation indicated) and ''COPY 2 REPLACEMENT MM/DD/YYYY,'' respectively. This section indicates how the USPTO will treat the submission of the two replacement read-only optical disc copies that are not identical to each other. Two discs would be considered not identical when, *e.g.,* the files contained on those discs are not the same.

*Section 1.71*

Section 1.71(f) is revised to clarify that a ''Sequence Listing,'' if required or submitted under § 1.821(c), should be submitted on a separate sheet. This is directed to those submissions of the ''Sequence Listing'' submitted on physical sheets of paper or as a PDF image file via the USPTO patent electronic filing system. In such cases where there is a ''Sequence Listing'' and a separate CRF of the ''Sequence Listing,'' the ''Sequence Listing'' must be on a separate sheet(s).

*Section 1.77*

Section 1.77(b)(5) is revised to clarify when an incorporation by reference statement is needed. The rule change allows for incorporation by reference of ASCII plain text files submitted via the USPTO patent electronic filing system or on one or more read-only optical discs for a ''Computer Program Listing Appendix,'' a ''Sequence Listing,'' or ''Large Tables,'' as provided for in § 1.96(c), § 1.821(c), or § 1.58(c), respectively. The incorporation by reference statement must identify the names of each ASCII plain text file and specify, if applicable, the files contained on each of the read-only optical discs, their dates of creation, and the sizes of each ASCII plain text file in bytes.

Section 1.77(b)(13) is revised to clarify that the ''Sequence Listing'' required by § 1.821(c), submitted on physical sheets of paper or as a PDF image file, should follow the other sections of the specification.

*Section 1.96*

Section 1.96(a) is revised to replace ''printout'' with ''document.''

Section 1.96(c) is revised to set forth the requirements that apply to any ''Computer Program Listing Appendix'' that will not be part of the printed patent specification. The appendix must be submitted as an electronic document in ASCII plain text, whether submitted via the USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e). Requirements for the ''Computer Program Listing Appendix'' include that it must be incorporated by reference in the specification, as set forth in § 1.77(b)(5), and have certain computer compatibilities (§ 1.96(c)(1)), naming convention adherences (§ 1.96(c)(2)), and size limitations (§ 1.96(c)(3)).

Section 1.96(c)(4) is added to state requirements (i) through (vi), where the ''Computer Program Listing Appendix'' is submitted on a read-only optical disc, in compliance with § 1.52(e).

Section 1.96(c)(5) is added to state requirements (i) through (iv) for amendments to delete, replace, or add to the information in a ''Computer Program Listing Appendix'' submitted in electronic form in ASCII plain text.

Section 1.96(c)(6) is added to indicate that should a ''Computer Program Listing Appendix'' be present on the filing date of the application without an express incorporation by reference in the specification related to the material contained in the ASCII plain text file, in accordance with § 1.77(b)(5), then an amendment to include such a paragraph in the specification will be required.

Section 1.96(c)(7) is added to indicate that a submission of a ''Computer Program Listing Appendix'' on a read-only optical disc must be completed in duplicate, since the processing by the USPTO of a ''Computer Program Listing Appendix'' submitted on a read-only optical disc involves keeping a first copy for record retention purposes and using a second copy during the examination process. The new section sets forth the criteria for labeling and necessary statements as to the identity of the read-only optical discs. This section indicates how the USPTO will treat the submission of the two read-only optical disc copies should they not be identical. Two discs would be considered not identical when, *e.g.,* the files contained on those discs are not the same.

*Section 1.121*

Section 1.121(b) is revised, and § 1.121(b)(6) is added, to clarify that ''Large Tables,'' in accordance with § 1.58(c); a ''Computer Program Listing Appendix,'' in accordance with § 1.96(c)(5) and (7); and a ''Sequence Listing'' or CRF, in accordance with § 1.825, must be amended in accordance with § 1.58(g), § 1.96(c)(5), and § 1.825, respectively.

*Section 1.173*

The heading of § 1.173(b)(1) is revised to reflect that, in a reissue application, changes to the claims, ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), or a ''Sequence Listing'' (§ 1.821(c)) are made in a different manner than changes to other parts of the specification.

The manner of making changes to the specification, other than to the claims, set forth in current § 1.173(b)(1), is moved to new § 1.173(b)(1)(i). New § 1.173(b)(1)(i) specifies that it does not apply to changes to ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), or a ''Sequence Listing'' (§ 1.821(c)), in addition to not applying to changes to the claims. Additionally, the language from the current § 1.173(b)(1) stating that the paragraph is not applicable to discs is not included in the new § 1.173(b)(1)(i).

Section 1.173(b)(1)(ii) is added to specify that changes to ''Large Tables,'' a ''Computer Program Listing Appendix,'' or a ''Sequence Listing'' must be made in accordance with § 1.58(g) for ''Large Tables,'' § 1.96(c)(5) for a ''Computer Program Listing Appendix,'' and § 1.825 for a ''Sequence Listing.''

Section 1.173(d) is revised to exclude changes to ''Large Tables,'' a ''Computer Program Listing Appendix,'' or a ''Sequence Listing'' from the changes that must be shown by markings in a reissue application.

Section § 1.173(d)(2) is revised to delete the following: ''except for amendments submitted on compact discs (§§ 1.96 and 1.821(c)). Matter added by reissue on compact discs must be preceded with 'U' and end with 'U' to properly identify the material being added.''

*Section 1.530*

The heading of § 1.530(d)(1) is revised to reflect that, in a reexamination proceeding, changes to the claims, ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), and a ''Sequence Listing'' (§ 1.821(c)) are made in a different manner than changes to the other parts of the specification.

The manner of making changes to the specification, other than to the claims, is moved from § 1.530(d)(1) to new § 1.530(d)(1)(i). New § 1.530(d)(1)(i) specifies that it does not apply to changes to ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), and a ''Sequence Listing'' (§ 1.821(c)), in addition to not applying to changes to the claims.

Section 1.530(d)(1)(ii) is added to specify that changes to ''Large Tables,'' a ''Computer Program Listing Appendix,'' or a ''Sequence Listing'' must be made in accordance with § 1.58(g) for ''Large Tables,'' § 1.96(c)(5) for a ''Computer Program Listing Appendix,'' and § 1.825 for a ''Sequence Listing.''

*Section 1.821*

Section 1.821(a) is revised to remove all prior references to WIPO Standard ST.25 (1998) and instead cross-reference new Appendices A through F to 37 CFR part 1, subpart G, which will contain the updated 2009 version of the tables from WIPO Standard ST.25.

Section 1.821(c) is revised to delete references to a paper or compact disc copy (§ 1.52(e)), delete discussion of sequence identifiers, and indicate that the criteria for submission of a ''Sequence Listing,'' except for national stage entry under § 1.495(b)(1), is set forth in the new § 1.821(c)(1)-(3). Information about sequence identifiers has been moved to § 1.823(a).

Section 1.821(c)(1) is added to state that the ''Sequence Listing'' can be submitted as an ASCII plain text file via the USPTO patent electronic filing system or on a read-only optical disc copy, where the form and format of the ''Sequence Listing'' conforms to § 1.824 and an incorporation by reference statement, as required by § 1.823(b)(1),

is provided. Section 1.821(c)(2) is added to permit the submission of a ''Sequence Listing'' as a PDF file via the USPTO patent electronic filing system. Section 1.821(c)(3) is added to permit the submission of a ''Sequence Listing'' on physical sheets of paper.

Section 1.821(d) is revised to add that where a sequence is presented in a drawing, reference must be made to the sequence by use of a sequence identifier, either in the drawing or in the Brief Description of the Drawings, where the correlation between multiple sequences in the drawing and their sequence identifiers in the Brief Description is clear. A sequence found in a drawing sheet is not a ''Sequence Listing'' under § 1.821(c) or (e). Therefore, a separate ''Sequence Listing'' will be required to comply with § 1.821(c). If the ''Sequence Listing'' was submitted as a PDF image file via the USPTO patent electronic filing system or on physical sheets of paper, a separate CRF of the ''Sequence Listing'' will be required to comply with § 1.821(e). When providing reference to the sequence in the text of the description or claims, the numeric sequence identifier is preceded by ''SEQ ID NO:'' or the like, even if the actual sequence is also embedded in the text of the description or claims of the patent application. The use of ''SEQ ID NO:'' is preferred, but including ''or the like'' is intended to ensure that a formalities notice is not sent when an application uses, for example, ''SEQ NO.'' or ''Seq. Id. No.'' or any similar identification for an amino acid or nucleotide sequence in the specification or claims where it is clear that a sequence from the ''Sequence Listing'' is shown in the description or claims.

Section 1.821(e)(1) is added to set forth the requirements in § 1.821(e)(1)(i) for submission of a CRF of the ''Sequence Listing,'' in compliance with § 1.824, when a ''Sequence Listing'' was submitted as a PDF image file via the USPTO patent electronic filing system or on physical sheets of paper for an application filed under 35 U.S.C. 111(a). The rule (§ 1.821(e)(1)(ii)) also indicates that a statement is required to confirm that the CRF is identical to the ''Sequence Listing'' under § 1.821(c), when the ''Sequence Listing,'' under § 1.821(c), was submitted on physical sheets of paper or as a PDF image file via the USPTO patent electronic filing system.

Section 1.821(e)(2) is added to set forth the requirements where the ''Sequence Listing,'' under § 1.821(c), in an application submitted under 35 U.S.C. 371, is in a PDF file (§ 1.821(c)(2)) or on physical sheets of paper (§ 1.821(c)(3)), and not also as an ASCII plain text file, in compliance with § 1.824 (§ 1.821(c)(1)). In such situations, the following are required: (1) A copy of the ''Sequence Listing'' in CRF, in accordance with the requirements of § 1.824 (§ 1.821(e)(2)(i)); and (2) a statement that the sequence information contained in the CRF, submitted under § 1.821(e)(2)(i), is identical to the sequence information contained in the ''Sequence Listing'' submitted as a PDF image file (§ 1.821(c)(2)) or on physical sheets of paper (§ 1.821(c)(3)).

Section 1.821(e)(3) is added to set forth the requirements where a ''Sequence Listing'' in ASCII plain text format, in compliance with § 1.824, has not been submitted for an international application under the Patent Cooperation Treaty (PCT) and where that application contains disclosures of nucleotide and/or amino acid sequences, as defined in paragraph (a) of this section, and is to be searched by the United States International Searching Authority or examined by the United States International Preliminary Examining Authority. In such situations, the following are required: (1) A copy of the ''Sequence Listing'' in CRF, in accordance with the requirements of § 1.824 (§ 1.821(e)(3)(i)); (2) a late furnishing fee for providing a ''Sequence Listing'' in response to an invitation, as set forth in § 1.445(a)(5) (§ 1.821(e)(3)(ii)); and (3) a statement that the sequence information contained in the CRF submitted under § 1.821(e)(3)(i) does not go beyond the disclosure in the international application as filed, or a statement that the information recorded in the ASCII plain text file submitted under § 1.821(e)(3)(i) is identical to the sequence listing contained in the international application as filed, as applicable (§ 1.821(e)(3)(iii)).

Section 1.821(e)(4) is added to state that the CRF may not be retained as a part of the patent application file.

Section 1.821(f) is reserved. The text previously found in this section is now in §§ 1.1821(e)(1)(ii) and 1.821(e)(2)(ii).

Section 1.821(g) is revised to delete the reference to § 1.821(f). Additionally, § 1.821(g) is revised to state that any amendment to add or replace a ''Sequence Listing'' and CRF copy thereof must be submitted in accordance with the requirements of § 1.825.

Section 1.821(h) is revised to reference paragraph (e)(3) of this section instead of paragraphs (b) through (f). Section 1.821(h) is also revised to add that a late furnishing fee, as set forth in § 1.445(a)(5), is required where a ''Sequence Listing'' under PCT Rule 13*ter* is provided.

*Section 1.822*

Section 1.822(b) is revised to remove all prior references to WIPO Standard ST.25 (1998) and instead cross-reference new Appendices A through F to 37 CFR part 1, subpart G, which contain the updated 2009 version of the standard. Therefore, the statement regarding permission for incorporation by reference and information about the availability of ST.25 from WIPO's website is deleted.

Section 1.822(c)(1) is revised to remove the prior reference to WIPO Standard ST.25 (1998) and instead cross-reference new Appendix A to 37 CFR part 1, subpart G, which contains the updated 2009 version of the standard.

Section 1.822(c)(3) is rewritten to replace instances of ''typed'' with ''listed.''

Section 1.822(c)(5) is rewritten to replace ''presented'' with ''represented.''

Section 1.822(c)(6) is rewritten to delete ''be marked'' and instead state ''appear.''

Section 1.822(d)(1) is revised to remove the prior reference to WIPO Standard ST.25 (1998) and instead cross-reference new Appendix C to 37 CFR part 1, subpart G, which contains the updated 2009 version of the standard.

Section 1.822(d)(3) is rewritten to replace ''presented'' with ''represented.''

Section 1.822(d)(4) is rewritten to replace ''presented'' with ''represented.''

Section 1.822(d)(5) is rewritten to replace the second occurrence of ''presented'' with ''represented.''

Section 1.822(e) is rewritten to replace ''that is made up'' with the term ''composed.''

*Section 1.823*

The title of § 1.823 is rewritten as ''Requirements for content of a 'Sequence Listing' part of the specification.''

Section 1.823(a) is rewritten to enumerate in § 1.823(a)(1) through (8) the content requirements for a ''Sequence Listing'' previously contained in §§ 1.821(c), 1.823(a)(1), 1.823(a)(2), and 1.823(b). Such requirements include, but are not limited to, sequence identifiers, the order and presentation of items of information, mandatory and optional information, the format as to line spacing, and the use of numeric identifiers.

Section 1.823(b)(1) is revised to include a requirement for applications, other than an international application

in the international stage, to contain, in the specification of the patent application, an express incorporation by reference of the material submitted as an ASCII plain text file via the USPTO patent electronic filing system or on a read-only optical disc(s) identifying the name of the file, the date of creation, and the size of the file in bytes.

Section 1.823(b)(2) is revised to specifically exempt international applications during the international stage from the incorporation by reference requirement in § 1.823(b)(1).

Section 1.823(b)(3) is added to specifically set forth the format and content for a ''Sequence Listing'' that is submitted either as a PDF image file via the USPTO patent electronic filing system or on physical sheets of paper, as enumerated in § 1.823(b)(3)(i) through (vi).

*Section 1.824*

The title of § 1.824 is rewritten as ''Form and format for a nucleotide and/or amino acid sequence submission as an ASCII plain text file.''

Section 1.824(a) is reorganized for clarity and to apply to any ''Sequence Listing'' submission as an ASCII plain text file, rather than only to the CRF of a ''Sequence Listing.'' Section 1.824(a)(1) sets forth the computer compatibilities and operating systems permitted. Section 1.824(a)(2) indicates that ASCII plain text is required, that all printable characters are permitted, and that no nonprintable characters are permitted, except ASCII Carriage Return plus ASCII Line Feed (CRLF) or Line Feed (LF) as line terminators. Section 1.824(a)(3) sets forth the naming convention for the ASCII plain text file of the ''Sequence Listing.'' Section 1.824(a)(4) is revised to indicate that no more than 74 printable characters can be present on any given line. This number represents a change from current rules (where 72 characters are permitted). This change is intended to conform to the number of characters of a sequence listing as printed in a granted patent or a pre-grant publication.

Section 1.824(a)(5) indicates that pagination is not permitted and that the ASCII plain text file must be one continuous file, with no hard page breaks and no page numbering.

Section 1.824(b) indicates that the ASCII plain text file must contain a copy of a single ''Sequence Listing'' in a single file and may be submitted through either the USPTO patent electronic filing system or on a read-only optical disc(s), in compliance with § 1.52(e). Section 1.824(b)(2) provides that file compression may be used, and it defines the parameters for file compression for submission on a read-only optical disc. Section 1.824 is further revised to eliminate obsolete media on which the CRF of a ''Sequence Listing'' may be submitted. Section 1.824(c) is eliminated, since the types of media available are specifically enumerated in § 1.52(e). Section 1.824(d) is eliminated, since the same provision is now included in § 1.52(e)(6).

*Section 1.825*

Sections 1.825(a) and (b) are rewritten to distinguish between a newly added ''Sequence Listing'' and an amended/replacement ''Sequence Listing'' submission, respectively. Sections 1.825(a) and (b) are rewritten to state when a new or amended/replacement copy of the CRF is also required upon submission of a ''Sequence Listing.''

Section 1.825(a) is amended to provide for submission of a ''Sequence Listing'' not present on the application filing date (1) as an ASCII plain text file via either the USPTO patent electronic filing system or on a read-only optical disc, (2) as a PDF image file via the USPTO patent electronic filing system, or (3) on physical sheets of paper. The amendment adding the ''Sequence Listing'' must include a request that the amendment be made in one of two ways. First, a ''Sequence Listing'' submitted as an ASCII plain text file, in accordance with § 1.825(a)(2)(i), must be incorporated by reference in a separate paragraph of the specification. Second, a ''Sequence Listing'' submitted as a PDF image file via the USPTO patent electronic filing system, in accordance with § 1.825(a)(2)(ii), or on physical sheets of paper, in accordance with § 1.825(a)(2)(iii), must be placed after the abstract of the disclosure. Additionally, the ''Sequence Listing'' must be submitted together with two statements. The first statement must indicate the basis for the amendment, with specific references to particular parts of the application as originally filed (specification, claims, drawings) for all sequence data in the ''Sequence Listing'' (§ 1.821(a)(3)). The second statement must indicate that the ''Sequence Listing'' contains no new matter (§ 1.821(a)(4)). Finally, if needed, § 1.825(a)(5) provides that a new or substitute CRF must be submitted together with a statement, pursuant to § 1.825(a)(6), that the sequence information contained in the CRF is the same as the sequence information contained in the ''Sequence Listing'' that had been submitted as a PDF image file via the USPTO patent electronic filing system or on physical sheets of paper.

Section 1.825(b) is updated to require an amended/replacement ''Sequence Listing'' be submitted (1) as an ASCII plain text file via either the USPTO patent electronic filing system or on a read-only optical disc (§ 1.825(b)(1)(i)), (2) as a PDF image file via the USPTO patent electronic filing system (§ 1.825(b)(1)(ii)), or (3) on physical sheets of paper (§ 1.825(b)(1)(iii)). The amended/replacement ''Sequence Listing'' must include a request that it be made in one of two ways. First, the request can ask to incorporate by reference the amended/replacement ''Sequence Listing,'' submitted as an ASCII plain text file, in a separate paragraph of the specification (replacing any prior such paragraph, as applicable) (§ 1.825(b)(2)). Second, the request can ask to insert, after the abstract of the disclosure, the amended/replacement ''Sequence Listing'' that was submitted as a PDF image file via the USPTO patent electronic filing system or on physical sheets of paper (replacing any prior ''Sequence Listing,'' as applicable).

The amended/replacement ''Sequence Listing'' must be submitted together with three statements. The first statement must identify the location of all deletions, replacements, or additions to the ''Sequence Listing'' (§ 1.825(b)(3)). The second statement must indicate the basis for the amendment, with specific references to particular parts of the application as originally filed (specification, claims, drawings) for all amended sequence data in the replacement ''Sequence Listing'' (§ 1.825(b)(4)). The third statement must indicate that the replacement ''Sequence Listing'' contains no new matter (§ 1.825(b)(5)). Finally, if needed, a new or substitute CRF with the amendment incorporated therein (§ 1.825(b)(6)) must be submitted together with a statement that the sequence information contained in the CRF is the same as the sequence information contained in the replacement ''Sequence Listing'' submitted as a PDF image file via the USPTO patent electronic filing system or on physical sheets of paper (§ 1.825(b)(7)).

Section 1.825(c) replaces the current § 1.825(c), which is moved to § 1.825(d). Section 1.825(c) relates to the required incorporation by reference statement when submitting a ''Sequence Listing'' under § 1.821(c)(1). Should the application as originally filed not contain the incorporation by reference, it must be amended to contain such an incorporation by reference.

Section 1.825(d) contains the material from the current § 1.825(c).

**Subpart G of Part 1**

Appendices A through F are added, explicitly incorporating the text of Tables 1–6, Appendix 2, WIPO Standard ST.25 (2009) into the CFR. Appendix G is added to incorporate the table that was previously located in § 1.823.

**Comments and Responses**

The USPTO published a proposed rule on May 26, 2021, at 86 FR 28301, soliciting public comment on the proposed amendments to 37 CFR part 1 being adopted in this final rule. The USPTO received no comments from the public on the proposed rule.

**Rulemaking Considerations**

*A. Administrative Procedure Act*

The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. See *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking were not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))). However, the USPTO chose to seek public comment before implementing the rule to benefit from the public's input.

*B. Regulatory Flexibility Act*

For the reasons set forth herein, the Senior Counsel for Regulatory and Legislative Affairs of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

The USPTO amends the rules of practice to permit higher-capacity physical media to be submitted to accommodate patent applications for certain inventions that require significant data in ASCII plain text format that exceed the capacity of the Office's electronic filing system. Additionally, extraction of compressed data files, which had not been permitted in the past for certain submissions, is permitted if compliant with certain new procedures. Other rules related to certain obsolete and non-secure methods of presenting data are eliminated. Lastly, this rule removes an applicant's ability to rely on a previously submitted CRF of required sequence information (*i.e.,* CRF transfer requests are eliminated). In light of the ability to download a ''Sequence Listing'' from granted U.S. patents and U.S. patent application publications via Public PAIR in the Supplemental Content tab, there is no longer a need for a CRF transfer.

This rulemaking makes more flexible the process for submitting large amounts of data and streamlines other procedural steps related to data files associated with patent applications. This rulemaking's changes are largely procedural in nature and do not impose any additional requirements or fees on applicants. For the foregoing reasons, the changes in this rule will not have a significant economic impact on a substantial number of small entities.

*C. Executive Order 12866 (Regulatory Planning and Review)*

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*D. Executive Order 13563 (Improving Regulation and Regulatory Review)*

The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, to the extent feasible and applicable, the USPTO has: (1) Reasonably determined that the benefits of the rule justify its costs; (2) tailored the rule to impose the least burden on society consistent with obtaining the agency's regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens while maintaining flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

*E. Executive Order 13132 (Federalism)*

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

*F. Executive Order 13175 (Tribal Consultation)*

This rulemaking will not (1) have substantial direct effects on one or more Indian tribes, (2) impose substantial direct compliance costs on Indian tribal governments, or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

*G. Executive Order 13211 (Energy Effects)*

This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

*H. Executive Order 12988 (Civil Justice Reform)*

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

*I. Executive Order 13045 (Protection of Children)*

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

*J. Executive Order 12630 (Taking of Private Property)*

This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

*K. Congressional Review Act*

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to

result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

*L. Unfunded Mandates Reform Act of 1995*

The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

*M. National Environmental Policy Act of 1969*

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

*N. National Technology Transfer and Advancement Act of 1995*

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

*O. Paperwork Reduction Act of 1995*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995, the majority of the paperwork and other information collection burdens discussed in this rule have already been approved under the following Office of Management and Budget (OMB) Control Numbers: 0651–0024 (Sequence Listing), 0651–0031 (Patent Processing), 0651–0032 (Initial Patent Applications), and 0651–0064 (Patent Reexaminations and Supplemental Examinations).

Modifications to 0651–0024 because of this rulemaking have been submitted to OMB. Modifications include the removal of the Request for Transfer of a Computer Readable Form Under 37 CFR 1.821(e) (Form PTO/SB/93), which will result in a slight reduction in the burden associated with this information collection. The USPTO estimates that this information collection's annual burden will decrease by 1,550 responses and 155 burden hours. These burden reduction estimates are based on the prior OMB approved burdens (response volumes) associated with this information collection, which may be different from any forecasts mentioned in other parts of this rule.

The changes discussed in this rule do not affect the information collection requirements or burdens associated with 0651–0031, 0651–0032, and 0651–0064 listed above; therefore, the USPTO has not taken any additional actions on these information collections as a result of this rulemaking. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

*P. E-Government Act Compliance*

The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble and under the authority contained in 35 U.S.C. 2, as amended, the USPTO amends 37 CFR part 1 as follows:

## PART 1—RULES OF PRACTICE IN PATENT CASES

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

**Authority:** 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Amend § 1.52 by revising the section heading and paragraphs (e) and (f) to read as follows:

**§ 1.52 Language, paper, writing, margins, read-only optical disc specifications.**

* * * * *

(e) *Electronic documents submitted on a read-only optical disc that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application, reexamination, or supplemental examination proceeding.* (1) The following documents may be submitted to the Office on a read-only optical disc in compliance with this paragraph (e):

(i) A ''Computer Program Listing Appendix'' (*see* § 1.96(c));

(ii) A ''Sequence Listing'' (submitted under § 1.821(c) in compliance with § 1.824); or

(iii) ''Large Tables'' (*see* § 1.58(c)).

(2) Read-only optical disc as used in this part means a finalized disc, in conformance with International Organization for Standardization (ISO) 9660, on which the data is recorded so it is permanent and cannot be changed or erased, and is one of:

(i) Compact Disc-Read-Only Memory (CD–ROM) or a Compact Disc-Recordable (CD–R); or

(ii) Digital Video Disc-Recordable (DVD–R or DVD+R);

(3) Each read-only optical disc must conform to the following requirements:

(i) Computer compatibility: PC or Mac®;

(ii) Operating system compatibility: MS–DOS®, MS-Windows®, MacOS®, or Unix®/Linux®; and

(iii) The contents of each read-only optical disc must be in American Standard Code for Information Interchange (ASCII) plain text and if compressed, must be compressed in accordance with §§ 1.58, 1.96, and 1.824, as applicable.

(4) Each read-only optical disc must be enclosed in a hard case within an unsealed, padded, and protective mailing envelope, and must be accompanied by a transmittal letter in accordance with paragraph (a) of this section, including the following information:

(i) First-named inventor (if known);

(ii) Title of the invention;

(iii) Attorney docket or file reference number (if applicable);

(iv) Application number and filing date (if known);

(v) The operating system (MS–DOS®, MS-Windows®, Mac OS®, or Unix®/Linux®) used to produce the disc; and

(vi) The file(s) contained on the read-only optical disc, including the name of the file, the size of the file in bytes, and the date of creation.

(5) Each read-only optical disc must have a label permanently affixed thereto

on which the following information has been hand-printed or typed:

(i) First-named inventor (if known);

(ii) Title of the invention;

(iii) Attorney docket or file reference number (if applicable);

(iv) Application number and filing date (if known);

(v) Date on which the data were recorded on the read-only optical disc; and

(vi) Disc order (*e.g.,* ''1 of X''), if multiple read-only optical discs are submitted.

(6) Read-only optical discs will not be returned to the applicant and may not be retained as part of the patent application file.

(7) Any amendment to the information on a read-only optical disc must be by way of a replacement read-only optical disc, in compliance with § 1.58(g) for ''Large Tables,'' § 1.96(c)(5) for a ''Computer Program Listing Appendix,'' and § 1.825(b) for a ''Sequence Listing'' or Computer Readable Form (CRF) of a ''Sequence Listing.''

(8) The specification must contain an incorporation by reference of the material on each read-only optical disc in a separate paragraph (§ 1.77(b)(5)), identifying the name of each file, their date of creation, and their size in bytes, except for an international application in the international stage. The Office may require the applicant to amend the specification to include the material incorporated by reference.

(9) If a file is unreadable, it will be treated as not having been submitted, and a notice will be issued to require a compliant submission.

(f) *Determining application size fees for applications containing electronic documents submitted on a read-only optical disc or via the USPTO patent electronic filing system*—(1) *Submission on Read-Only Optical Discs:* The application size fee required by § 1.16(s) or 1.492(j), for an application component submitted in part on a read-only optical disc in compliance with paragraph (e) of this section, shall be determined such that each three kilobytes of content submitted on a read-only optical disc shall be counted as a sheet of paper. Excluded from this determination is any ASCII plain text file submitted on a read-only optical disc under paragraph (e) of this section containing:

(i) Any ''Sequence Listing'' or CRF of a ''Sequence Listing'' in compliance with § 1.821(c) or (e); or

(ii) Any ''Computer Program Listing Appendix'' in compliance with § 1.96(c).

(2) *Submission via the USPTO Patent Electronic Filing System:* The application size fee required by § 1.16(s) or § 1.492(j), for an application submitted in whole or in part via the USPTO patent electronic filing system, shall be determined such that the paper size equivalent will be considered to be 75% of the number of sheets of paper present in the specification and drawings in the application when entered into the Office file wrapper after being rendered by the USPTO patent electronic filing system. Excluded from this determination is any ASCII plain text file submitted via the USPTO patent electronic filing system containing:

(i) Any ''Sequence Listing'' or CRF of a ''Sequence Listing'' in compliance with § 1.821(c) or (e); or

(ii) Any ''Computer Program Listing Appendix'' in compliance with § 1.96(c).

(3) *Oversized submission.* Any submission of a ''Sequence Listing'' in electronic form of 300 MB–800 MB filed in an application under 35 U.S.C. 111 or 371 will be subject to the fee set forth in § 1.21(o)(1). Any submission of a ''Sequence Listing'' filed in electronic form that exceeds 800 MB in an application under 35 U.S.C. 111 or 371 will be subject to the fee set forth in § 1.21(o)(2).

■ 3. Amend § 1.58 by revising paragraphs (b) and (c) and adding paragraphs (d) through (j) to read as follows:

**§ 1.58 Chemical and mathematical formulas and tables.**

* * * * *

(b) Chemical and mathematical formulas and tables must be presented in compliance with § 1.52(a) and (b), except that chemical and mathematical formulas or tables may be placed in a landscape orientation if they cannot be presented satisfactorily in a portrait orientation. Typewritten characters used in such formulas and tables must be chosen from a block (nonscript) type font or lettering style having capital letters that should be at least 0.422 cm (0.166 inches) high (*e.g.,* preferably Arial, Times Roman, or Courier, with a font size of 12 points), but may be no smaller than 0.21cm (0.08 inches) high (*e.g.,* a font size of 6 points). A space at least 0.64 cm (0.25 inches) high should be provided between complex formulas and tables and the text. Chemical and mathematical formulas must be configured to maintain the proper positioning of their characters when displayed in order to preserve their intended meaning. Tables should have the lines and columns of data closely spaced to conserve space, consistent with a high degree of legibility.

(c) The following ''Large Tables'' may be submitted in electronic form in ASCII plain text via the USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e), excluding an international application during the international stage:

(1) Any individual table that is more than 50 pages in length; or

(2) Multiple tables, if the total number of pages of all the tables in an application exceeds 100 pages in length, where a table page is a page printed on paper, in conformance with paragraph (b) of this section.

(d) ''Large Tables'' submitted in electronic form in ASCII plain text must conform to the following requirements:

(1) Must maintain the spatial relationships (*e.g.,* alignment of columns and rows) of the table elements when displayed to visually preserve the relational information they convey;

(2) Must have the following compatibilities:

(i) Computer compatibility: PC or Mac®;

(ii) Operating system compatibility: MS–DOS®, MS-Windows®, Mac OS®, or Unix®/Linux®.

(3) Must be in ASCII plain text, where:

(i) All printable characters (including the space character) are permitted;

(ii) No nonprintable (ASCII control) characters are permitted, except ASCII Carriage Return plus ASCII Line Feed (CRLF) or Line Feed (LF) as line terminators.

(4) Must be named as *.txt, where ''*'' is one character or a combination of characters limited to upper- or lowercase letters, numbers, hyphens, and underscores and does not exceed 60 characters in total, excluding the extension. No spaces or other types of characters are permitted in the file name; and

(5) Must be incorporated by reference in a separate paragraph of the specification, in accordance with § 1.77(b)(5).

(e) ''Large Tables'' submitted via the USPTO patent electronic filing system must not exceed 25 MB, and file compression is not permitted.

(f) ''Large Tables'' submitted in compliance with § 1.52(e) via read-only optical disc must meet the following requirements:

(1) The ASCII plain text file may be compressed using WinZip®, 7-Zip, or Unix®/Linux® Zip;

(2) A compressed file must not be self-extracting; and

(3) A compressed ASCII plain text file that does not fit on a single read-only

optical disc may be split into multiple file parts in accordance with the target read-only optical disc size and labeled in compliance with § 1.52(e)(5)(vi).

(g) Any amendments to ''Large Tables'' in electronic form in ASCII plain text format must include:

(1) A replacement ASCII plain text file, in accordance with the requirements of paragraphs (d) through (f) of this section, submitted via the USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e), labeled as ''REPLACEMENT MM/DD/YYYY'' (with the month, day, and year of creation indicated);

(2) A request that the amendment be made by incorporation by reference of the material in the replacement ASCII plain text file, in a separate paragraph of the specification (replacing any prior such paragraph, as applicable) identifying the name of the file, the date of creation, and the size of the file in bytes (*see* § 1.77(b)(5));

(3) A statement that identifies the location of all deletions, replacements, or additions to the ASCII plain text file; and

(4) A statement that the replacement ASCII plain text file contains no new matter.

(h) The specification of an application with ''Large Tables'' as an ASCII plain text file, present on the application filing date, without an incorporation by reference of the material contained in the ASCII plain text file, must be amended to contain a separate paragraph incorporating by reference the material contained in the ASCII plain text file, in accordance with § 1.77(b)(5).

(i) Any read-only optical disc for ''Large Tables'' must be submitted in duplicate. The read-only optical disc and duplicate copy must be labeled ''Copy 1'' and ''Copy 2,'' respectively. The transmittal letter that accompanies the read-only optical discs must include a statement that the two read-only optical discs are identical. In the event that the two read-only optical disc copies are not identical, the Office will use the read-only optical disc labeled ''Copy 1'' for further processing.

(j) Any amendment to the information on a read-only optical disc must be by way of a replacement read-only optical disc, in compliance with paragraph (g) of this section, where the replacement read-only optical disc and copy must be labeled ''COPY 1 REPLACEMENT MM/DD/YYYY'' (with the month, day, and year of creation indicated), and ''COPY 2 REPLACEMENT MM/DD/YYYY,'' respectively.

■ 4. Amend § 1.71 by revising paragraph (f) to read as follows:

**§ 1.71 Detailed description and specification of the invention.**

* * * * *

(f) The specification must commence on a separate sheet. Each sheet including part of the specification may not include other parts of the application or other information. The claim(s), abstract, and ''Sequence Listing'' (if required or submitted under § 1.821(c)) should not be included on a sheet including any other part of the application.

* * * * *

■ 5. Amend § 1.77 by revising paragraphs (b)(5) and (13) to read as follows:

**§ 1.77 Arrangement of application elements.**

* * * * *

(b) * * *

(5) An incorporation by reference statement regarding the material in the one or more ASCII plain text files, submitted via the USPTO patent electronic filing system or on one or more read-only optical discs (*see* § 1.52(e)(8)), identifying the names of each file, the date of creation of each file, and the size of each file in bytes, for the following document types:

(i) A ''Computer Program Listing Appendix'' (*see* § 1.96(c));

(ii) A ''Sequence Listing'' (see § 1.821(c)); or

(iii) ''Large Tables'' (*see* § 1.58(c)).

* * * * *

(13) ''Sequence Listing,'' required by § 1.821(c), that is submitted as a Portable Document Format (PDF) file (as set forth in § 1.821(c)(1)(ii)) via the USPTO patent electronic filing system or on physical sheets of paper (as set forth in § 1.821(c)(1)(iii)).

* * * * *

■ 6. Amend § 1.96 by revising paragraphs (a) and (c) to read as follows:

**§ 1.96 Submission of computer program listings.**

(a) *General.* Descriptions of the operation and general content of computer program listings should appear in the description portion of the specification. A computer program listing for the purpose of this section is defined as a document that lists, in appropriate sequence, the instructions, routines, and other contents of a program for a computer. The program listing may be either in machine or machine-independent (object or source) language that will cause a computer to perform a desired procedure or task such as solving a problem, regulating the flow of work in a computer, or controlling or monitoring events. Computer program listings may be submitted in patent applications, as set forth in paragraphs (b) and (c) of this section.

* * * * *

(c) *As an appendix that will not be printed:* Any computer program listing may, and any computer program listing having over 300 lines (up to 72 characters per line) must, be submitted as an electronic document in ASCII plain text, whether submitted via the USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e). An electronic document containing such a computer program listing is to be referred to as a ''Computer Program Listing Appendix.'' The ''Computer Program Listing Appendix'' will not be part of the printed patent. The specification must include an incorporation by reference of the ''Computer Program Listing Appendix,'' in accordance with § 1.77(b)(5).

(1) A ''Computer Program Listing Appendix'' must conform to the following requirements:

(i) Computer compatibility: PC or Mac®;

(ii) Operating system compatibility: MS–DOS®, MS-Windows®, Mac OS®, or Unix®/Linux®;

(iii) Line terminator: ASCII CRLF or LF only; and

(iv) Control codes: The data must not be dependent on control characters or codes that are not defined in the ASCII character set.

(2) Each file must be named as *.txt, where ''*'' is one character or a combination of characters limited to upper- or lowercase letters, numbers, hyphens, and underscores and does not exceed 60 characters in total, excluding the extension. No spaces or other types of characters are permitted in the file name.

(3) Each file containing a ''Computer Program Listing Appendix'' submitted via the USPTO patent electronic filing system must not exceed 25 MB, and file compression is not permitted.

(4) A ''Computer Program Listing Appendix'' submitted in compliance with § 1.52(e) must conform to the following requirements:

(i) A separate read-only optical disc containing a ''Computer Program Listing Appendix'' must be submitted for each applicable application;

(ii) Multiple computer program listings for a single application may be placed on a single read-only optical disc;

(iii) Multiple read-only optical discs, containing one or more computer

program listings, may be submitted for a single application, if necessary;

(iv) Any computer program listing may, and a computer program listing having a nested file structure must, when submitted in compliance with § 1.52(e), be compressed into a single file using WinZip®, 7-Zip, or Unix®/Linux® Zip;

(v) Any compressed file must not be self-extracting; and

(vi) A compressed ASCII plain text file that does not fit on a single read-only optical disc may be split into multiple file parts, in accordance with the target read-only optical disc size and labeled in compliance with § 1.52(e)(5)(vi).

(5) Any amendments to a ''Computer Program Listing Appendix'' in electronic form in ASCII plain text format must include:

(i) A replacement ASCII plain text file, in accordance with the requirements of this paragraph (c), submitted via the USPTO patent electronic filing system, or on a read-only optical disc, in compliance with § 1.52(e), where the replacement read-only optical disc must be submitted in duplicate, and the read-only optical discs must be labeled ''COPY 1 REPLACEMENT MM/DD/YYYY'' (with the month, day, and year of creation indicated) and ''COPY 2 REPLACEMENT MM/DD/YYYY'';

(ii) A request that the amendment be made by incorporation by reference of the material in the replacement ASCII plain text file, in a separate paragraph of the specification (replacing any prior such paragraph) identifying the name of the file, the date of creation, and the size of the file in bytes (*see* § 1.77(b)(5));

(iii) A statement that identifies the location of all deletions, replacements, or additions to the ASCII plain text file; and

(iv) A statement that the replacement ASCII plain text file contains no new matter.

(6) The specification of a complete application with a ''Computer Program Listing Appendix'' as an ASCII plain text file, filed on the application filing date, without an incorporation by reference of the material contained in the ASCII plain text file, must be amended to contain a separate paragraph incorporating by reference the material contained in the ASCII plain text file, in accordance with § 1.77(b)(5).

(7) Any read-only optical disc for a ''Computer Program Listing Appendix'' must be submitted in duplicate. The read-only optical disc and duplicate copy must be labeled ''Copy 1'' and ''Copy 2,'' respectively. The transmittal letter that accompanies the read-only optical discs must include a statement that the two read-only optical discs are identical. In the event that the two read-only optical discs are not identical, the Office will use the read-only optical disc labeled ''Copy 1'' for further processing. Any amendment to the information on a read-only optical disc must be by way of a replacement read-only optical disc, in compliance with § 1.96(c)(5).

■ 7. Amend § 1.121 by revising paragraph (b) introductory text and adding paragraph (b)(6) to read as follows:

**§ 1.121 Manner of making amendments in applications.**

* * * * *

(b) *Specification.* Amendments to the specification, other than the claims, ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)(5) and (7)), and a ''Sequence Listing'' or CRF (§ 1.825), must be made by adding, deleting, or replacing a paragraph; by replacing a section; or by a substitute specification (§ 1.125), in the manner specified in this section.

* * * * *

(6) Changes to ''Large Tables,'' a ''Computer Program Listing Appendix,'' or a ''Sequence Listing'' must be made in accordance with § 1.58(g) for ''Large Tables,'' § 1.96(c)(5) for a ''Computer Program Listing Appendix,'' and § 1.825 for a ''Sequence Listing.''

* * * * *

■ 8. Amend § 1.173 by revising paragraphs (b)(1) and (d) to read as follows:

**§ 1.173 Reissue specification, drawings, and amendments.**

* * * * *

(b) * * *

(1) *Specification other than the claims, ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), or a ''Sequence Listing'' (§ 1.821(c)).* (i) Changes to the specification, other than to the claims, ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), or a ''Sequence Listing'' (§ 1.821(c)), must be made by submission of the entire text of an added or rewritten paragraph, including markings pursuant to paragraph (d) of this section, except that an entire paragraph may be deleted by a statement deleting the paragraph, without presentation of the text of the paragraph. The precise point in the specification where any added or rewritten paragraph is located must be identified.

(ii) Changes to ''Large Tables,'' a ''Computer Program Listing Appendix,'' or a ''Sequence Listing'' must be made in accordance with § 1.58(g) for ''Large Tables,'' § 1.96(c)(5) for a ''Computer Program Listing Appendix,'' and § 1.825 for a ''Sequence Listing.''

* * * * *

(d) *Changes shown by markings.* Any changes relative to the patent being reissued that are made to the specification, including the claims but excluding ''Large Tables,'' a ''Computer Program Listing Appendix,'' or a ''Sequence Listing,'' upon filing or by an amendment paper in the reissue application, must include the following markings:

(1) The matter to be omitted by reissue must be enclosed in brackets; and

(2) The matter to be added by reissue must be underlined.

* * * * *

■ 9. Amend § 1.530 by revising paragraph (d)(1) to read as follows:

**§ 1.530 Statement by patent owner in ex parte reexamination; amendment by patent owner in ex parte or inter partes reexamination; inventorship change in ex parte or inter partes reexamination.**

* * * * *

(d) * * *

(1) *Specification other than the claims, ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), or a ''Sequence Listing'' (§ 1.821(c)).* (i) Changes to the specification, other than to the claims, ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), or a ''Sequence Listing'' (§ 1.821(c)), must be made by submission of the entire text of an added or rewritten paragraph, including markings pursuant to paragraph (f) of this section, except that an entire paragraph may be deleted by a statement deleting the paragraph, without presentation of the text of the paragraph. The precise point in the specification where any added or rewritten paragraph is located must be identified.

(ii) Changes to ''Large Tables,'' a ''Computer Program Listing Appendix,'' or a ''Sequence Listing'' must be made in accordance with § 1.58(g) for ''Large Tables,'' § 1.96(c)(5) for a ''Computer Program Listing Appendix,'' and § 1.825 for a ''Sequence Listing.''

* * * * *

■ 10. Amend § 1.821 by revising paragraphs (a) and (c) through (e), removing and reserving paragraph (f), and revising paragraphs (g) and (h) to read as follows:

**§ 1.821 Nucleotide and/or amino acid sequence disclosures in patent applications.**

(a) Nucleotide and/or amino acid sequences, as used in §§ 1.821 through 1.825, are interpreted to mean an unbranched sequence of 4 or more amino acids or an unbranched sequence of 10 or more nucleotides. Branched sequences are specifically excluded from this definition. Sequences with fewer than four specifically defined nucleotides or amino acids are specifically excluded from this section. ''Specifically defined'' means those amino acids other than ''Xaa'' and those nucleotide bases other than ''n,'' defined in accordance with Appendices A through F to this subpart. Nucleotides and amino acids are further defined as follows:

(1) *Nucleotides.* Nucleotides are intended to embrace only those nucleotides that can be represented using the symbols set forth in Appendix A to this subpart. Modifications (*e.g.,* methylated bases) may be described as set forth in Appendix B to this subpart but shall not be shown explicitly in the nucleotide sequence.

(2) *Amino acids.* Amino acids are those L-amino acids commonly found in naturally occurring proteins and are listed in appendix C to this subpart. Those amino acid sequences containing D-amino acids are not intended to be embraced by this definition. Any amino acid sequence that contains post-translationally modified amino acids may be described as the amino acid sequence that is initially translated using the symbols shown in appendix C to this subpart, with the modified positions (*e.g.,* hydroxylations or glycosylations) being described as set forth in appendix D to this subpart, but these modifications shall not be shown explicitly in the amino acid sequence. Any peptide or protein that can be expressed as a sequence using the symbols in appendix C to this subpart, in conjunction with a description in the Feature section, to describe, for example, modified linkages, cross links and end caps, non-peptidyl bonds, etc., is embraced by this definition.

**Note 1 to paragraph (a):** Appendices A through F to this subpart contain Tables 1–6 of the World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

* * * * *

(c) Patent applications that contain disclosures of nucleotide and/or amino acid sequences, as defined in paragraph (a) of this section, must contain a ''Sequence Listing,'' which is a separate part of the specification containing each of those nucleotide and/or amino acid sequences and associated information using the symbols and format in accordance with the requirements of §§ 1.822 and 1.823. The ''Sequence Listing'' must be submitted as follows, except for a national stage entry under § 1.495(b)(1), where the ''Sequence Listing'' has been previously communicated by the International Bureau or originally filed in the United States Patent and Trademark Office and complies with Patent Cooperation Treaty (PCT) Rule 5.2:

(1) As an ASCII plain text file, in compliance with § 1.824, submitted via the USPTO patent electronic filing system or on a read-only optical disc under § 1.52(e), accompanied by an incorporation by reference statement of the ASCII plain text file, in a separate paragraph of the specification, in accordance with § 1.77(b)(5);

(2) As a PDF file via the USPTO patent electronic filing system; or

(3) On physical sheets of paper.

(d) Where the description or claims of a patent application discuss a sequence that is set forth in the ''Sequence Listing,'' in accordance with paragraph (c) of this section, reference must be made to the sequence by use of a sequence identifier (§ 1.823(a)(5)), preceded by ''SEQ ID NO:'' or the like, in the text of the description or claims, even if the sequence is also embedded in the text of the description or claims of the patent application. Where a sequence is presented in a drawing, reference must be made to the sequence by use of the sequence identifier (§ 1.823(a)(5)), either in the drawing or in the Brief Description of the Drawings, where the correlation between multiple sequences in the drawing and their sequence identifiers (§ 1.823(a)(5)) in the Brief Description is clear.

(e)(1) If the ''Sequence Listing'' under paragraph (c) of this section is submitted in an application filed under 35 U.S.C. 111(a) as a PDF file (§ 1.821(c)(2)) via the USPTO patent electronic filing system or on physical sheets of paper (§ 1.821(c)(3)), then the following must be submitted:

(i) A CRF of the ''Sequence Listing,'' in accordance with the requirements of § 1.824; and

(ii) A statement that the sequence information contained in the CRF submitted under paragraph (e)(1)(i) of this section is identical to the sequence information contained in the ''Sequence Listing'' under paragraph (c) of this section.

(2) If the ''Sequence Listing'' under paragraph (c) of this section in an application submitted under 35 U.S.C. 371 is a PDF file (paragraph (c)(2) of this section) or on physical sheets of paper (paragraph (c)(3) of this section), and not also as an ASCII plain text file, in compliance with § 1.824 (paragraph (c)(1) of this section), then the following must be submitted:

(i) A CRF of the ''Sequence Listing,'' in accordance with the requirements of § 1.824; and

(ii) A statement that the sequence information contained in the CRF submitted under paragraph (e)(2)(i) of this section is identical to the sequence information contained in the ''Sequence Listing'' under paragraph (c)(2) or (3) of this section.

(3) If a ''Sequence Listing'' in ASCII plain text format, in compliance with § 1.824, has not been submitted for an international application under the PCT, and that application contains disclosures of nucleotide and/or amino acid sequences, as defined in paragraph (a) of this section, and is to be searched by the United States International Searching Authority or examined by the United States International Preliminary Examining Authority, then the following must be submitted:

(i) A CRF of the ''Sequence Listing,'' in accordance with the requirements of § 1.824;

(ii) The late furnishing fee for providing a ''Sequence Listing'' in response to an invitation, as set forth in § 1.445(a)(5); and

(iii) A statement that the sequence information contained in the CRF, submitted under paragraph (e)(3)(i) of this section, does not go beyond the disclosure in the international application as filed, or a statement that the information recorded in the ASCII plain text file, submitted under paragraph (e)(3)(i) of this section, is identical to the sequence listing contained in the international application as filed, as applicable.

(4) The CRF may not be retained as a part of the patent application file.

* * * * *

(g) If any of the requirements of paragraphs (b) through (e) of this section are not satisfied at the time of filing under 35 U.S.C. 111(a) or at the time of entering the national stage under 35 U.S.C. 371, the applicant will be notified and given a period of time within which to comply with such requirements in order to prevent abandonment of the application. Any amendment to add or replace a ''Sequence Listing'' and CRF copy thereof in reply to a requirement under

this paragraph must be submitted in accordance with the requirements of § 1.825.

(h) If any of the requirements of paragraph (e)(3) of this section are not satisfied at the time of filing an international application under the PCT, and the application is to be searched by the United States International Searching Authority or examined by the United States International Preliminary Examining Authority, the applicant may be sent a notice necessitating compliance with the requirements within a prescribed time period. Where a ''Sequence Listing'' under PCT Rule 13*ter* is provided in reply to a requirement under this paragraph, it must be accompanied by a statement that the information recorded in the ASCII plain text file under paragraph (e)(3)(i) of this section is identical to the sequence listing contained in the international application as filed, or does not go beyond the disclosure in the international application as filed, as applicable. It must also be accompanied by the late furnishing fee, as set forth in § 1.445(a)(5). If the applicant fails to timely provide the required CRF, the United States International Searching Authority shall search only to the extent that a meaningful search can be performed without the CRF, and the United States International Preliminary Examining Authority shall examine only to the extent that a meaningful examination can be performed without the CRF.

■ 11. Amend § 1.822 by:
■ a. Revising paragraphs (b) and (c)(1), (3), (5) and (6);
■ b. Adding note 2 to paragraph (c);
■ c. Revising paragraphs (d)(1) and (3) through (5);
■ d. Adding note 3 to paragraph (d); and
■ e. Revising paragraph (e).

The revisions and additions read as follows:

**§ 1.822 Symbols and format to be used for nucleotide and/or amino acid sequence data.**

* * * * *

(b) The code for representing the nucleotide and/or amino acid sequence characters shall conform to the code set forth in appendices A and C to this subpart. No code other than that specified in these sections shall be used in nucleotide and amino acid sequences. A modified base or modified or unusual amino acid may be presented in a given sequence as the corresponding unmodified base or amino acid if the modified base or modified or unusual amino acid is one of those listed in appendices B and D to this subpart, and the modification is also set forth in the Feature section. Otherwise, each occurrence of a base or amino acid not appearing in appendices A and C, shall be listed in a given sequence as ''n'' or ''Xaa,'' respectively, with further information, as appropriate, given in the Feature section, by including one or more feature keys listed in appendices E and F to this subpart.

**Note 1 to paragraph (b):** Appendices A through F to this subpart contain Tables 1–6 of the World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

(c) * * *

(1) A nucleotide sequence shall be listed using the lowercase letter for representing the one-letter code for the nucleotide bases set forth in appendix A to this subpart.

* * * * *

(3) The bases in the coding parts of a nucleotide sequence shall be listed as triplets (codons). The amino acids corresponding to the codons in the coding parts of a nucleotide sequence shall be listed immediately below the corresponding codons. Where a codon spans an intron, the amino acid symbol shall be listed below the portion of the codon containing two nucleotides.

* * * * *

(5) A nucleotide sequence shall be represented, only by a single strand, in the 5 to 3 direction, from left to right.

(6) The enumeration of nucleotide bases shall start at the first base of the sequence with number 1. The enumeration shall be continuous through the whole sequence in the direction 5 to 3. The enumeration shall appear in the right margin, next to the line containing the one-letter codes for the bases and giving the number of the last base of that line.

* * * * *

**Note 2 to paragraph (c):** Appendices A through F to this subpart contain Tables 1–6 of the World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

(d) * * *

(1) The amino acids in a protein or peptide sequence shall be listed using the three-letter abbreviation, with the first letter as an uppercase character, as in Appendix C to this subpart.

* * * * *

(3) An amino acid sequence shall be represented in the amino to carboxy direction, from left to right, and the amino and carboxy groups shall not be represented in the sequence.

(4) The enumeration of amino acids may start at the first amino acid of the first mature protein, with the number 1. When represented, the amino acids preceding the mature protein (*e.g.,* pre-sequences, pro-sequences, pre-pro-sequences, and signal sequences) shall have negative numbers, counting backwards starting with the amino acid next to number 1. Otherwise, the enumeration of amino acids shall start at the first amino acid at the amino terminal as number 1, and shall appear below every five amino acids of the sequence. The enumeration method for amino acid sequences that is set forth in this section remains applicable for amino acid sequences that are circular in configuration, with the exception that the designation of the first amino acid of the sequence may be made at the option of the applicant.

(5) An amino acid sequence that contains internal terminator symbols (*e.g.,* ''Ter,'' ''*,'' or ''.,'' etc.) may not be represented as a single amino acid sequence but shall be represented as separate amino acid sequences.

**Note 3 to paragraph (d):** Appendices A through F to this subpart contain Tables 1–6 of the World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

(e) A sequence with a gap or gaps shall be represented as a plurality of separate sequences, with separate sequence identifiers (§ 1.823(a)(5)), with the number of separate sequences being equal in number to the number of continuous strings of sequence data. A sequence composed of one or more noncontiguous segments of a larger sequence or segments from different sequences shall be presented as a separate sequence.

■ 12. Revise § 1.823 to read as follows:

**§ 1.823 Requirements for content of a ''Sequence Listing'' part of the specification.**

(a) The ''Sequence Listing'' must comply with the following:

(1) The order and presentation of the items of information in the ''Sequence Listing'' shall conform to the arrangement in appendix G to this subpart. The submission of those items of information designated with an ''M'' is mandatory. The submission of those items of information designated with an ''O'' is optional.

(2) Each item of information shall begin on a new line, with the numeric

identifier enclosed in angle brackets, as shown in appendix G to this subpart.

(3) Set forth numeric identifiers <110> through <170> at the beginning of the ''Sequence Listing.''

(4) Include each disclosed nucleotide and/or amino acid sequence, as defined in § 1.821(a).

(5) Assign a separate sequence identifier to each sequence, beginning with 1 and increasing sequentially by integers, and include the sequence identifier in numeric identifier <210>.

(6) Use the code ''000'' in place of the sequence where no sequence is present for a sequence identifier.

(7) Include the total number of SEQ ID NOs in numeric identifier <160>, as defined in appendix G to this subpart, whether followed by a sequence or by the code ''000.''

(8) Must not contain more than 74 characters per line.

(b)(1) Unless paragraph (b)(2) of this section applies, if the ''Sequence Listing'' required by § 1.821(c) is submitted as an ASCII plain text file via the USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e), then the specification must contain a statement in a separate paragraph (see § 1.77(b)(5)) that incorporates by reference the material in the ASCII plain text file identifying:

(i) The name of the file;

(ii) The date of creation; and

(iii) The size of the file in bytes.

(2) If the ''Sequence Listing'' required by § 1.821(c) is submitted as an ASCII plain text file via the USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e) for an international application during the international stage, then incorporation by reference of the material in the ASCII plain text file is not required.

(3) A ''Sequence Listing'' required by § 1.821(c) that is submitted as a PDF file (§ 1.821(c)(2)) via the USPTO patent electronic filing system or on physical sheets of paper (§ 1.821(c)(3)), setting forth the nucleotide and/or amino acid sequence and associated information in accordance with paragraph (a) of this section:

(i) Must begin on a new page;

(ii) Must be titled ''Sequence Listing'';

(iii) Must not include material other than the ''Sequence Listing'' itself;

(iv) Must have sheets containing no more than 66 lines, with each line containing no more than 74 characters;

(v) Should have sheets numbered independently of the numbering of the remainder of the application; and

(vi) Should use a fixed-width font exclusively throughout.

■ 13. Revise § 1.824 to read as follows:

**§ 1.824 Form and format for a nucleotide and/or amino acid sequence submission as an ASCII plain text file.**

(a) A ''Sequence Listing'' under § 1.821(c)(1) and the CRF required by § 1.821(e) submitted as an ASCII plain text file may be created by any means, such as text editors, nucleotide/amino acid sequence editors, or other custom computer programs; however, the ASCII plain text file must conform to the following requirements:

(1) Must have the following compatibilities:

(i) Computer compatibility: PC or Mac®; and

(ii) Operating system compatibility: MS–DOS®, MS-Windows®, Mac OS®, or Unix®/Linux®.

(2) Must be in ASCII plain text, where:

(i) All printable characters (including the space character) are permitted; and

(ii) No nonprintable (ASCII control) characters are permitted, except ASCII CRLF or LF as line terminators.

(3) Must be named as *.txt, where ''*'' is one character or a combination of characters limited to upper- or lowercase letters, numbers, hyphens, and underscores and does not exceed 60 characters in total, excluding the extension. No spaces or other types of characters are permitted in the file name.

(4) Must contain no more than 74 printable characters in each line.

(5) Pagination is not permitted; the ASCII plain text file must be one continuous file, with no ''hard page break'' codes and no page numbering.

(b) The ASCII plain text file must contain a copy of a single ''Sequence Listing'' in a single file and be submitted either:

(1) Electronically via the USPTO patent electronic filing system, where the file must not exceed 100 MB, and file compression is not permitted; or

(2) On a read-only optical disc(s), in compliance with § 1.52(e), where:

(i) A file that is not compressed must be contained on a single read-only optical disc;

(ii) The file may be compressed using WinZip®, 7-Zip, or Unix®/Linux® Zip;

(iii) A compressed file must not be self-extracting; and

(iv) A compressed ASCII plain text file that does not fit on a single read-only optical disc may be split into multiple file parts, in accordance with the target read-only optical disc size, and labeled in compliance with § 1.52(e)(5)(vi).

■ 14. Revise § 1.825 to read as follows:

**§ 1.825 Amendment to add or replace a ''Sequence Listing'' and CRF copy thereof.**

(a) Any amendment adding a ''Sequence Listing'' (§ 1.821(c)) after the application filing date must include:

(1) A ''Sequence Listing,'' in accordance with the requirements of §§ 1.821 through 1.824, submitted as:

(i) An ASCII plain text file, under § 1.821(c)(1), via the USPTO patent electronic filing system or on a read-only optical disc, in compliance with § 1.52(e);

(ii) A PDF file via the USPTO patent electronic filing system; or

(iii) Physical sheets of paper;

(2) A request that the amendment be made:

(i) By incorporation by reference of the material in the ASCII plain text file, in a separate paragraph of the specification, identifying the name of the file, the date of creation, and the size of the file in bytes (*see* § 1.77(b)(5)), for a ''Sequence Listing'' submitted under § 1.821(c)(1), except when submitted to the United States International Preliminary Examining Authority for an international application; or

(ii) By inserting, after the abstract of the disclosure, a ''Sequence Listing'' submitted as a PDF file under § 1.821(c)(2) or submitted on physical sheets of paper under § 1.821(c)(3), except when submitted to the United States International Preliminary Examining Authority for an international application;

(3) A statement that indicates the basis for the amendment, with specific references to particular parts of the application (specification, claims, drawings) for all sequence data in the ''Sequence Listing'' in the application as originally filed;

(4) A statement that the ''Sequence Listing'' includes no new matter;

(5) A new or substitute CRF under § 1.821(e), if:

(i) The added ''Sequence Listing'' is submitted as a PDF file, under § 1.821(c)(2), or on physical sheets of paper, under § 1.821(c)(3); and

(ii) A CRF, under § 1.821(e), was not submitted, not compliant with § 1.824, or not the same as the ''Sequence Listing''; and

(6) A statement that the sequence information contained in the CRF is the same as the sequence information contained in the added ''Sequence Listing,'' if submitted as a PDF file, under § 1.821(c)(2), or on physical sheets of paper, under § 1.821(c)(3).

(b) Any amendment to a ''Sequence Listing'' (§ 1.821(c)) must include:

(1) A replacement ''Sequence Listing,'' in accordance with the requirements of §§ 1.821 through 1.824, submitted as:

(i) An ASCII plain text file, under § 1.821(c)(1), via the USPTO patent electronic filing system, or on a read-only optical disc, in compliance with § 1.52(e), labeled as ''REPLACEMENT MM/DD/YYYY'' (with the month, day, and year of creation indicated);

(ii) A PDF file via the USPTO patent electronic filing system; or

(iii) Physical sheets of paper;

(2) A request that the amendment be made:

(i) By incorporation by reference of the material in the ASCII plain text file, in a separate paragraph of the specification (replacing any prior such paragraph, as applicable) identifying the name of the file, the date of creation, and the size of the file in bytes (see § 1.77(b)(5)) for a ''Sequence Listing'' under § 1.821(c)(1), except when submitted to the United States International Preliminary Examining Authority for an international application; or

(ii) By placing, after the abstract of the disclosure, a ''Sequence Listing'' submitted as a PDF file, under § 1.821(c)(2), or on physical sheets of paper, under § 1.821(c)(3) (replacing any prior ''Sequence Listing,'' as applicable), except when submitted to the United States International Preliminary Examining Authority for an international application;

(3) A statement that identifies the location of all deletions, replacements, or additions to the ''Sequence Listing'';

(4) A statement that indicates the basis for the amendment, with specific references to particular parts of the application (specification, claims, drawings) as originally filed for all amended sequence data in the replacement ''Sequence Listing'';

(5) A statement that the replacement ''Sequence Listing'' includes no new matter;

(6) A new or substitute CRF, under § 1.821(e), with the amendment incorporated therein, if:

(i) The replacement ''Sequence Listing'' is submitted as a PDF file, under § 1.821(c)(2), or on physical sheets of paper, under § 1.821(c)(3); and

(ii) A CRF, under § 1.821(e), was not submitted, not compliant with § 1.824, or not the same as the submitted ''Sequence Listing''; and

(7) A statement that the sequence information contained in the CRF is the same as the sequence information contained in the replacement ''Sequence Listing'' when submitted as a PDF file, under § 1.821(c)(2), or on physical sheets of paper, under § 1.821(c)(3).

(c) The specification of a complete application, filed on the application filing date, with a ''Sequence Listing'' as an ASCII plain text file, under § 1.821(c)(1), without an incorporation by reference of the material contained in the ASCII plain text file, must be amended to contain a separate paragraph incorporating by reference the material contained in the ASCII plain text file, in accordance with § 1.77(b)(5), except for international applications during the international stage or national stage.

(d) Any appropriate amendments to the ''Sequence Listing'' in a patent (*e.g.,* by reason of reissue, reexamination, or a certificate of correction) must comply with the requirements of paragraph (b) of this section.

■ 15. Redesignate appendix A to subpart G of part 1 as appendix G to subpart G, add appendices A through F to subpart G, and revise the newly redesignated appendix G to read as follows:

Sec.

* * * * *

Appendix A to Subpart G of Part 1—List of Nucleotides

Appendix B to Subpart G of Part 1—List of Modified Nucleotides

Appendix C to Subpart G of Part 1—List of Amino Acids

Appendix D to Subpart G of Part 1—List of Modified and Unusual Amino Acids

Appendix E to Subpart G of Part 1—List of Feature Keys Related to Nucleotide Sequences

Appendix F to Subpart G of Part 1—List of Feature Keys Related to Protein Sequences

Appendix G to Subpart G of Part 1—Numeric Identifiers

## Appendix A to Subpart G of Part 1—List of Nucleotides

*Source:* World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

| Symbol | Meaning | Origin of designation |
|---|---|---|
| A | a | *A*denine. |
| G | g | *G*uanine. |
| C | c | *C*ytosine. |
| T | t | Thymine. |
| U | u | *U*racil. |
| r | g or a | Purine. |
| y | t/u or c | P*y*rimidine. |
| m | a or c | A*m*ino. |
| k | g or t/u | *K*eto. |
| s | g or c | strong interactions 3H-bonds. |
| w | a or t/u | *w*eak interactions 2H-bonds. |
| b | g or c or t/u | not a. |
| d | a or g or t/u | not c. |
| h | a or c or t/u | not g. |
| v | a or g or c | not t, not u. |
| n | a or g or c or t/u, unknown, or other | A*n*y. |

## Appendix B to Subpart G of Part 1—List of Modified Nucleotides

*Source:* World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

| Symbol | Meaning |
|---|---|
| ac4c | 4-acetylcytidine. |
| chm5u | 5-(carboxyhydroxymethyl)uridine. |

| Symbol | Meaning |
|---|---|
| cm | 2′-O-methylcytidine. |
| cmnm5s2u | 5-carboxymethylaminomethyl-2-thiouridine. |
| cmnm5u | 5-carboxymethylaminomethyluridine. |
| d | Dihydrouridine. |
| fm | 2′-O-methylpseudouridine. |
| gal q | beta, D-galactosylqueuosine. |
| gm | 2′-O-methylguanosine. |
| i | Inosine. |
| i6a | N6-isopentenyladenosine. |
| m1a | 1-methyladenosine. |
| m1f | 1-methylpseudouridine. |
| m1g | 1-methylguanosine. |
| m1i | 1-methylinosine. |
| m22g | 2,2-dimethylguanosine. |
| m2a | 2-methyladenosine. |
| m2g | 2-methylguanosine. |
| m3c | 3-methylcytidine. |
| m5c | 5-methylcytidine. |
| m6a | N6-methyladenosine. |
| m7g | 7-methylguanosine. |
| mam5u | 5-methylaminomethyluridine. |
| mam5s2u | 5-methoxyaminomethyl-2-thiouridine. |
| man q | beta, D-mannosylqueuosine. |
| mcm5s2u | 5-methoxycarbonylmethyl-2-thiouridine. |
| mcm5u | 5-methoxycarbonylmethyluridine. |
| mo5u | 5-methoxyuridine. |
| ms2i6a | 2-methylthio-N6-isopentenyladenosine. |
| ms2t6a | N-((9-beta-D-ribofuranosyl-2-methylthiopurine-6-yl)carbamoyl)threonine. |
| mt6a | N-((9-beta-D-ribofuranosylpurine-6-yl)N-methylcarbamoyl)threonine. |
| mv | uridine-5-oxyacetic acid-methylester. |
| o5u | uridine-5-oxyacetic acid. |
| osyw | Wybutoxosine. |
| p | Pseudouridine. |
| q | Queuosine. |
| s2c | 2-thiocytidine. |
| s2t | 5-methyl-2-thiouridine. |
| s2u | 2-thiouridine. |
| s4u | 4-thiouridine. |
| t | 5-methyluridine. |
| t6a | N-((9-beta-D-ribofuranosylpurine-6-yl)-carbamoyl)threonine. |
| tm | 2′-O-methyl-5-methyluridine. |
| um | 2′-O-methyluridine. |
| yw | Wybutosine. |
| x | 3-(3-amino-3-carboxy-propyl)uridine, (acp3)u. |

## Appendix C to Subpart G of Part 1—List of Amino Acids

*Source:* World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

| Symbol | Meaning |
|---|---|
| Ala | Alanine. |
| Cys | Cysteine. |
| Asp | Aspartic Acid. |
| Glu | Glutamic Acid. |
| Phe | Phenylalanine. |
| Gly | Glycine. |
| His | Histidine. |
| Ile | Isoleucine. |
| Lys | Lysine. |
| Leu | Leucine. |
| Met | Methionine. |
| Asn | Asparagine. |
| Pro | Proline. |
| Gln | Glutamine. |
| Arg | Arginine. |
| Ser | Serine. |
| Thr | Threonine. |
| Val | Valine. |
| Trp | Tryptophan. |

| Symbol | Meaning |
|---|---|
| Tyr | Tyrosine. |
| Asx | Asp or Asn. |
| Glx | Glu or Gln. |
| Xaa | unknown or other. |

## Appendix D to Subpart G of Part 1—List of Modified and Unusual Amino Acids

*Source:* World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

| Symbol | Meaning |
|---|---|
| Aad | 2-Aminoadipic acid. |
| bAad | 3-Aminoadipic acid. |
| bAla | beta-Alanine, beta-Aminopropionic acid. |
| Abu | 2-Aminobutyric acid. |
| 4Abu | 4-Aminobutyric acid, piperidinic acid. |
| Acp | 6-Aminocaproic acid. |
| Ahe | 2-Aminoheptanoic acid. |
| Aib | 2-Aminoisobutyric acid. |
| bAib | 3-Aminoisobutyric acid. |
| Apm | 2-Aminopimelic acid. |
| Dbu | 2,4 Diaminobutyric acid. |
| Des | Desmosine. |
| Dpm | 2,2′-Diaminopimelic acid. |
| Dpr | 2,3-Diaminopropionic acid. |
| EtGly | N-Ethylglycine. |
| EtAsn | N-Ethylasparagine. |
| Hyl | Hydroxylysine. |
| aHyl | allo-Hydroxylysine. |
| 3Hyp | 3-Hydroxyproline. |
| 4Hyp | 4-Hydroxyproline. |
| Ide | Isodesmosine. |
| aIle | allo-Isoleucine. |
| MeGly | N-Methylglycine, sarcosine. |
| MeIle | N-Methylisoleucine. |
| MeLys | 6-N-Methyllysine. |
| MeVal | N-Methylvaline. |
| Nva | Norvaline. |
| Nle | Norleucine. |
| Orn | Ornithine. |

## Appendix E to Subpart G of Part 1—List of Feature Keys Related to Nucleotide Sequences

*Source:* World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

| Key | Description |
|---|---|
| allele | a related individual or strain contains stable, alternative forms of the same gene, which differs from the presented sequence at this location (and perhaps others). |
| attenuator | (1) region of DNA at which regulation of termination of transcription occurs, which controls the expression of some bacterial operons; (2) sequence segment located between the promoter and the first structural gene that causes partial termination of transcription. |
| C_region | constant region of immunoglobulin light and heavy chains, and T-cell receptor alpha, beta, and gamma chains; includes one or more exons depending on the particular chain. |
| CAAT_signal | CAAT box; part of a conserved sequence located about 75 bp upstream of the start point of eukaryotic transcription units which may be involved in RNA polymerase binding; consensus=GG (C or T) CAATCT. |
| CDS | coding sequence; sequence of nucleotides that corresponds with the sequence of amino acids in a protein (location includes stop codon); feature includes amino acid conceptual translation. |
| conflict | independent determinations of the ‘‘same’’ sequence differ at this site or region. |
| D-loop | displacement loop; a region within mitochondrial DNA in which a short stretch of RNA is paired with one strand of DNA, displacing the original partner DNA strand in this region; also used to describe the displacement of a region of one strand of duplex DNA by a single stranded invader in the reaction catalyzed by RecA protein. |
| D-segment | diversity segment of immunoglobulin heavy chain, and T-cell receptor beta chain. |

| Key | Description |
|---|---|
| enhancer | a cis-acting sequence that increases the utilization of (some) eukaryotic promoters, and can function in either orientation and in any location (upstream or downstream) relative to the promoter. |
| exon | region of genome that codes for portion of spliced mRNA; may contain 5′UTR, all CDSs, and 3′UTR. |
| GC_signal | GC box; a conserved GC-rich region located upstream of the start point of eukaryotic transcription units which may occur in multiple copies or in either orientation; consensus=GGGCGG. |
| gene | region of biological interest identified as a gene and for which a name has been assigned. |
| iDNA | intervening DNA; DNA which is eliminated through any of several kinds of recombination. |
| intron | a segment of DNA that is transcribed, but removed from within the transcript by splicing together the sequences (exons) on either side of it. |
| J_segment | joining segment of immunoglobulin light and heavy chains, and T-cell receptor alpha, beta, and gamma chains. |
| LTR | long terminal repeat, a sequence directly repeated at both ends of a defined sequence, of the sort typically found in retroviruses. |
| mat_peptide | mature peptide or protein coding sequence; coding sequence for the mature or final peptide or protein product following post-translational modification; the location does not include the stop codon (unlike the corresponding CDS). |
| misc_binding | site in nucleic acid which covalently or non-covalently binds another moiety that cannot be described by any other Binding key (primer_bind or protein_bind). |
| misc_difference | feature sequence is different from that presented in the entry and cannot be described by any other Difference key (conflict, unsure, old_sequence, mutation, variation, allele, or modified_base). |
| misc_feature | region of biological interest which cannot be described by any other feature key; a new or rare feature. |
| misc_recomb | site of any generalized, site-specific or replicative recombination event where there is a breakage and reunion of duplex DNA that cannot be described by other recombination keys (iDNA and virion) or qualifiers of source key (/insertion_seq, /transposon, /proviral). |
| misc_RNA | any transcript or RNA product that cannot be defined by other RNA keys (prim_transcript, precursor_RNA, mRNA, 5′clip, 3′clip, 5′UTR, 3′UTR, exon, CDS, sig_peptide, transit_peptide, mat_peptide, intron, polyA_site, rRNA, tRNA, scRNA, and snRNA). |
| misc_signal | any region containing a signal controlling or altering gene function or expression that cannot be described by other Signal keys (promoter, CAAT_signal, TATA_signal, –35_signal, –10_signal, GC_signal, RBS, polyA_signal, enhancer, attenuator, terminator, and rep_origin). |
| misc_structure | any secondary or tertiary structure or conformation that cannot be described by other Structure keys (stem_loop and D-loop). |
| modified_base | the indicated nucleotide is a modified nucleotide and should be substituted for by the indicated molecule (given in the mod_base qualifier value). |
| mRNA | messenger RNA; includes 5′ untranslated region (5′UTR), coding sequences (CDS, exon) and 3′ untranslated region (3′UTR). |
| mutation | a related strain has an abrupt, inheritable change in the sequence at this location. |
| N_region | extra nucleotides inserted between rearranged immunoglobulin segments. |
| old_sequence | the presented sequence revises a previous version of the sequence at this location. |
| polyA_signal | recognition region necessary for endonuclease cleavage of an RNA transcript that is followed by polyadenylation; consensus=AATAAA. |
| polyA_site | site on an RNA transcript to which will be added adenine residues by post-transcriptional polyadenylation. |
| precursor_RNA | any RNA species that is not yet the mature RNA product; may include 5′ clipped region (5′clip), 5′ untranslated region (5′UTR), coding sequences (CDS, exon), intervening sequences (intron), 3′ untranslated region (3′UTR), and 3′ clipped region (3′clip). |
| prim_transcript | primary (initial, unprocessed) transcript; includes 5′ clipped region (5′clip), 5′ untranslated region (5′UTR), coding sequences (CDS, exon), intervening sequences (intron), 3′ untranslated region (3′UTR), and 3′ clipped region (3′clip). |
| primer_bind | non-covalent primer binding site for initiation of replication, transcription, or reverse transcription; includes site(s) for synthetic, for example, PCR primer elements. |
| promoter | region on a DNA molecule involved in RNA polymerase binding to initiate transcription. |
| protein_bind | non-covalent protein binding site on nucleic acid. |
| RBS | ribosome binding site. |
| repeat_region | region of genome containing repeating units. |
| repeat_unit | single repeat element. |
| rep_origin | origin of replication; starting site for duplication of nucleic acid to give two identical copies. |
| rRNA | mature ribosomal RNA; the RNA component of the ribonucleoprotein particle (ribosome) which assembles amino acids into proteins. |
| S_region | switch region of immunoglobulin heavy chains; involved in the rearrangement of heavy chain DNA leading to the expression of a different immunoglobulin class from the same B-cell. |
| satellite | many tandem repeats (identical or related) of a short basic repeating unit; many have a base composition or other property different from the genome average that allows them to be separated from the bulk (main band) genomic DNA. |
| scRNA | small cytoplasmic RNA; any one of several small cytoplasmic RNA molecules present in the cytoplasm and (sometimes) nucleus of a eukaryote. |
| sig_peptide | signal peptide coding sequence; coding sequence for an N-terminal domain of a secreted protein; this domain is involved in attaching nascent polypeptide to the membrane; leader sequence. |
| snRNA | small nuclear RNA; any one of many small RNA species confined to the nucleus; several of the snRNAs are involved in splicing or other RNA processing reactions. |
| source | identifies the biological source of the specified span of the sequence; this key is mandatory; every entry will have, as a minimum, a single source key spanning the entire sequence; more than one source key per sequence is permissible. |
| stem_loop | hairpin; a double-helical region formed by base-pairing between adjacent (inverted) complementary sequences in a single strand of RNA or DNA. |
| STS | Sequence Tagged Site; short, single-copy DNA sequence that characterizes a mapping landmark on the genome and can be detected by PCR; a region of the genome can be mapped by determining the order of a series of STSs. |
| TATA_signal | TATA box; Goldberg-Hogness box; a conserved AT-rich septamer found about 25 bp before the start point of each eukaryotic RNA polymerase II transcript unit which may be involved in positioning the enzyme for correct initiation; consensus=TATA(A or T)A(A or T). |

| Key | Description |
|---|---|
| terminator | sequence of DNA located either at the end of the transcript or adjacent to a promoter region that causes RNA polymerase to terminate transcription; may also be site of binding of repressor protein. |
| transit_peptide | transit peptide coding sequence; coding sequence for an N-terminal domain of a nuclear-encoded organellar protein; this domain is involved in post-translational import of the protein into the organelle. |
| tRNA | mature transfer RNA, a small RNA molecule (75–85 bases long) that mediates the translation of a nucleic acid sequence into an amino acid sequence. |
| unsure | author is unsure of exact sequence in this region. |
| V_region | variable region of immunoglobulin light and heavy chains, and T-cell receptor alpha, beta, and gamma chains; codes for the variable amino terminal portion; can be made up from V_segments, D_segments, N_regions, and J_segments. |
| V_segment | variable segment of immunoglobulin light and heavy chains, and T-cell receptor alpha, beta, and gamma chains; codes for most of the variable region (V_region) and the last few amino acids of the leader peptide. |
| variation | a related strain contains stable mutations from the same gene (for example, RFLPs, polymorphisms, etc.) which differ from the presented sequence at this location (and possibly others). |
| 3′clip | 3′-most region of a precursor transcript that is clipped off during processing. |
| 3′UTR | region at the 3′ end of a mature transcript (following the stop codon) that is not translated into a protein. |
| 5′clip | 5′-most region of a precursor transcript that is clipped off during processing. |
| 5′UTR | region at the 5′ end of a mature transcript (preceding the initiation codon) that is not translated into a protein. |
| −10_signal | pribnow box; a conserved region about 10 bp upstream of the start point of bacterial transcription units which may be involved in binding RNA polymerase; consensus=TAtAaT. |
| −35_signal | a conserved hexamer about 35 bp upstream of the start point of bacterial transcription units; consensus=TTGACa [] or TGTTGACA []. |

## Appendix F to Subpart G of Part 1—List of Feature Keys Related to Protein Sequences

*Source:* World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (2009).

| Key | Description |
|---|---|
| CONFLICT | different papers report differing sequences. |
| VARIANT | authors report that sequence variants exist. |
| VARSPLIC | description of sequence variants produced by alternative splicing. |
| MUTAGEN | site which has been experimentally altered. |
| MOD_RES | post-translational modification of a residue. |
| ACETYLATION | N-terminal or other. |
| AMIDATION | generally at the C-terminal of a mature active peptide. |
| BLOCKED | undetermined N- or C-terminal blocking group. |
| FORMYLATION | of the N-terminal methionine. |
| GAMMA-CARBOXYGLUTAMIC ACID HYDROXYLATION. | of asparagine, aspartic acid, proline, or lysine. |
| METHYLATION | generally of lysine or arginine. |
| PHOSPHORYLATION | of serine, threonine, tyrosine, aspartic acid or histidine. |
| PYRROLIDONE CARBOXYLIC ACID | N-terminal glutamate which has formed an internal cyclic lactam. |
| SULFATATION | generally of tyrosine. |
| LIPID | covalent binding of a lipidic moiety. |
| MYRISTATE | myristate group attached through an amide bond to the N-terminal glycine residue of the mature form of a protein or to an internal lysine residue. |
| PALMITATE | palmitate group attached through a thioether bond to a cysteine residue or through an ester bond to a serine or threonine residue. |
| FARNESYL | farnesyl group attached through a thioether bond to a cysteine residue. |
| GERANYL-GERANYL | geranyl-geranyl group attached through a thioether bond to a cysteine residue. |
| GPI-ANCHOR | glycosyl-phosphatidylinositol (GPI) group linked to the alpha- carboxyl group of the C-terminal residue of the mature form of a protein. |
| N-ACYL DIGLYCERIDE | N-terminal cysteine of the mature form of a prokaryotic lipoprotein with an amide-linked fatty acid and a glyceryl group to which two fatty acids are linked by ester linkages. |
| DISULFID | disulfide bond; the ‘FROM’ and ‘TO’ endpoints represent the two residues which are linked by an intra-chain disulfide bond; if the ‘FROM’ and ‘TO’ endpoints are identical, the disulfide bond is an interchain one and the description field indicates the nature of the cross-link. |
| THIOLEST | thiolester bond; the ‘FROM’ and ‘TO’ endpoints represent the two residues which are linked by the thiolester bond. |
| THIOETH | thioether bond; the ‘FROM’ and ‘TO’ endpoints represent the two residues which are linked by the thioether bond. |
| CARBOHYD | glycosylation site; the nature of the carbohydrate (if known) is given in the description field. |
| METAL | binding site for a metal ion; the description field indicates the nature of the metal. |
| BINDING | binding site for any chemical group (co-enzyme, prosthetic group, etc.); the chemical nature of the group is given in the description field. |
| SIGNAL | extent of a signal sequence (prepeptide). |
| TRANSIT | extent of a transit peptide (mitochondrial, chloroplastic, or for a microbody). |
| PROPEP | extent of a propeptide. |
| CHAIN | extent of a polypeptide chain in the mature protein. |

| Key | Description |
|---|---|
| PEPTIDE | extent of a released active peptide. |
| DOMAIN | extent of a domain of interest on the sequence; the nature of that domain is given in the description field. |
| CA_BIND | extent of a calcium-binding region. |
| DNA_BIND | extent of a DNA-binding region. |
| NP_BIND | extent of a nucleotide phosphate binding region; the nature of the nucleotide phosphate is indicated in the description field. |
| TRANSMEM | extent of a transmembrane region. |
| ZN_FING | extent of a zinc finger region. |
| SIMILAR | extent of a similarity with another protein sequence; precise information, relative to that sequence, is given in the description field. |
| REPEAT | extent of an internal sequence repetition. |
| HELIX | secondary structure: Helices, for example, Alpha-helix, 3(10) helix, or Pi-helix. |
| STRAND | secondary structure: Beta-strand, for example, Hydrogen bonded beta-strand, or Residue in an isolated beta-bridge. |
| TURN | secondary structure Turns, for example, H-bonded turn (3-turn, 4-turn, or 5-turn). |
| ACT_SITE | amino acid(s) involved in the activity of an enzyme. |
| SITE | any other interesting site on the sequence. |
| INIT_MET | the sequence is known to start with an initiator methionine. |
| NON_TER | the residue at an extremity of the sequence is not the terminal residue; if applied to position 1, this signifies that the first position is not the N-terminus of the complete molecule; if applied to the last position, it signifies that this position is not the C-terminus of the complete molecule; there is no description field for this key. |
| NON_CONS | non consecutive residues; indicates that two residues in a sequence are not consecutive and that there are a number of unsequenced residues between them. |
| UNSURE | uncertainties in the sequence; used to describe region(s) of a sequence for which the authors are unsure about the sequence assignment. |

## Appendix G to Subpart G of Part 1—Numeric Identifiers

| Numeric identifier | Definition | Comments and format | Mandatory (M) or optional (O) |
|---|---|---|---|
| <110> | Applicant | If Applicant is inventor, then preferably max. of 10 names; one name per line; preferable format: Surname, Other Names and/or Initials. | M. |
| <120> | Title of Invention | | M. |
| <130> | File Reference | Personal file reference | M when filed prior to assignment or appl. number. |
| <140> | Current Application Number | Specify as: US 09/999,999 or PCT/US09/99999. | M, if available. |
| <141> | Current Filing Date | Specify as: yyyy-mm-dd | M, if available. |
| <150> | Prior Application Number | Specify as: US 09/999,999 or PCT/US09/99999. | M, if applicable include priority documents under 35 U.S.C. 119 and 120. |
| <151> | Prior Application Filing Date | Specify as: yyyy-mm-dd | M, if applicable. |
| <160> | Number of SEQ ID NOs | Count includes total number of SEQ ID NOs | M. |
| <170> | Software | Name of software used to create the ''Sequence Listing''. | O. |
| <210> | SEQ ID NO:#: | Response shall be an integer representing the SEQ ID NO shown. | M. |
| <211> | Length | Respond with an integer expressing the number of bases or amino acid residues. | M. |
| <212> | Type | Whether presented sequence molecule is DNA, RNA, or PRT (protein). If a nucleotide sequence contains both DNA and RNA fragments, the type shall be ''DNA.'' In addition, the combined DNA/RNA molecule shall be further described in the <220> to <223> feature section. | M. |
| <213> | Organism | Scientific name, *i.e.,* Genus/species, Unknown or Artificial Sequence. In addition, the ''Unknown'' or ''Artificial Sequence'' organisms shall be further described in the <220> to <223> feature section. | M. |
| <220> | Feature | Leave blank after <220>. <221–223> provide for a description of points of biological significance in the sequence. | M, under the following conditions: If ''n,'' ''Xaa,'' or a modified or unusual L-amino acid or modified base was used in a sequence; if ORGANISM is ''Artificial Sequence'' or ''Unknown''; if molecule is combined DNA/RNA. |

| Numeric identifier | Definition | Comments and format | Mandatory (M) or optional (O) |
|---|---|---|---|
| <221> | Name/Key | Provide appropriate identifier for feature, from WIPO Standard ST.25 (2009), Appendices E and F to this subpart. | M, under the following conditions: If "n," "Xaa," or a modified or unusual L-amino acid or modified base was used in a sequence. |
| <222> | Location | Specify location within sequence; where appropriate, state number of first and last bases/amino acids in feature. | M, under the following conditions: If "n," "Xaa," or a modified or unusual L-amino acid or modified base was used in a sequence. |
| <223> | Other Information | Other relevant information; four lines maximum. | M, under the following conditions: If "n," "Xaa," or a modified or unusual L-amino acid or modified base was used in a sequence; if ORGANISM is "Artificial Sequence" or "Unknown"; if molecule is combined DNA/RNA. |
| <300> | Publication Information | Leave blank after <30> | O. |
| <301> | Authors | Preferably max. of 10 named authors of publication; specify one name per line; preferable format: Surname, Other Names and/or Initials. | O. |
| <302> | Title | | O. |
| <303> | Journal | | O. |
| <304> | Volume | | O. |
| <305> | Issue | | O. |
| <306> | Pages | | O. |
| <307> | Date | Journal date on which data published; specify as yyyy-mm-dd, MMM-yyyy or Season-yyyy. | O. |
| <308> | Database Accession Number | Accession number assigned by database, including database name. | O. |
| <309> | Database Entry Date | Date of entry in database; specify as yyyy-mm-dd or MMM-yyyy. | O. |
| <310> | Patent Document Number | Document number; for patent-type citations only. Specify as, for example, US 09/999,999. | O. |
| <311> | Patent Filing Date | Document filing date, for patent-type citations only; specify as yyyy-mm-dd. | O. |
| <312> | Publication Date | Document publication date, for patent-type citations only; specify as yyyy-mm-dd. | O. |
| <313> | Relevant Residues | FROM (position) TO (position) | O. |
| <400> | Sequence | SEQ ID NO should follow the numeric identifier and should appear on the line preceding the actual sequence. | M. |

**Andrew Hirshfeld,**

*Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2021–22217 Filed 10–13–21; 8:45 am]

**BILLING CODE 3510–16–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R01–OAR–2020–0562; FRL–8855–02–Region 1]**

## Air Plan Approval; Rhode Island; Infrastructure State Implementation Plan Requirements for the 2015 Ozone Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving most of a State Implementation Plan (SIP) revision submitted by the State of Rhode Island to address the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). This action does not address three requirements related to interstate transport. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program, including provisions prohibiting emissions that will have certain adverse air quality effects in other states, are adequate to meet the state's responsibilities under the CAA. This action is being taken in accordance with the Clean Air Act.

**DATES:** This rule is effective on November 15, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2020–0562. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

**FOR FURTHER INFORMATION CONTACT:** Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1684, email *simcox.alison@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

**Table of Contents**

I. Background and Purpose
II. Final Action
III. Statutory and Executive Order Reviews

## I. Background and Purpose

On August 17, 2021 (86 FR 45939), EPA published a notice of proposed rulemaking (NPRM). The NPRM proposed approval of most elements of a Rhode Island SIP revision addressing the infrastructure requirements of the Clean Air Act (CAA or Act)—excluding three interstate transport provisions under section 110(a)(2)(D)(i)—for the 2015 ozone National Ambient Air Quality Standards (NAAQS). This NPRM also proposed to disapprove one element, section 110(a)(2)(H)(Future SIP revisions). However, remedying Federal regulations are already in place for this element and a disapproval requires no further action by EPA or the state.

Rhode Island submitted the formal SIP revision for the 2015 ozone NAAQS on September 23, 2020. The rationale for EPA's proposed action is given in the NPRM and will not be restated here. No public comments were received on the NPRM.

## II. Final Action

EPA is approving most elements of Rhode Island's September 23, 2020, infrastructure SIP submission for the 2015 ozone NAAQS as a revision to the Rhode Island SIP. This action does not include three interstate transport provisions under section 110(a)(2)(D)(i), namely the ''good neighbor'' provisions at section 110(a)(2)(D)(i)(I) (also known as the State's Transport SIP or ''prongs 1 and 2'') and the provision relating to visibility protection at 110(a)(2)(D)(i)(II) (also known as ''prong 4''). EPA will address these requirements for the 2015 ozone NAAQS in future actions.

In addition, we are disapproving section 110(a)(2)(H) (Future SIP revisions) because the State's original SIP did not fully satisfy this element and Rhode Island's September 23, 2020, submittal likewise does not address this gap. However, no further action by EPA or the State is required because remedying Federal regulations are already in place. *See* 40 CFR 52.2080. Moreover, mandatory sanctions under CAA section 179 do not apply because the submittal is not required under CAA title I part D nor in response to a SIP call under CAA section 110(k)(5).

## III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 13, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: October 6, 2021.

**Deborah Szaro,**

*Acting Regional Administrator, EPA Region 1.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart OO—Rhode Island

■ 2. In § 52.2070(e), amend the table by adding an entry for ''Infrastructure SIP for the 2015 Ozone NAAQS'' at the end of the table to read as follows:

**§ 52.2070 Identification of plan.**

* * * * *

(e) * * *

RHODE ISLAND NON REGULATORY

| Name of non regulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approved date | Explanations |
|---|---|---|---|---|
| * | * | * | * | * |
| Infrastructure SIP for the 2015 ozone NAAQS. | Statewide ..... | 10/15/2020 | 10/14/2021, [Insert **Federal Register** citation]. | This submittal is approved with respect to the following CAA elements or portions thereof: 110(a)(2)(A); (B); (C); (D) except (D)(i)(I) and (D)(i)(II)—visibility protection; (E); (F); (G); (J); (K); (L); and (M). This submittal is disapproved for element (H). See § 52.2077. |

[FR Doc. 2021–22232 Filed 10–13–21; 8:45 am]
BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Chapter III

**[Docket No. FMCSA–2021–0132]**

**RIN 2126–AC41**

## General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FMCSA amends its regulations by making technical corrections throughout the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency makes minor changes to correct inadvertent errors and omissions, remove or update obsolete references, and improve the clarity and consistency of certain regulatory provisions. The Agency also makes nondiscretionary, ministerial changes that merely align regulatory requirements with the underlying statutory authority. Finally, FMCSA adds two new provisions for transparency relating to agency management and to FMCSA's rules of organization, procedures, or practice, and makes corresponding changes to definitions, addresses, and employee titles throughout the FMCSRs.

**DATES:** This final rule is effective October 14, 2021.

**FOR FURTHER INFORMATION CONTACT:** Mr. Nicholas Warren, Regulatory Development Division, Office of Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–6124; *nicholas.warren@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to the United States Department of Transportation (DOT or Department) in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 89–670, 80 Stat. 931, 937, Oct. 15, 1966). Section 6 of the DOT Act transferred to the Department the authority of the former Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours of service of employees, the safety of operations, and the equipment of motor carriers in interstate commerce (80 Stat. 939). This authority, first granted to the ICC in the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, Aug. 9, 1935), now appears in 49 U.S.C. chapter 315. The regulations issued under this (and subsequently enacted) authority became known as the FMCSRs, codified at 49 CFR parts 350–399. The administrative powers to enforce chapter 315 (codified in 49 U.S.C. chapter 5) were also transferred from the ICC to the DOT in 1966, and assigned first to the Federal Highway Administration (FHWA) and then to FMCSA. The FMCSA Administrator, whose powers and duties are set forth in 49 U.S.C. 113, has been delegated authority, under 49 CFR 1.81, to exercise the authority of the Secretary over and with respect to any personnel within their respective organizations and, under 49 CFR 1.87, to carry out the motor carrier functions vested in the Secretary of Transportation. In addition, under 49 CFR 1.81a, except as otherwise specifically provided in 49 CFR part 1, the Administrator may redelegate and authorize successive redelegations of authority within FMCSA under the Administrator's jurisdiction.

Between 1984 and 1999, several statutes added to FHWA's authority. Various statutes authorize the enforcement of the FMCSRs, the Hazardous Materials Regulations, and the Commercial Regulations, and provide both civil and criminal penalties for violations of these requirements. These statutes include the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, Oct. 30, 1984), codified at 49 U.S.C. chapter 311, subchapter III; the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, Oct. 27, 1986), codified at 49 U.S.C. chapter 313; the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended (Pub. L. 101–615, 104 Stat. 3244, Nov. 16, 1990), codified at 49 U.S.C. chapter 51; the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143, Title V, 105 Stat. 917, 952, Oct. 28, 1991), codified at 49 U.S.C. 31306; the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803, Dec. 29, 1995), codified at 49 U.S.C. chapters 131–149; and the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998).

The Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748, Dec. 9, 1999) established FMCSA as a new operating

administration within DOT, effective January 1, 2000. The motor carrier safety responsibilities previously assigned to both the ICC and FHWA are now assigned to FMCSA.

Congress expanded, modified, and amended FMCSA's authority in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. 107–56, 115 Stat. 272, Oct. 26, 2001); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005); the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572, June 6, 2008); the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, July 6, 2012); and the Fixing America's Surface Transportation Act (Pub. L. 114–94, 129 Stat. 1312, Dec. 4, 2015).

The specific regulations amended by this rule are based on the statutes detailed above. Generally, the legal authority for each of those provisions was explained when the requirement was originally adopted and is noted at the beginning of each part in title 49 of the Code of Federal Regulations (CFR).

The Administrative Procedure Act (APA) specifically provides exceptions to its notice and comment rulemaking procedures when an agency finds there is good cause to dispense with them, and incorporates the finding, and a brief statement of reasons therefore, in the rules issued (5 U.S.C. 553(b)(3)(B)). Good cause exists when an agency determines that notice and public comment procedures are impractical, unnecessary, or contrary to the public interest. The amendments made in this final rule primarily correct inadvertent errors and omissions, remove or update obsolete references, and make minor language changes to improve clarity and consistency. Some changes relate to previous changes that were statutorily mandated or align regulatory requirements with the underlying statutory authority. In accommodating those changes, the Agency is performing nondiscretionary, ministerial acts. The technical amendments do not impose any material new requirements or increase compliance obligations. For these reasons, FMCSA finds good cause that notice and public comment on this final rule are unnecessary.

Moreover, the amendment adding a separation of functions provision in new § 390.8 and almost all of this rule's amendments to definitions, addresses, and employee titles throughout the FMCSRs concern an additional exception to the APA's notice and comment rulemaking procedures for ''rules of agency organization, procedure, or practice'' (5 U.S.C. 553(b)(3)(A)). These amendments are, therefore, excepted from the notice and public comment requirements. Further, the APA does not apply to matters ''relating to agency management or personnel'' (5 U.S.C. 553(a)(2)); therefore, the notice and comment rulemaking procedures do not apply to the delegations provision in new § 390.4.

The APA also allows agencies to make rules effective immediately with good cause (5 U.S.C. 553(d)(3)), instead of requiring publication 30 days prior to the effective date. For the reasons already stated, FMCSA finds there is good cause for this rule to be effective immediately.

The Agency is aware of the regulatory requirements concerning public participation in FMCSA rulemaking (49 U.S.C. 31136(g)). These requirements pertain to certain major rules,[1] but, because this final rule is not a major rule, they are not applicable.

## II. Section-by-Section Analysis

This section-by-section analysis describes the changes to the regulatory text in numerical order.

### *A. Part 365—Rules Governing Applications for Operating Authority*

Sections 365.101 (Suspended) and 365.101T Applications Governed by These Rules [2]

FMCSA revises paragraph (h) of §§ 365.101 (Suspended) and 365.101T to reflect the termination of the North American Free Trade Agreement and the adoption of the United States-Mexico-Canada Agreement (USMCA), which came into effect July 1, 2020. This amended provision is consistent with USMCA Annex I—United States (p. 9) and existing § 365.501(b), which reference the prohibition against a Mexico-domiciled motor carrier from providing point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

### *B. Part 368—Application for a Certificate of Registration To Operate in Municipalities in the United States on the United States-Mexico International Border or Within the Commercial Zones of Such Municipalities*

Sections 368.8 (Suspended) and 368.8T Appeals [3]

Recent vacancies and organizational changes that affected the titles of FMCSA employees and office names underscored the need for FMCSA to add flexibility to redelegate functions internally according to organizational needs. FMCSA simplifies many sections across various parts of the CFR to remove or otherwise update references to specific titles or offices and replace them with ''FMCSA'' and, where necessary to ensure adequate mail routing, an ''ATTN'' line showing the subject matter of the petition or request. In §§ 368.8 (Suspended) and 368.8T, FMCSA removes the references to ''the Director'' and replaces them with ''FMCSA'' and replaces ''the Director, Office of Data Analysis and Information Systems'' with an address and ATTN: line (''FMCSA, ATTN: § 368.8 Appeal, 1200 New Jersey Avenue SE, Washington, DC 20590,''). These changes relate to agency management and do not affect the procedural rights of persons outside FMCSA; therefore, they are excepted from notice and comment by 5 U.S.C. 553(a)(2).

### *C. Part 380—Special Training Requirements*

Section 380.603 Applicability

FMCSA replaces ''veterans'' with ''military personnel'' in paragraph (a)(3). This conforming change ensures consistency with § 383.77, which is referenced in paragraph (a)(3). The term ''military personnel'' is used in § 383.77, and the word ''veterans'' does not appear in that section. This change ensures that paragraph (a)(3) uses the correct term when referencing the requirements under § 383.77.

[1] A ''major rule'' means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

[2] On January 17, 2017, FMCSA suspended certain regulations relating to the electronic Unified Registration System and delayed their effective date indefinitely (82 FR 5292). The suspended regulations were replaced by temporary provisions that contain the requirements in place on January 13, 2017. Section 365.101 was one of the sections suspended and § 365.101T, which is currently in effect, was one of the replacement sections added (82 FR 5299).

[3] See Note 2. Section 368.8 was another one of the sections suspended by the January 17, 2017 final rule, and § 368.8T, which is currently in effect, was another one of the replacement sections added (82 FR 5304).

Section 380.723 Removal From Training Provider Registry: Procedure

As discussed in section II.C., above, FMCSA simplifies many sections across various parts of the CFR to remove or otherwise update references to specific titles or offices to provide greater flexibility in delegations. In paragraph (a) of this section, FMCSA replaces ''FMCSA's Director, Office of Carrier, Driver, and Vehicle Safety Standards (Director)'' with ''FMCSA, ATTN: Training Provider Registry Removal, 1200 New Jersey Avenue SE, Washington, DC 20590.'' Throughout paragraphs (c) and (f), FMCSA replaces ''the Director'' and ''The Director'' with ''FMCSA.'' In the introductory text of paragraph (d), FMCSA replaces ''the FMCSA Associate Administrator for Policy (Associate Administrator)'' with an address and ATTN: line (''FMCSA, ATTN: § 380.723 Training Provider Registry Removal Proceedings, 1200 New Jersey Avenue SE, Washington, DC 20590,'') and throughout the rest of paragraph (d) replaces the shorthand references to ''The Associate Administrator'' and ''the Associate Administrator'' with ''FMCSA.''

Section 380.725 Documentation and Record Retention

FMCSA removes paragraph (b)(4), which currently requires all training providers on the Training Provider Registry (TPR) to retain the Training Provider Registration Form submitted to the TPR (see 81 FR 88732, Dec. 8, 2016). This revision reflects that FMCSA recognizes there is a duplicative record keeping requirement because the TPR will retain the same information provided on the Training Provider Registration Form, both as submitted under § 380.703 and as updated under § 380.719. This amendment simply eliminates that duplicative record keeping requirement.

Appendix B to Part 380—Class B—CDL Training Curriculum

In Unit B1.1.6 Backing and Docking, FMCSA removes the word ''combination,'' which was inadvertently included. The subject of appendix B is Class B training and Class B vehicles are not combination vehicles.

*D. Part 381—Waivers, Exemptions, and Pilot Programs*

Section 381.200 What is a waiver?

FMCSA amends paragraph (c) to more closely align its language with the statutory language in 49 U.S.C. 31315(a)(3), which provides that the Secretary may grant a waiver (after making the specified determination) ''for nonemergency and unique events.'' The current language in paragraph (c), ''for unique, non-emergency events,'' implies that waivers are available only for events that are both unique and nonemergency in nature. This amendment is necessary to ensure consistency of interpretation and clarify that FMCSA has the authority to grant waivers under either circumstance.

*E. Part 382—Controlled Substances and Alcohol Use and Testing*

Section 382.107 Definitions

In the definition of *Consortium/Third party administrator (C/TPA)* in § 382.107, FMCSA adds the phrase ''except as provided in § 382.705(c)'' after ''for purposes of this part.'' The Agency makes this change to conform the definition of *C/TPA* to the requirement, set forth in § 382.705(c), that a C/TPA acting on behalf of a self-employed driver is acting as an ''employer'' when reporting that driver's drug and alcohol violations to the Clearinghouse, and is therefore ultimately responsible for compliance with the reporting requirements in § 382.705(b). The sentence now provides that C/TPAs are not employers for purposes of the part, except as provided in § 382.705(c).

Section 382.305 Random Testing

This amendment relates to the higher minimum annual percentage rate for random controlled substances testing made effective for all testing in 2020 and later. FMCSA amends § 382.305(b)(2) to reflect that the minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions, as it has been effective since January 1, 2020. On December 27, 2019 (84 FR 71527), FMCSA announced the increase of the minimum annual percentage rate for random controlled substances testing for drivers of CMVs requiring a CDL from 25 percent of the average number of driver positions to 50 percent of the average number of driver positions, effective in calendar year 2020.

The FMCSA Administrator must increase the minimum annual random testing percentage rate when the data received under the reporting requirements for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent. Based on the results of the 2018 FMCSA Drug and Alcohol Testing Survey, the positive rate for controlled substances random testing increased to 1.0 percent.[4] As a result, the Agency increased the controlled substances minimum annual percentage rate for random controlled substances testing to 50 percent of the average number of driver positions. (84 FR 71528)

Section 382.703 Driver Consent To Permit Access to Information in the Clearinghouse

FMCSA replaces the word ''and'' with ''or'' in paragraph (c). This amendment would correct the erroneous use of ''and'' in paragraph (c). Paragraph (a) provides that employers must obtain an employee's general consent before conducting a limited query of the Clearinghouse. Paragraph (b) provides that employers must obtain an employee's specific consent before conducting a full query of the Clearinghouse. The inadvertent use of the word ''and'' in paragraph (c) implies that employees are precluded from performing safety-sensitive functions only if they refuse to grant consent for both queries, rather than being precluded upon refusal to grant consent for either query as was originally intended. See 81 FR 87686, 87713 (''This section provides that no employer may obtain information about an individual from the Clearinghouse without that individual's express consent. It also provides that an employee cannot perform safety-sensitive functions if he or she refuses to give this consent.'').

Section 382.717 Procedures for Correcting Information in the Database

As discussed in section II.C., above, FMCSA simplifies many sections across various parts of the CFR to remove or otherwise update references to specific titles or offices to provide greater flexibility in delegations. In paragraph (c) of this section, FMCSA replaces ''Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager'' with ''ATTN: Drug and Alcohol Clearinghouse Petition for Review.'' In paragraph (f)(2), FMCSA replaces ''the Associate Administrator for Enforcement (MC–E)'' with ''FMCSA, ATTN: Drug and Alcohol Clearinghouse Administrative Review.'' Finally, in paragraph (f)(4), FMCSA replaces the shorthand reference to ''The Associate Administrator's'' with ''FMCSA's.''

[4] FMCSA, Results from the 2018 Drug and Alcohol Testing Survey (Dec. 2019), available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2019-12/RRA-19-015%28b%29-Drug_and_Alcohol_Survey_Results_FINAL-508C.pdf.*

*F. Part 383—Commercial Driver's License Standards; Requirements and Penalties*

Section 383.71 Driver Application and Certification Procedures

FMCSA removes paragraph (a)(1), removes the introductory text from paragraph (a)(2), and renumbers paragraphs (a)(2)(i) through (ix) as paragraphs (a)(1) through (9). These revisions remove requirements relating to commercial learner's permit applications submitted prior to July 18, 2015, which are no longer necessary. These revisions will clarify and streamline the section by removing requirements that are out-of-date.

Section 383.73 State Procedures

FMCSA revises the introductory text to paragraph (a), removes paragraph (a)(1), removes the introductory text from paragraph (a)(2), renumbers paragraphs (a)(2)(i) through (vii) as paragraphs (a)(1) through (7), and renumbers paragraphs (a)(7)(A) and (B) as paragraphs (a)(7)(i) and (ii). These changes remove requirements relating to commercial learner's permit issued prior to July 18, 2015, similar to the changes above in § 383.71. FMCSA also updates cross-references to § 383.71 to reflect the changes in that section above.

FMCSA replaces ''CMV'' with ''CDL'' in paragraphs (o)(4)(i)(A)(*1*) and (*2*). This amendment corrects an inadvertent error in the terminology used in this section. A ''CDL downgrade'' involves the State removing the ''CDL'' privilege from the driver license, not the ''CMV'' privilege. See 49 CFR 383.5 (definition of *CDL Downgrade,* paragraph 4).

FMCSA replaces ''insure'' with ''ensure'' in paragraph (o)(5). This revision corrects an inadvertent word choice error. The word ''insure'' generally means to cover something with insurance, while the word ''ensure'' generally means to make sure something happens. It is clear from the context of the last sentence in paragraph (o)(5) that ''ensure'' is the word with the intended meaning.

*G. Part 385—Safety Fitness Procedures*

Sections 385.15 Administrative Review and 385.423 Does a motor carrier have a right to an administrative review of a denial, suspension, or revocation of a safety permit?

Under 49 U.S.C. 113(e) and 49 CFR 386.1(a), the Chief Safety Officer is the Assistant Administrator of FMCSA. To be consistent with other sections within the FMCSRs, FMCSA replaces the term ''Chief Safety Officer'' with ''Assistant Administrator'' throughout §§ 385.15 and 385.423. In addition, in § 385.15(c), FMCSA adds a comma after ''Assistant Administrator'' and ''ATTN: Adjudications Counsel'' to clarify that requests for administrative review under this section should be directed to FMCSA's Adjudications Counsel to ensure that these requests are promptly received by the appropriate office for processing. This practice is consistent with other proceedings before the Assistant Administrator. See 49 CFR 383.52(c), 385.423(c), 385.911(e), 385.915(f), and 386.73(g). These updates are merely intended to provide greater clarity and transparency; they do not change existing authorities or practices.

Sections 385.113 Administrative Review and 385.711 Administrative Review

As discussed in section II.C., above, FMCSA simplifies many sections across various parts of the CFR to remove or otherwise update references to specific titles or offices to provide greater flexibility in delegations. In §§ 385.113(b) and 385.711(b), FMCSA replaces ''the Associate Administrator for Enforcement and Program Delivery (MC–E), Federal Motor Carrier Safety Administration'' and the same text without the ''(MC–E)'' routing designation with ''FMCSA'' and an ATTN: line (''FMCSA, ATTN: § 385.113 Request for Administrative Review''). In §§ 385.113(d) and 385.711(d), FMCSA replaces ''The Associate Administrator's'' with ''FMCSA's.''

Sections 385.903 Definitions and 385.1003 Definitions

As part of the effort (discussed in section II.C., above) to update references to specific titles or offices and provide greater flexibility in delegations, FMCSA amends the definition of the term *Agency Official* in §§ 385.903 and 385.1003. The term was defined in both sections to mean ''the Director of FMCSA's Office of Enforcement and Compliance or his or her designee'' but is now amended to mean ''the FMCSA employee with delegated authority under this subpart.''

*H. Part 386—Rules of Practice for FMCSA Proceedings*

Section 386.2 Definitions

In § 386.2, FMCSA revises the definition of *Assistant Administrator* to use language that is consistent with the new definition of *Assistant Administrator* in §§ 390.5 (Suspended) and 390.5T. In addition, FMCSA replaces the term *Decisionmaker* in § 386.2 with *Agency decisionmaker,* which is the term used throughout part 386, and clarifies that the Agency decisionmaker makes the final decision for all administrative proceedings under part 386, not merely civil penalty proceedings. See, *e.g.,* 49 CFR 386.73(g)(9). Finally, FMCSA revises the definition of *Field Administrator* by adding ''or an authorized delegee'' to the end of the definition, which is consistent with the clarification made to the definition of *Assistant Administrator* in this section (and in the new definition in §§ 390.5 (Suspended) and 390.5T). These updates are merely intended to provide greater clarity and transparency; they do not change existing authorities or practices.

Section 386.3 Separation of Functions

In § 386.3, FMCSA expands the application of its separation of functions provision in part 386 from civil penalty proceedings to also include proceedings under § 386.11, § 386.72, or § 386.73. This change streamlines the amendments made to part 386 in this rule because FMCSA would otherwise have needed to add a separation of functions provision to each of those sections, for clarity. This amendment codifies the separation of functions practices that FMCSA has maintained relating to these proceedings. FMSCA also adds a comma after the words ''Hearing Officer''.

Sections 386.11 Commencement of Proceedings, 386.48 Medical Records and Physicians' Reports, 386.71 Injunctions, 386.72 Imminent Hazard, and 386.73 Operations Out of Service and Record Consolidation Proceedings (Reincarnated Carriers)

As discussed in section II.C., above, FMCSA simplifies many sections across various parts of the CFR to remove or otherwise update references to specific titles or offices to provide greater flexibility in delegations. In §§ 386.11(a) introductory text and 386.48, FMCSA replaces ''the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC–PS)'' with ''FMCSA.'' FMCSA also inserts ''FMCSA'' in lieu of ''the Chief Counsel'' (§ 386.71), ''the Director of the Office of Enforcement and Compliance or a Division Administrator, or his or her delegate,'' (§ 386.72(b)(1) introductory text), ''An FMCSA Field Administrator or the Director of FMCSA's Office of Enforcement and Compliance (Director)'' (§ 386.73(a) introductory text), and ''The Field Administrator or Director'' or ''the Field Administrator or Director'' (throughout § 386.73). Similarly, FMCSA replaces ''Field Administrator or Director'' with ''FMCSA official.''

Sections 386.83 Sanction for Failure To Pay Civil Penalties or Abide by Payment Plan; Operation in Interstate Commerce Prohibited and 386.84 Sanction for Failure To Pay Civil Penalties or Abide by Payment Plan; Suspension or Revocation of Registration

Under 49 U.S.C. 113(e) and 49 CFR 386.1(a), the Chief Safety Officer is the Assistant Administrator of FMCSA. To be consistent with other sections within the FMCSRs, FMCSA replaces the term ''Chief Safety Officer'' with ''Assistant Administrator'' in §§ 386.83(b)(2) and 386.84(b)(2). These updates are merely intended to provide greater clarity and transparency; they do not change existing authorities or practices.

*I. Part 387—Minimum Levels of Financial Responsibility for Motor Carriers*

Section 387.9 Financial Responsibility, Minimum Levels

FMCSA revises the table in § 387.9. The table, as currently written, switches between ''in bulk,'' ''any quantity,'' and ''in excess of 3,500 gallons.'' All of these terms refer to the definition of *In bulk* in § 387.5. The table is revised to replace all these terms with ''in bulk'' throughout the table. This revision eliminates confusion and increases consistency by replacing a variety of similar terms with a singular, defined term throughout the table.

Sections 387.323 (Suspended) and 387.323T Electronic Filing of Surety Bonds, Trust Fund Agreements, Certificates of Insurance and Cancellations [5]

FMCSA revises paragraph (c) of § 387.323 (Suspended) and 387.323T to reflect an updated link for filings that are transmitted online. Filers should use the updated link at *https://li-public.fmcsa.dot.gov.*

*J. Part 390—Federal Motor Carrier Safety Regulations; General*

Section 390.3T General Applicability

In § 390.3T, FMCSA removes the reference date in the introductory text of paragraph (h). The introductory text of paragraph (h) states that certain provisions apply to intermodal equipment providers ''[o]n and after December 17, 2009.'' This reference date is over 11 years old and can be safely removed without changing the requirements in paragraph (h).

Section 390.4 Delegations and Redelegations of Authority of FMCSA Employees To Perform Assigned Actions or Duties

New § 390.4 clarifies internal delegations of authority and assignments of responsibility within FMCSA and does not affect the procedural rights of persons outside FMCSA. As such, the clarifications are rules related to management and personnel. 5 U.S.C. 553(a)(2). Moreover, these clarifications relate solely to agency organization, procedure, or practice and do not constitute a substantive rule. 5 U.S.C. 553(b)(3)(A). These changes do not affect the regulatory requirements imposed upon regulated entities. Therefore, they are excepted from notice and comment. Clarifying the responsibilities for personnel delegated authority in agency regulations is an internal management function. See *United States* v. *Saunders,* 951 F.2d 1065, 1068 (9th Cir. 1991) (delegations of authority have ''no legal impact on, or significance for, the general public,'' and ''simply effect[ ] a shifting of responsibilities wholly internal to the Treasury Department''); *Lonsdale* v. *United States,* 919 F.2d 1440, 1446 (10th Cir. 1990) (''APA does not require publication of [rules] which internally delegate authority to enforce the Internal Revenue laws'').

It should be noted, however, that the decision to memorialize some internal agency management procedures in regulation does not limit an agency's general authority, without changing rule text, to establish or make changes to other internal agency management procedures (*i.e.,* those not already memorialized in regulation).

Sections 390.5 (Suspended) and 390.5T Definitions [6]

In §§ 390.5 (suspended) and 390.5T, FMCSA adds a definition of the term *Assistant Administrator* to clarify that references to the Assistant Administrator may include an individual who has been delegated the authority of the Assistant Administrator.

FMCSA modifies the definition of *Emergency* in these sections by replacing, in paragraph (1), ''the FMCSA Field Administrator for the geographical area in which the occurrence happens'' with ''FMCSA.'' As discussed in section II.C., above, FMCSA simplifies many sections across various parts of the CFR to remove or otherwise update references to specific titles or offices to provide greater flexibility in delegations. This edit conforms and relates to the edits made to §§ 390.23 and 390.25, as discussed below.

In addition, FMCSA modifies the definition of *Exempt intracity zone* by replacing the reference to ''appendix F of subchapter B of this chapter'' with ''appendix A to part 372'' in both sections to reflect the new location of this appendix per the redesignation edits in chapter III, subchapter B. The redesignation of this appendix is discussed further in Section II.P, below.

FMCSA also adds a definition of *Field Administrator* identical to the revised definition of that term in § 386.2, which has been slightly modified to clarify that the actions or duties assigned to the Field Administrator may be carried out by an authorized delegee. This definition applies throughout 49 CFR chapter III, subchapter B, whereas the definition in § 386.2 applies only to part 386. Adding the definition of *Field Administrator* to § 390.5T clarifies that, throughout subchapter B, the term refers to the head of the Service Center, regardless of changes to the title of that position (*e.g.,* the head of the Service Center was previously the ''Field Administrator,'' but is now the ''Regional Field Administrator''), which is consistent with how the term has been applied in the context of § 386.2. These updates are merely intended to provide greater clarity and transparency; they do not change existing authorities or practices.

Section 390.8 Separation of Functions

In new § 390.8, FMCSA adds a separation of functions provision that applies to various administrative review proceedings under parts 380, 382, 390, 391, and 395. This amendment clarifies that FMCSA applies a separation of functions between Agency employees engaged in investigative or prosecutorial functions and the initial Agency determination, and those who participate or advise in the final Agency decision. This new section codifies separation of functions practices that FMCSA has maintained relating to these procedures. FMCSA adopts language similar to the language in §§ 385.21 and 386.3, which are the separation of functions provisions applicable to administrative reviews of safety ratings and proposed civil penalties, respectively.

Sections 390.23 Relief From Regulations and 390.25 Extension of Relief From Regulations—Emergencies

As discussed in section II.C., above, FMCSA simplifies many sections across

[5] See Note 2. Section 387.323 was another one of the sections suspended by the January 17, 2017 final rule, and § 387.323T, which is currently in effect, was another one of the replacement sections added (82 FR 5309).

[6] See Note 2. Section 390.5 was another one of the sections suspended by the January 17, 2017 final rule, and § 390.5T, which is currently in effect, was another one of the replacement sections added (82 FR 5309).

various parts of the CFR to remove or otherwise update references to specific titles or offices to provide greater flexibility in delegations. In §§ 390.23(a) (paragraphs (a)(1)(i)(B), (a)(1)(ii)(A), (a)(2)(i)(B), and (a)(2)(ii)) and 390.25, FMCSA replaces ''The FMCSA Field Administrator'' and ''the FMCSA Field Administrator'' with ''FMCSA.''

Sections 390.115 Procedure for Removal From the National Registry of Certified Medical Examiners and 390.135 Procedure for Removal of a Certified VA Medical Examiner From the National Registry of Certified Medical Examiners

As discussed in section II.C., above, FMCSA simplifies many sections across various parts of the CFR to remove or otherwise update references to specific titles or offices to provide greater flexibility in delegations. In §§ 390.115(a) and 390.135(a), FMCSA replaces ''the FMCSA Director, Office of Carrier, Driver and Vehicle Safety Standards'' with ''FMCSA'' and an ATTN: line (''FMCSA, ATTN: Removal from National Registry of Certified Medical Examiners''). Similarly, in §§ 390.115(d) and 390.135(d), FMCSA replaces ''the FMCSA Associate Administrator for Policy'' with ''FMCSA'' and an ATTN: line (''FMCSA, ATTN: National Registry of Certified Medical Examiners—Request for Administrative Review'').

FMCSA also inserts ''FMCSA'' in lieu of ''the Director, Office of Carrier, Driver and Vehicle Safety Standards'' and its slight variation ''The Director, Office of Carrier, Driver and Vehicle Safety Standards'' throughout §§ 390.115 and 390.135. The table in the amendatory instructions for these sections identifies each paragraph where these changes occur. In §§ 390.115(c)(1)(i) and (ii) and 390.135(c)(1)(i) and (ii), FMCSA replaces this same title and the words that immediately follow (''finds it'') with ''FMCSA finds it'' so as to read (in the first of six instances) ''If FMCSA finds it has wholly relied on . . .'' rather than ''If the Director Office of Carrier, Driver and Vehicle Safety Standards finds *FMCSA* has wholly relied on . . .''. Finally, FMCSA inserts ''FMCSA'' in lieu of ''The Associate Administrator'' and its slight variation ''the Associate Administrator'' throughout §§ 390.115(d) and 390.135(d), as described in the table in the amendatory instructions for these sections.

*K. Part 391—Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors*

Sections 391.43 Medical Examination; Certificate of Physical Examination and 391.47 Resolution of Conflicts of Medical Evaluation

As discussed in section II.C., above, FMCSA simplifies many sections across various parts of the CFR to remove or otherwise update references to specific titles or offices to provide greater flexibility in delegations. In §§ 391.43(g)(5)(i)(A) and (B) and 391.47(c), (d)(1) and (2), and (f), FMCSA replaces ''the Director, Office of Carrier, Driver and Vehicle Safety Standards'' and its slight variant ''The Director, Office of Carrier, Driver and Vehicle Safety Standards'' with ''FMCSA.'' FMCSA also replaces the shorthand terms ''The Director'' and ''The Director's'' with ''FMCSA'' and ''FMCSA's'' in § 391.47(c) and (e), respectively.

Section 391.49 Alternative Physical Qualification Standards for the Loss or Impairment of Limbs

As discussed in section II.C., above, FMCSA simplifies many sections across various parts of the CFR to remove or otherwise update references to specific titles or offices to provide greater flexibility in delegations. In § 391.49(a), (g), (h), (j)(1), and (k), FMCSA removes the references to ''the Division Administrator, FMCSA,'' or to the ''The Division Administrator/State Director, FMCSA,'' as applicable, leaving only the references to FMCSA. In paragraph (b)(2), FMCSA specifies the application must be submitted to ''the SPE Certificate Program at the applicable FMCSA service center'' rather than ''the applicable field service center, FMCSA.'' In paragraphs (e)(1) introductory text, (e)(1)(i) and (ii), and (i), the Agency replaces ''Medical Program Specialist, FMCSA service center,'' ''Medical Program Specialist, FMCSA field service center,'' and ''Medical Program Specialist, FMCSA'' with ''SPE Certificate Program, FMCSA service center.'' In paragraph (j)(2), FMCSA simplifies ''the Division Administrator/State Director, FMCSA, for the State where the driver applicant has legal residence'' to ''FMCSA.''

In addition, in § 391.49(d)(1) after ''A copy of the,'' FMCSA adds ''Medical Examination Report Form, MCSA–5875, documenting the.'' In paragraph (i)(7), FMCSA replaces ''medical examination report'' with ''Medical Examination Report Form, MCSA–5875.'' In paragraph (d)(2), FMCSA changes ''medical certificate'' to ''Medical Examiner's Certificate, Form MCSA–5876.'' These changes provide clarity and assist the reader by specifying the current forms required and adopted in 2015 (see 80 FR 22790, Apr. 23, 2015). In addition to the change above in paragraph (j)(2), the Agency replaces ''a Skill Performance Evaluation Program Specialist'' with ''an SPE Evaluator'' to be consistent with the terminology used in the program and to avoid confusion with an SPE Medical Program Specialist.

FMCSA removes the paragraph headings for paragraphs (b) and (e) to ensure consistency throughout the section. FMCSA also adds hyphens to the term ''co-applicants'' throughout the section and the term ''above-named'' in the form under paragraph (j)(2).

Section 391.51 General Requirements for Driver Qualification Files

In § 391.51, FMCSA makes edits to conform to the edits made to paragraph (a) of § 391.49, which § 391.51(b)(8) cross-references. Specifically, rather than state that the qualification file for a driver must include a ''Skill Performance Evaluation Certificate obtained from a Field Administrator, Division Administrator, or State Director issued in accordance with § 391.49,'' paragraph (b)(8) will refer to a ''Skill Performance Evaluation Certificate issued by FMCSA in accordance with § 391.49.'' This language is also structured to parallel the structure in the rest of the paragraph regarding a ''Medical Exemption document issued by a Federal medical program in accordance with part 381 of this chapter.''

Section 391.61 Drivers Who Were Regularly Employed Before January 1, 1971

FMCSA revises § 391.61 by changing the reference in that section from § 391.33 to § 391.31. This revision corrects an earlier mistake when FHWA inadvertently changed the reference in § 391.61 from § 391.31 to § 391.33. When § 391.61 was adopted in 1971, the regulation referenced § 391.31 (35 FR 6458, 6466, Apr. 22, 1970).

On January 27, 1997, FHWA proposed to eliminate the requirement for a road test in § 391.31 and stated the removal of the regulation affects § 391.61 (62 FR 3855, 3858). There was no discussion of changes made to § 391.61 (see 62 FR 3859). In the June 18, 1998 final rule, FHWA decided to retain § 391.31 and the road test requirement, but amended § 391.61 to include § 391.33 instead of § 391.31 in error (see 63 FR 33254, 33263–64, 33278).

*L. Part 393—Parts and Accessories Necessary for Safe Operation*

Section 393.47 Brake Actuators, Slack Adjusters, Linings/Pads, and Drums/Rotors

FMCSA amends this section in response to a December 17, 2018 petition for rulemaking from the Commercial Vehicle Safety Alliance (CVSA). After consulting with a major brake chamber supplier concerning the manufacturer's recommended adjustment limits for type 36 clamp-type chambers, CVSA requested that FMCSA amend the FMCSRs to specify the correct readjustment limit for such chambers in § 393.47(e)(l) and appendix G, section 1. Brake System. CVSA noted its belief that the incorrect value was taken directly from the 2001 edition of Society for Automotive Engineers (SAE) standard J1817 (SAE J1817), which also contains the error, and informed FMCSA that SAE was in the process of correcting the error.

FMCSA has reviewed the February 2018 edition of SAE J1817 (as well as the June 2017 edition of SAE J2899) and confirmed that the readjustment limit for type 36 clamp-type brake chambers is 2.5 in. (63.5 mm.). The readjustment limits specified in the August 6, 2012 final rule (77 FR 46633, 46638) were based on the July 2001 SAE J1817 that had been incorporated by reference in § 393.7(b)(15) on August 15, 2005 (70 FR 48008, 48027). Because SAE has since corrected the error, FMCSA makes conforming amendments to the entries for type 36 clamp-type chambers in § 393.47(e)(l) and appendix G, section 1. Brake System. FMCSA has placed a copy of CVSA's 2018 petition in the docket for this rulemaking.

Section 393.71 Coupling Devices and Towing Methods, Driveaway-Towaway Operations

FMCSA replaces ''insure'' with ''ensure'' throughout the section. This revision corrects an inadvertent word choice error and follows the rationale of the change to § 383.73 in section II.I., above.

*M. Part 395—Hours of Service of Drivers*

Section 395.13 Drivers Ordered Out of Service

In § 395.13, FMCSA replaces the words ''declared,'' ''declare,'' and ''declaring'' with ''ordered,'' ''order,'' and ''ordering,'' respectively, in both the text of the section and in the title of the section. Section 383.5 defines an out-of-service ''order'' to include §§ 396.9, 395.13, 392.5, and 386.72. However, § 395.13 uses the word ''declared'' instead of ''ordered,'' which is inconsistent with §§ 392.5 and 386.72, both of which state ''order.'' These amendments would provide clarity and consistency; now § 395.13 will use ''ordered'' instead of ''declared'' to mirror the language of § 383.37(d), which provides when a driver or vehicle is subject to an out-of-service ''order.'' FMCSA also adds the word ''the'' before ''motor carrier'' in paragraph (d)(3).

Appendix A to Subpart B of Part 395 Functional Specifications for All Electronic Logging Devices (ELDs)

In reference sections 5.4.3, 5.4.4(b), and 5.4.4(d), FMCSA replaces ''the Director, Office of Carrier Driver, and Vehicle Safety Standards'' and its slight variants (one with a comma at the end and the other beginning with a capital ''t'' in ''The'') with simply ''FMCSA.'' FMCSA also inserts ''FMCSA'' in lieu of the shorthand version (''the Director'') in reference sections 5.4.4(c) and 5.4.4(d). In reference section 5.4.4.(b), FMCSA replaces ''the Associate Administrator for Policy'' with ''FMCSA, ATTN: ELD Removal—Request for Administrative Review.'' FMCSA also replaces ''The Associate Administrator'' (in reference sections 5.4.5(c) and (d)) and its slight variant ''the Associate Administrator'' (in reference section 5.4.5(c)) with ''FMCSA.''

In addition, in reference section 7.19 Engine Hours, FMCSA corrects a typographical error. Namely, FMCSA removes a comma from the stated range to ensure the value is within the required data length of 3–7 characters and the range for elapsed engine hours reflects the proper value.

*N. Part 396—Inspection, Repair, and Maintenance*

Section 396.9 Inspection of Motor Vehicles and Intermodal Equipment in Operation

In § 396.9(c), FMCSA replaces the words ''declared'' and ''declare'' with ''ordered,'' and ''order,'' respectively, and replaces the word ''notice'' (in the phrase ''out-of-service notice'' with ''order'' (to read ''out-of-service order''). Section 383.5 defines an out-of-service ''order'' to include §§ 396.9, 395.13, 392.5, and 386.72. However, § 396.9 uses the word ''declared'' instead of ''ordered,'' which is inconsistent with §§ 392.5 and 386.72, both of which use the word ''order.'' These amendments provide clarity and consistency; § 396.9(c) will use ''ordered'' instead of ''declared'' to mirror the language of § 395.13, as modified in section II..M, above.

Sections 396.17 Periodic Inspection, 396.19 Inspector Qualifications, and 396.21 Periodic Inspection Recordkeeping Requirements

As further discussed in section II.P. below, FMCSA redesignates appendix G to subchapter B of chapter III (''Minimum Periodic Inspection Standards'') as appendix A to part 396. Accordingly, FMCSA amends §§ 396.17, 396.19, and 396.21 to change the cross-references to ''appendix G of this subchapter'' and ''appendix G of this subchapter'' to reflect the new name and location of the appendix (*i.e.,* ''appendix A to part 396—. . .'').

*O. Part 398—Transportation of Migrant Workers*

Section 398.4 Driving of Motor Vehicles

FMCSA replaces ''insure'' with ''ensure'' in paragraph (a). This revision corrects an inadvertent word choice error and follows the rationale of the change to § 383.73 in section II..I, above.

Section 398.7 Inspection and Maintenance of Motor Vehicles

FMCSA replaces ''insure'' with ''ensure'' in § 398.7. This revision corrects an inadvertent word choice error and follows the rationale of the change to § 383.73 in section II..I, above.

*P. Chapter III—Federal Motor Carrier Safety Administration, Department of Transportation, Subchapter B—Federal Motor Carrier Safety Regulations Appendix F to Subchapter B of Chapter III—Commercial Zones and Appendix G to Subchapter B of Chapter III—Minimum Periodic Inspection Standards*

FMCSA currently has a number of appendices listed as appendices to subchapter B of chapter III that directly pertain to other parts of the CFR. FMCSA believes it would be beneficial to move two of those appendices, appendices F and G, to the parts of title 49 of the CFR to which they pertain. FMCSA implements these changes by redesignating appendix F as appendix A to part 372, and redesignating appendix G as appendix A to part 396.

FMCSA also makes amendments to the entry for type 36 clamp-type chambers in the ''Clamp-Type Brake Chambers'' table in section 1 of the newly redesignated appendix A to part 396 as discussed in section II.L.

## III. Regulatory Analyses

*A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures*

FMCSA has considered the impact of this final rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and DOT's regulatory policies and procedures. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, OMB has not reviewed it under that E.O.

The amendments made in this final rule primarily correct inadvertent errors and omissions, remove or update obsolete references, and make minor language changes to improve clarity and consistency. Some changes relate to previous changes that were statutorily mandated or merely align regulatory requirements with the underlying statutory authority. In accommodating those changes, the Agency is performing nondiscretionary, ministerial acts. Two new provisions relate to agency management and to FMCSA's rules of organization, procedures, or practice. None of the changes in this final rule imposes material new requirements or increases compliance obligations; therefore, this final rule imposes no new costs and a full regulatory evaluation is unnecessary.

*B. Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801–808), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

*C. Regulatory Flexibility Act (Small Entities)*

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis because, as discussed earlier in the Legal Basis for the Rulemaking section, this action is not subject to notice and public comment under section 553(b) of the APA.

*D. Assistance for Small Entities*

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996), FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the person listed under the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's 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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

*E. Unfunded Mandates Reform Act of 1995*

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 $170 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2020 levels) or more in any 1 year. This final rule will not result in such an expenditure.

*F. Paperwork Reduction Act (Collection of Information)*

This final rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*G. E.O. 13132 (Federalism)*

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.'' FMCSA has determined that this rule will not have substantial direct costs on or for States, nor will it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

*H. Privacy*

The Consolidated Appropriations Act, 2005 (Pub. L. 108–447, 118 Stat. 2809, 3268, Dec. 8, 2004 (5 U.S.C. 552a note)), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. Because this rule does not require the collection of personally identifiable information, the Agency is not required to conduct a privacy impact assessment.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a privacy impact assessment.

*I. E.O. 13175 (Indian Tribal Governments)*

This rule does not have Tribal implications under E.O. 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.

*J. National Environmental Policy Act of 1969*

FMCSA analyzed this rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraphs 6.b and c. These Categorical Exclusions address minor corrections and regulations concerning internal agency functions, organization, or personnel administration such as those

found in this rulemaking. Therefore, preparation of an environmental assessment or environmental impact statement is not necessary.

**List of Subjects**

*49 CFR Part 365*

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Mexico, Motor carriers, Moving of household goods.

*49 CFR Part 368*

Administrative practice and procedure, Mexico, Motor carriers.

*49 CFR Part 380*

Administrative practice and procedure, Highway safety, Motor carriers, Reporting and recordkeeping requirements.

*49 CFR Part 381*

Motor carriers.

*49 CFR Part 382*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

*49 CFR Part 383*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

*49 CFR Part 385*

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 386*

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

*49 CFR Part 387*

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

*49 CFR Part 390*

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 391*

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

*49 CFR Part 393*

Highway safety, Motor carriers, Motor vehicle safety.

*49 CFR Part 395*

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

*49 CFR Part 396*

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 398*

Highway safety, Migrant labor, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III as set forth below:

**Appendix F to Subchapter B of Chapter III [Transferred to Part 372 and Redesignated as Appendix A to Part 372]**

■ 1. Under the authority of 44 U.S.C. 1505 and 1510, appendix F to subchapter B of chapter III is transferred to part 372 and redesignated as appendix A to part 372.

**Appendix G to Subchapter B of Chapter III [Transferred to Part 396 and Redesignated as Appendix A to Part 396]**

■ 2. Under the authority of 44 U.S.C. 1505 and 1510, appendix G to subchapter B of chapter III is transferred to part 396 and redesignated as appendix A to part 396.

## PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

■ 3. The authority citation for part 365 continues to read as follows:

**Authority:** 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 13908, 14708, 31133, 31138, and 31144; 49 CFR 1.87.

■ 4. Amend § 365.101 as follows:
■ a. Lift the suspension of the section;
■ b. Revise paragraph (h); and
■ c. Suspend the section indefinitely.

The revision reads as follows:

**§ 365.101 Applications governed by these rules.**

* * * * *

(h) Applications for Mexico-domiciled motor carriers to operate in foreign commerce as common, contract or private motor carriers of property (including exempt items) between Mexico and all points in the United States. A Mexico-domiciled motor carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

* * * * *

■ 5. Amend § 365.101T by revising paragraph (h) to read as follows:

**§ 365.101T Applications governed by these rules.**

* * * * *

(h) Applications for Mexico-domiciled motor carriers to operate in foreign commerce as for-hire or private motor carriers of property (including exempt items) between Mexico and all points in the United States. A Mexico-domiciled motor carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

* * * * *

## PART 368—APPLICATION FOR A CERTIFICATE OF REGISTRATION TO OPERATE IN MUNICIPALITIES IN THE UNITED STATES ON THE UNITED STATES-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES

■ 6. The authority citation for part 368 is revised to read as follows:

**Authority:** 49 U.S.C. 13301, 13902, 13908; Pub. L. 106–159, 113 Stat. 1748; and 49 CFR 1.87.

■ 7. Amend § 368.8 as follows:
■ a. Lift the suspension of the section;
■ b. Revise the third sentence; and
■ c. Suspend the section indefinitely.

The revision reads as follows:

**§ 368.8 Appeals.**

* * * The appeal must be filed with FMCSA, ATTN: § 368.8 Appeal, 1200 New Jersey Avenue SE, Washington, DC 20590, within 20 days of the date of the letter denying the application.

■ 8. Amend § 368.8T by revising the third and fourth sentences to read as follows:

**§ 368.8T Appeals.**

* * * The appeal must be filed with FMCSA, ATTN: § 368.8 Appeal, 1200 New Jersey Avenue SE, Washington, DC 20590, within 20 days of the date of the letter denying the application. The decision will be the final agency order.

## PART 380—SPECIAL TRAINING REQUIREMENTS

■ 9. The authority citation for part 380 is revised to read as follows:

**Authority:** 49 U.S.C. 31133, 31136, 31305, 31307, 31308, 31502; sec. 4007(a) and (b), Pub. L. 102–240, 105 Stat. 1914, 2151–2152; sec. 32304, Pub. L. 112–141, 126 Stat. 405, 791; and 49 CFR 1.87.

■ 10. Amend § 380.603 by revising paragraph (a)(3) to read as follows:

**§ 380.603 Applicability.**

(a) * * *

(3) Military personnel with military CMV experience who meet all the requirements and conditions of § 383.77 of this chapter; and

* * * * *

**§ 380.723 [Amended]**

■ 11. In the table below, for each paragraph of § 380.723 indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

| Paragraph | Remove | Add |
|---|---|---|
| (a) | FMCSA's Director, Office of Carrier, Driver, and Vehicle Safety Standards (Director). | FMCSA, ATTN: Training Provider Registry Removal, 1200 New Jersey Avenue SE, Washington, DC 20590. |
| (c) introductory text, (c)(1)(i) and (ii), and (c)(2)(i). | the Director | FMCSA. |
| (c)(1) introductory text and (c)(2)(i) and (ii). | The Director | FMCSA. |
| (d) introductory text | the FMCSA Associate Administrator for Policy (Associate Administrator). | FMCSA, ATTN: § 380.723 Training Provider Registry Removal Proceedings, 1200 New Jersey Avenue SE, Washington, DC 20590. |
| (d)(1) and (2) | The Associate Administrator | FMCSA. |
| (d)(1) and (2) | the Associate Administrator | FMCSA. |
| (e) introductory text and (f)(1) and (2). | the Director | FMCSA. |

**§ 380.725 [Amended]**

■ 12. Amend § 380.725 by:

■ a. Removing paragraph (b)(4); and

■ b. Redesignating paragraphs (b)(5) and (6) as paragraphs (b)(4) and (5), respectively.

### Appendix B to Part 380—[Amended]

■ 13. Amend appendix B to part 380 by removing the word ''combination'' in unit B1.1.6.

## PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

■ 14. The authority citation for part 381 is revised to read as follows:

**Authority:** 49 U.S.C. 31136(e), 31315; and 49 CFR 1.87.

■ 15. Amend § 381.200 by revising paragraph (c) to read as follows:

**§ 381.200 What is a waiver?**

* * * * *

(c) A waiver is intended for nonemergency and unique events, and is subject to conditions imposed by the Administrator.

* * * * *

## PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 16. The authority citation for part 382 continues to read as follows:

**Authority:** 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 17. Amend § 382.107 by revising the definition of ''Consortium/Third party administrator (C/TPA)'' to read as follows:

**§ 382.107 Definitions.**

* * * * *

*Consortium/Third party administrator (C/TPA)* means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (*e.g.,* having a combined random testing pool). C/TPAs are not ''employers'' for purposes of this part, except as provided in § 382.705(c).

* * * * *

**§ 382.305 [Amended]**

■ 18. Amend § 382.305 in paragraph (b)(2) by removing ''25 percent'' and adding in its place ''50 percent''.

■ 19. Amend § 382.703 by revising paragraph (c) to read as follows:

**§ 382.703 Driver consent to permit access to information in the Clearinghouse.**

* * * * *

(c) No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraph (a) or (b) of this section.

* * * * *

**§ 382.717 [Amended]**

■ 20. In the table below, for each paragraph of § 382.717 indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

| Paragraph | Remove | Add |
|---|---|---|
| (c) | Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager. | ATTN: Drug and Alcohol Clearinghouse Petition for Review. |
| (f)(2) | the Associate Administrator for Enforcement (MC–E). | FMCSA, ATTN: Drug and Alcohol Clearinghouse Administrative Review. |
| (f)(4) | The Associate Administrator's | FMCSA's. |

## PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 21. The authority citation for part 383 continues to read as follows:

**Authority:** 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

### § 383.71 [Amended]

■ 22. Amend § 383.71 by:
■ a. Redesignating paragraph (a)(3) as paragraph (a)(10);
■ b. Removing paragraph (a)(1);
■ c. Removing the heading and introductory text to paragraph (a)(2); and
■ d. Redesignating paragraphs (a)(2)(i) through (ix) as paragraphs (a)(1) through (9), respectively.

■ 23. Amend § 383.73 by:
■ a. Adding introductory text to paragraph (a);
■ b. Removing paragraph (a)(1);
■ c. Removing the heading and introductory text to paragraph (a)(2);
■ d. Redesignating paragraphs (a)(2)(i) through (vii) as paragraphs (a)(1) through (7), respectively;
■ e. Revising newly redesignated paragraphs (a)(1) and (6);
■ f. Further redesignating paragraphs (a)(7)(A) and (B) as paragraphs (a)(7)(i) and (ii), respectively; and
■ g. Revising paragraphs (o)(4)(i)(A) and (o)(5) and (6).

The addition and revisions read as follows:

### § 383.73 State procedures.

(a) * * * Prior to issuing a CLP to a person, a State must:

(1) Require the applicant to make the certifications, pass the tests, and provide the information as described in § 383.71(a).

* * * * *

(6) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in *§ 383.71(a)(5)* and proof of State of domicile specified in *§ 383.71(a)(6). Exception:* A State is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done.

* * * * *

(o) * * *

(4) * * *

(i) * * *

(A)(*1*) Before June 23, 2025, notify the CLP or CDL holder of his/her CLP or CDL ''not-certified'' medical certification status and that the CDL privileges will be removed from the CLP or CDL unless the driver submits a current medical examiner's certificate and/or medical variance, or changes his/her self-certification to driving only in excepted or intrastate commerce (if permitted by the State).

(*2*) On or after June 23, 2025, notify the CLP or CDL holder of his/her CLP or CDL ''not-certified'' medical certification status and that the CDL privileges will be removed from the CLP or CDL unless the driver has been medically examined and certified in accordance with 49 CFR 391.43 as physically qualified to operate a commercial motor vehicle by a medical examiner, as defined in 49 CFR 390.5, or the driver changes his/her self-certification to driving only in excepted or intrastate commerce (if permitted by the State).

* * * * *

(5) *State contacts for medical variances.* FMCSA Medical Programs is designated as the keeper of the list of State contacts for receiving medical variance information from FMCSA. Beginning January 30, 2012, States are responsible for ensuring their medical variance contact information is always up-to-date with FMCSA's Medical Programs.

(6) *Conflicting medical certification information.* In the event of a conflict between the medical certification information provided electronically by FMCSA and a paper copy of the medical examiner's certificate, the medical certification information provided electronically by FMCSA shall control.

* * * * *

## PART 385—SAFETY FITNESS PROCEDURES

■ 24. The authority citation for part 385 continues to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901–13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 113(a), Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 408, Pub. L. 104–88, 109 Stat. 803, 958; sec. 350, Pub. L. 107–87, 115 Stat. 833, 864; sec. 5205, Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

### § 385.15 [Amended]

■ 25. Amend § 385.15(c) introductory text by removing the words ''Chief Safety Officer'' and adding in their place the words ''Assistant Administrator, ATTN: Adjudications Counsel''.

### §§ 385.113 and 385.711 [Amended]

■ 26. In the table below, for each section indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 385.113(b) ..... | the Associate Administrator for Enforcement and Program Delivery (MC–E), Federal Motor Carrier Safety Administration. | FMCSA, ATTN: § 385.113 Request for Administrative Review. |
| 385.113(d) ..... | The Associate Administrator's ..... | FMCSA's/ |
| 385.711(b) ..... | the Associate Administrator for Enforcement and Program Delivery, Federal Motor Carrier Safety Administration. | FMCSA, ATTN: § 385.113 Request for Administrative Review. |
| 385.711(d) ..... | The Associate Administrator's ..... | FMCSA's. |

### § 385.423 [Amended]

■ 27. Amend § 385.423 in paragraphs (b), (c)(1) introductory text, (c)(1)(i), (c)(3) and (4), (c)(5) introductory text, (c)(5)(ii), and (c)(6) and (7) by removing the words ''Chief Safety Officer'' every time they appear and adding in their place the words ''Assistant Administrator''.

■ 28. Amend § 385.903 by revising the definition of ''Agency Official'' to read as follows:

### § 385.903 Definitions.

* * * * *

*Agency Official* means the FMCSA employee with delegated authority under this subpart.

* * * * *

■ 29. Amend § 385.1003 by revising the definition of ''Agency Official'' to read as follows:

**§ 385.1003 Definitions.**

* * * * *

*Agency Official* means the FMCSA employee with delegated authority under this subpart.

* * * * *

## PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

■ 30. The authority citation for part 386 is revised to read as follows:

**Authority:** 28 U.S.C. 2461 note; 49 U.S.C. 113, 1301 note, 31306a; 49 U.S.C. chapters 5, 51, 131–141, 145–149, 311, 313, and 315; and 49 CFR 1.81, 1.87.

■ 31. Amend § 386.2 by:

■ a. Adding a definition of ''Agency decisionmaker'' in alphabetical order;

■ b. Revising the definition of ''Assistant Administrator'';

■ c. Removing the definition of ''Decisionmaker''; and

■ d. Revising the definition of ''Field Administrator''.

The addition and revisions read as follows:

**§ 386.2 Definitions.**

* * * * *

*Agency decisionmaker* means the FMCSA official authorized to issue a final decision and order of the Agency in an administrative proceeding under this part. The Agency decisionmaker is the Assistant Administrator or any person to whom this decisionmaking authority has been delegated.

*Assistant Administrator* means the Assistant Administrator of the Federal Motor Carrier Safety Administration or an authorized delegee. The Assistant Administrator is the Agency decisionmaker who issues final decisions under this part.

* * * * *

*Field Administrator* means the head of an FMCSA Service Center who has been delegated authority to initiate compliance and enforcement actions on behalf of FMCSA or an authorized delegee.

* * * * *

■ 32. Amend § 386.3 by revising paragraph (b) to read as follows:

**§ 386.3 Separation of functions.**

* * * * *

(b) An Agency employee, including those listed in paragraph (c) of this section, engaged in the performance of investigative or prosecutorial functions in a civil penalty proceeding or in a proceeding under § 386.11, § 386.72, or § 386.73 may not, in that case or a factually related case, discuss or communicate the facts or issues involved with the Agency decisionmaker, Administrative Law Judge, Hearing Officer, or others listed in paragraph (d) of this section, except as counsel or a witness in the public proceedings. The prohibition in this paragraph (b) also includes the staff of those covered by this section.

* * * * *

**§§ 386.11, 386.48, 386.71, 386.72, and 386.73 [Amended]**

■ 33. In the table below, for each section indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 386.11(a) introductory text | the Director, Office of Carrier, Driver, and Vehicle Safety Standards (MC–PS). | FMCSA. |
| 386.48 | the Director, Office of Carrier, Driver, and Vehicle Safety Standards (MC–PS). | FMCSA. |
| 386.71 | the Chief Counsel | FMCSA. |
| 386.72(b)(1) introductory text | the Director of the Office of Enforcement and Compliance or a Division Administrator, or his or her delegate. | FMCSA. |
| 386.73(a) introductory text | An FMCSA Field Administrator or the Director of FMCSA's Office of Enforcement and Compliance (Director). | FMCSA. |
| 386.73(a) introductory text, (b) introductory text, (c) introductory text, (c)(1), (g)(2), and (h)(3), (5), and (6). | the Field Administrator or Director | FMCSA. |
| 386.73(c) introductory text, (d), (f) introductory text, (g)(5), and (h)(4). | The Field Administrator or Director | FMCSA. |
| 386.73(g)(1) and (h)(1) | Field Administrator or Director | FMCSA official. |
| 386.73(g)(7) | the Field Administrator or the Director | FMCSA. |

**§ 386.83 [Amended]**

■ 34. Amend § 386.83(b)(2) introductory text by removing the words ''Chief Safety Officer'' and adding in their place the words ''Assistant Administrator''.

**§ 386.84 [Amended]**

■ 35. Amend § 386.84(b)(2) introductory text by removing the words ''Chief Safety Officer'' and adding in their place the words ''Assistant Administrator''.

## PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 36. The authority citation for part 387 is revised to read as follows:

**Authority:** 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, 31139; sec. 204(a), Pub. L. 104–88, 109 Stat. 803, 941; and 49 CFR 1.87.

■ 37. Revise § 387.9 to read as follows:

**§ 387.9 Financial responsibility, minimum levels.**

The minimum levels of financial responsibility referred to in § 387.7 are hereby prescribed as follows:

TABLE 1 TO § 387.9—SCHEDULE OF LIMITS—PUBLIC LIABILITY

| Type of carriage | Commodity transported | January 1, 1985 |
|---|---|---|
| (1) For-hire (In interstate or foreign commerce, with a gross vehicle weight rating of 10,001 or more pounds). | Property (nonhazardous) | $750,000 |

TABLE 1 TO § 387.9—SCHEDULE OF LIMITS—PUBLIC LIABILITY—Continued

| Type of carriage | Commodity transported | January 1, 1985 |
|---|---|---|
| (2) For-hire and Private (In interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,001 or more pounds). | Hazardous substances, as defined in 49 CFR 171.8, transported in bulk in cargo tanks, portable tanks, or hopper-type vehicles with capacities in bulk; in bulk Division 1.1, 1.2 or 1.3 materials; Division 2.3, Hazard Zone A material; in bulk Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2 material; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403. | 5,000,000 |
| (3) For-hire and Private (In interstate or foreign commerce, in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,001 or more pounds). | Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials, or hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in entry (2) or (4) of this table. | 1,000,000 |
| (4) For-hire and Private (In interstate or foreign commerce, with a gross vehicle weight rating of less than 10,001 pounds). | In bulk Division 1.1, 1.2, or 1.3 material; in bulk Division 2.3, Hazard Zone A material; in bulk Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403. | 5,000,000 |

■ 38. Amend § 387.323 as follows:
■ a. Lift the suspension of the section;
■ b. Revise paragraph (c); and
■ c. Suspend the section indefinitely.
The revision reads as follows:

**§ 387.323 Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.**

* * * * *

(c) Filings may be transmitted online via the internet at: *https://li-public.fmcsa.dot.gov.*

* * * * *

■ 39. Amend § 387.323T by revising paragraph (c) introductory text to read as follows:

**§ 387.323T Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.**

* * * * *

(c) Filings may be transmitted online via the internet at: *https://li-public.fmcsa.dot.gov* or via American Standard Code Information Interchange (ASCII). All ASCII transmission must be in fixed format, *i.e.,* all records must have the same number of fields and same length. The record layouts for ASCII electronic transactions are described in the following table:

* * * * *

## PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 40. The authority citation for part 390 is revised to read as follows:

**Authority:** 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

■ 41. Amend § 390.3T by revising the introductory text of paragraph (h) to read as follows:

**§ 390.3T General applicability.**

* * * * *

(h) *Intermodal equipment providers.* The rules in the following provisions of this subchapter apply to intermodal equipment providers:

* * * * *

■ 42. Add § 390.4 to read as follows:

**§ 390.4 Delegations and redelegations of authority of FMCSA employees to perform assigned actions or duties.**

(a) *General.* FMCSA may apply the guidelines and procedures of this section to delegate or redelegate the authority of FMCSA employees to perform assigned actions or duties under this chapter.

(b) *FMCSA Administrator authority to delegate and redelegate.* (1) The FMCSA Administrator is authorized to delegate and redelegate authority and authorize successive redelegations.

(2) The FMCSA Administrator retains concurrent authority to exercise or redelegate any authority that he or she has delegated to an employee in regulation, directive, or memorandum.

(c) *Redelegations by FMCSA employees.* Unless specifically prohibited by law, and in consultation with the FMCSA Office of the Chief Counsel, an FMCSA employee with delegated authority is authorized to—

(1) Redelegate that authority to another FMCSA employee, as appropriate; and

(2) Maintain concurrent authority to exercise or redelegate the authority he or she has delegated to another FMCSA employee.

(d) *Exercise of delegated authority in special circumstances.* In consultation with the FMCSA Office of the Chief Counsel, if the FMCSA employee to whom a regulation assigns the authority to perform an action or a duty is unavailable or otherwise unable to perform such action or duty (*e.g.,* due to a conflict of interest or a vacancy in the position), a supervisor of the FMCSA employee may exercise that authority or redelegate such authority to another FMCSA employee, as appropriate.

(e) *Format of delegations and redelegations.* Delegations and redelegations authorized under this section must be in writing and may be made by regulation, directive, or memorandum.

(f) *Actions or duties performed under delegated or redelegated authority.* Each action or duty performed by any FMCSA employee pursuant to authority delegated or redelegated to him or her in accordance with this section, whether directly or by redelegation, shall be a valid exercise of that authority, notwithstanding any regulation that provides that such action or duty shall be performed by another FMCSA employee.

■ 43. Amend § 390.5 as follows:
■ a. Lift the suspension of the section;
■ b. Add the definition of ''Assistant Administrator'' in alphabetical order;
■ c. Revise the definitions of ''Emergency'' and ''Exempt intracity zone'';

■ d. Add the definition of ''Field Administrator'' in alphabetical order; and

■ e. Suspend the section indefinitely.

The additions and revisions read as follows:

**§ 390.5 Definitions.**

* * * * *

*Assistant Administrator* means the Assistant Administrator of the Federal Motor Carrier Safety Administration or an authorized delegee.

* * * * *

*Emergency* means any hurricane, tornado, storm (*e.g.* thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout, or other occurrence, natural or man-made, which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in:

(1) A declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies; or

(2) A request by a police officer for tow trucks to move wrecked or disabled motor vehicles.

* * * * *

*Exempt intracity zone* means the geographic area of a municipality or the commercial zone of that municipality described in appendix A to part 372 of this chapter. The term ''exempt intracity zone'' does not include any municipality or commercial zone in the State of Hawaii. For purposes of § 391.62 of this chapter, a driver may be considered to operate a commercial motor vehicle wholly within an exempt intracity zone notwithstanding any common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone.

* * * * *

*Field Administrator* means the head of an FMCSA Service Center who has been delegated authority to initiate compliance and enforcement actions on behalf of FMCSA or an authorized delegee.

* * * * *

■ 44. Amend § 390.5T by:

■ a. Adding the definition of ''Assistant Administrator'' in alphabetical order;

■ b. Revising the definitions of ''Emergency'' and ''Exempt intracity zone''; and

■ c. Adding the definition of ''Field Administrator'' in alphabetical order.

The additions and revisions read as follows:

**§ 390.5T Definitions.**

* * * * *

*Assistant Administrator* means the Assistant Administrator of the Federal Motor Carrier Safety Administration or an authorized delegee.

* * * * *

*Emergency* means any hurricane, tornado, storm (*e.g.* thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout, or other occurrence, natural or man-made, which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in:

(1) A declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies; or

(2) A request by a police officer for tow trucks to move wrecked or disabled motor vehicles.

* * * * *

*Exempt intracity zone* means the geographic area of a municipality or the commercial zone of that municipality described in appendix A to part 372 of this chapter. The term ''exempt intracity zone'' does not include any municipality or commercial zone in the State of Hawaii. For purposes of § 391.62 of this chapter, a driver may be considered to operate a commercial motor vehicle wholly within an exempt intracity zone notwithstanding any common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone.

* * * * *

*Field Administrator* means the head of an FMCSA Service Center who has been delegated authority to initiate compliance and enforcement actions on behalf of FMCSA or an authorized delegee.

* * * * *

■ 45. Add § 390.8 to subpart A to read as follows:

**§ 390.8 Separation of functions.**

(a) An Agency employee who has taken an active part in investigating, prosecuting, advocating, or making an initial Agency determination in a proceeding under § 380.723, § 382.717, § 390.115, § 390.135, or § 391.47 of this chapter or section 5.4 to appendix A to subpart B of part 395 of this chapter may not, in that case or a factually-related case, advise or assist the Agency official authorized to issue a final decision in the applicable proceeding.

(b) Nothing in this section shall preclude the Agency official authorized to issue a final decision or anyone advising that Agency official from taking part in a determination to launch an investigation or issue a complaint, or similar preliminary decision.

**§§ 390.23 and 390.25 [Amended]**

■ 46. In the table below, for each section indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 390.23(a)(1)(i)(B) and (a)(2)(i)(B) | The FMCSA Field Administrator | FMCSA |
| 390.23(a)(1)(ii)(A) and (a)(2)(ii) | the FMCSA Field Administrator | FMCSA |
| 390.25 | the FMCSA Field Administrator | FMCSA |
| 390.25 | The FMCSA Field Administrator | FMCSA |

**§§ 390.115 and 390.135 [Amended]**

■ 47. In the table below, for each section indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 390.115(a) | the FMCSA Director, Office of Carrier, Driver and Vehicle Safety Standards. | FMCSA, ATTN: Removal from National Registry of Certified Medical Examiners. |
| 390.115(a), (c) introductory text, (c)(2)(i), (c)(3), (d)(2)(v), (e), (f) introductory text, and (f)(5). | the Director, Office of Carrier, Driver and Vehicle Safety Standards. | FMCSA. |
| 390.115(c)(1) introductory text and (c)(2)(i) and (ii). | The Director, Office of Carrier, Driver and Vehicle Safety Standards. | FMCSA. |
| 390.115(c)(1)(i) and (ii) | the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA. | FMCSA finds it. |
| 390.115(c)(1)(i) and (ii) | the Director, Office of Carrier, Driver and Vehicle Safety Standards will. | FMCSA will. |
| 390.115(c)(1)(i) | the Director, Office of Carrier, Driver and Vehicle Safety Standards modifies. | FMCSA modifies. |
| 390.115(c)(1)(ii) | the Director, Office of Carrier, Driver and Vehicle Safety Standards affirms. | FMCSA affirms. |
| 390.115(d) introductory text | the FMCSA Associate Administrator for Policy | FMCSA, ATTN: National Registry of Certified Medical Examiners—Request for Administrative Review. |
| 390.115(d)(1) and (d)(2) introductory text. | The Associate Administrator | FMCSA. |
| 390.115(d)(1) and (d)(2) introductory text. | the Associate Administrator | FMCSA. |
| 390.135(a) | the FMCSA Director, Office of Carrier, Driver and Vehicle Safety Standards. | FMCSA, ATTN: Removal from National Registry of Certified Medical Examiners. |
| 390.135(a), (c) introductory text, (c)(2)(i), (c)(3), (d)(2)(v), (e), (f) introductory text, and (f)(5). | the Director, Office of Carrier, Driver and Vehicle Safety Standards. | FMCSA. |
| 390.135(c)(1) introductory text and (c)(2)(i) and (ii). | The Director, Office of Carrier, Driver and Vehicle Safety Standards. | FMCSA. |
| 390.135(c)(1)(i) and (ii) | the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA. | FMCSA finds it. |
| 390.135(c)(1)(i) and (ii) | the Director, Office of Carrier, Driver and Vehicle Safety Standards will. | FMCSA will. |
| 390.135(c)(1)(i) | the Director, Office of Carrier, Driver and Vehicle Safety Standards modifies. | FMCSA modifies. |
| 390.135(c)(1)(ii) | the Director, Office of Carrier, Driver and Vehicle Safety Standards affirms. | FMCSA affirms. |
| 390.135(d) introductory text | the FMCSA Associate Administrator for Policy | FMCSA, ATTN: National Registry of Certified Medical Examiners—Request for Administrative Review. |
| 390.135(d)(1) and (d)(2) introductory text. | The Associate Administrator | FMCSA. |
| 390.135(d)(1) and (d)(2) introductory text. | the Associate Administrator | FMCSA. |

## PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 48. The authority citation for part 391 continues to read as follows:

**Authority:** 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.87.

**§§ 391.43 and 391.47 [Amended]**

■ 49. In the table below, for each section indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 391.43(g)(5)(i)(A) and (B) | the Director, Office of Carrier, Driver and Vehicle Safety Standards. | FMCSA. |
| 391.47(c) | The Director, Office of Carrier, Driver and Vehicle Safety Standards. | FMCSA. |
| 391.47(c) | the Director | FMCSA. |
| 391.47(d)(1) and (2) and (f) | the Director, Office of Carrier, Driver and Vehicle Safety Standards. | FMCSA. |
| 391.47(e) | the Director's | FMCSA's. |

■ 50. Amend § 391.49 by:
■ a. Revising paragraph (a);
■ b. Removing the heading from paragraph (b);
■ c. Revising paragraphs (b)(2), (c)(1)(i), (c)(2)(i), (c)(4)(i), (c)(5)(ii), (d)(1) and (2), (d)(3) introductory text, and (d)(5)(i);
■ d. Removing the heading from paragraph (e);
■ e. Revising paragraphs (e)(1), (g), (h), (i) introductory text, (i)(7), (j), and (k).

The revisions read as follows:

**§ 391.49 Alternative physical qualification standards for the loss or impairment of limbs.**

(a) A person who is not physically qualified to drive under § 391.41(b)(1) or (2) and who is otherwise qualified to drive a commercial motor vehicle, may drive a commercial motor vehicle if FMCSA has granted a Skill Performance Evaluation (SPE) Certificate to that person.

(b) * * *

(2) *Application address.* The application must be addressed to the SPE Certificate Program at the applicable FMCSA service center for the State in which the co-applicant motor carrier's principal place of business is located. The address of each, and the States serviced, are listed in § 390.27 of this chapter.

* * * * *

(c) * * *

(1) * * *

(i) Name and complete address of the motor carrier co-applicant;

* * * * *

(2) * * *

(i) State(s) in which the driver will operate for the motor carrier co-applicant (if more than 10 States, designate general geographic area only);

* * * * *

(4) * * *

(i) The co-applicant motor carrier must certify that the driver applicant is otherwise qualified under the regulations of this part;

* * * * *

(5) * * *

(ii) Motor carrier official's signature (if application has a co-applicant), title, and date signed. Depending upon the motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.

(d) * * *

(1) A copy of the Medical Examination Report Form, MCSA–5875, documenting the results of the medical examination performed pursuant to § 391.43;

(2) A copy of the Medical Examiner's Certificate, Form MCSA–5876, completed pursuant to § 391.43(h);

(3) A medical evaluation summary completed by either a board qualified or board certified physiatrist (doctor of physical medicine) or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform;

* * * * *

(5) * * *

(i) A copy of the driver applicant's road test administered by the motor carrier co-applicant and the certificate issued pursuant to § 391.31(b) through (g); or

* * * * *

(e) * * *

(1) File promptly (within 30 days of the involved incident) with the SPE Certificate Program, FMCSA service center, such documents and information as may be required about driving activities, accidents, arrests, license suspensions, revocations, or withdrawals, and convictions which involve the driver applicant. This paragraph (e)(1) applies whether the driver SPE certificate is a unilateral one or has a co-applicant motor carrier;

(i) A motor carrier who is a co-applicant must file the required documents with the SPE Certificate Program, FMCSA service center, for the State in which the carrier's principal place of business is located; or

(ii) A motor carrier who employs a driver who has been issued a unilateral SPE certificate must file the required documents with the SPE Certificate Program, FMCSA service center, for the State in which the driver has legal residence.

* * * * *

(g) FMCSA may require the driver applicant to demonstrate his or her ability to safely operate the commercial motor vehicle(s) the driver intends to drive to an agent of FMCSA. The SPE certificate form will identify the power unit (bus, truck, truck tractor) for which the SPE certificate has been granted. The SPE certificate forms will also identify the trailer type used in the Skill Performance Evaluation; however, the SPE certificate is not limited to that specific trailer type. A driver may use the SPE certificate with other trailer types if a successful trailer road test is completed in accordance with paragraph (e)(2) of this section. Job tasks, as stated in paragraph (e)(3) of this section, are not evaluated during the Skill Performance Evaluation.

(h) FMCSA may deny the application for SPE certificate or may grant it totally or in part and issue the SPE certificate subject to such terms, conditions, and limitations as deemed consistent with the public interest. The SPE certificate is valid for a period not to exceed 2 years from date of issue, and may be renewed 30 days prior to the expiration date.

(i) The SPE certificate renewal application shall be submitted to the SPE Certificate Program, FMCSA service center, for the State in which the driver has legal residence, if the SPE certificate was issued unilaterally. If the SPE certificate has a co-applicant, then the renewal application is submitted to the SPE Certificate Program, FMCSA service center, for the State in which the co-applicant motor carrier's principal place of business is located. The SPE certificate renewal application shall contain the following:

* * * * *

(7) A current Medical Examination Report Form, MCSA–5875;

* * * * *

(j)(1) Upon granting an SPE certificate, FMCSA will notify the driver applicant and co-applicant motor carrier (if applicable) by letter. The terms, conditions, and limitations of the SPE certificate will be set forth. A motor carrier shall maintain a copy of the SPE certificate in its driver qualification file. A copy of the SPE certificate shall be retained in the motor carrier's file for a period of 3 years after the driver's employment is terminated. The driver applicant shall have the SPE certificate (or a legible copy) in his/her possession whenever on duty.

(2) Upon successful completion of the skill performance evaluation, FMCSA must notify the driver by letter and enclose an SPE certificate substantially in the following form:

Skill Performance Evaluation Certificate

Name of Issuing Agency: _____
Agency Address: _____
Telephone Number: ( ) _____
Issued Under 49 CFR 391.49, subchapter B of the Federal Motor Carrier Safety Regulations

Driver's Name: _____
Effective Date: _____
SSN: _____
DOB: _____
Expiration Date: _____
Address: _____
Driver Disability: _____
Check One: _____New _____Renewal
Driver's License: _____
(State) (Number)

In accordance with 49 CFR 391.49, subchapter B of the Federal Motor Carrier Safety Regulations (FMCSRs), the driver application for a skill performance evaluation (SPE) certificate is hereby granted authorizing the above-named driver to operate in interstate or foreign commerce under the provisions set forth below. This

certificate is granted for the period shown above, not to exceed 2 years, subject to periodic review as may be found necessary. This certificate may be renewed upon submission of a renewal application. Continuation of this certificate is dependent upon strict adherence by the above-named driver to the provisions set forth below and compliance with the FMCSRs. Any failure to comply with provisions herein may be cause for cancellation.

CONDITIONS: As a condition of this certificate, reports of all accidents, arrests, suspensions, revocations, withdrawals of driver licenses or permits, and convictions involving the above-named driver shall be reported in writing to the Issuing Agency by the EMPLOYING MOTOR CARRIER within 30 days after occurrence.

LIMITATIONS:

1. Vehicle Type (power unit):* _____
2. Vehicle modification(s): _____
3. Prosthetic or Orthotic device(s) (Required to be Worn While Driving): _____
4. Additional Provision(s): _____

NOTICE: To all MOTOR CARRIERS employing a driver with an SPE certificate. This certificate is granted for the operation of the *power unit only.* It is the responsibility of the employing motor carrier to evaluate the driver with a road test using the trailer type(s) the motor carrier intends the driver to transport, or in lieu of, accept the trailer road test done during the SPE if it is a similar trailer type(s) to that of the prospective motor carrier. Also, it is the responsibility of the employing motor carrier to evaluate the driver for those non-driving safety-related job tasks associated with the type of trailer(s) utilized, as well as, any other non-driving safety-related or job-related tasks unique to the operations of the employing motor carrier.

The SPE of the above-named driver was given by an SPE Evaluator. It was successfully completed utilizing the above-named power unit and _____ (trailer, if applicable)

The tractor or truck had a _____ transmission.

Please read the *NOTICE* paragraph above.

Name: _____

Signature: _____

Title: _____

Date: _____

(k) FMCSA may revoke an SPE certificate after the person to whom it was issued is given notice of the proposed revocation and has been allowed a reasonable opportunity to appeal.

* * * * *

■ 51. Amend § 391.51 by revising paragraph (b)(8) to read as follows:

**§ 391.51 General requirements for driver qualification files.**

* * * * *

(b) * * *

(8) A Skill Performance Evaluation Certificate issued by FMCSA in accordance with § 391.49; or the Medical Exemption document issued by a Federal medical program in accordance with part 381 of this chapter; and

* * * * *

■ 52. Revise § 391.61 to read as follows:

**§ 391.61 Drivers who were regularly employed before January 1, 1971.**

The provisions of §§ 391.21 (relating to applications for employment), 391.23 (relating to investigations and inquiries), and 391.31 (relating to road tests) do not apply to a driver who has been a single-employer driver (as defined in § 390.5 of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he/she continues to be a single-employer driver of that motor carrier.

## PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 53. The authority citation for part 393 is revised to read as follows:

**Authority:** 49 U.S.C. 31136, 31151, 31502; sec. 1041(b), Pub. L. 102–240, 105 Stat. 1914, 1993; secs. 5301 and 5524, Pub. L. 114–94, 129 Stat. 1312, 1543, 1560; and 49 CFR 1.87.

■ 54. Amend § 393.47(e)(1) in the table titled ''Clamp-Type Brake Chambers'' by revising the entry for type 36 chambers to read as follows:

**§ 393.47 Brake actuators, slack adjusters, linings/pads and drums/rotors.**

* * * * *

(e) * * *

(1) * * *

CLAMP-TYPE BRAKE CHAMBERS

| Type | Outside diameter | Brake readjustment limit: standard stroke chamber | Brake readjustment limit: long stroke chamber |
|---|---|---|---|
| * * | * * | * * | * * |
| 36 | 9 in. (229 mm) | 2½ in. (63.5 mm) | |

* * * * *

**§ 393.71 [Amended]**

■ 55. Amend § 393.71 by removing the word ''insure'' adding in its place the word ''ensure'' in paragraphs (h)(1) introductory text, (j)(5)(i), (k)(2), and (k)(3)(i).

## PART 395—HOURS OF SERVICE OF DRIVERS

■ 56. The authority citation for part 395 is revised to read as follows:

**Authority:** 49 U.S.C. 504, 21104(e), 31133, 31136, 31137, 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; sec. 5206(b), Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 57. Amend § 395.13 by revising the section heading and paragraphs (a), (c)(1)(i) and (ii), and (d)(1) through (3) to read as follows:

**§ 395.13 Drivers ordered out of service.**

(a) *Authority to order drivers out of service.* Every special agent of the Federal Motor Carrier Safety Administration (as defined in appendix B to this subchapter) is authorized to order a driver out of service and to notify the motor carrier of that order, upon finding at the time and place of examination that the driver has violated the out-of- service criteria as set forth in paragraph (b) of this section.

* * * * *

(c) * * *

(1) * * *

(i) Require or permit a driver who has been ordered out of service to operate a commercial motor vehicle until that driver may lawfully do so under the rules in this part.

(ii) Require a driver who has been ordered out of service for failure to prepare a record of duty status to operate a commercial motor vehicle until that driver has been off duty for the appropriate number of consecutive hours required by this part and is in compliance with this section. The appropriate consecutive hours off duty may include sleeper berth time.

* * * * *

(d) * * *

(1) No driver who has been ordered out of service shall operate a commercial motor vehicle until that driver may lawfully do so under the rules of this part.

(2) No driver who has been ordered out of service, for failing to prepare a record of duty status, shall operate a commercial motor vehicle until the driver has been off duty for the appropriate number of consecutive hours required by this part and is in compliance with this section.

(3) A driver to whom a form has been tendered ordering the driver out of service shall within 24 hours thereafter deliver or mail the copy to a person or place designated by the motor carrier to receive it.

* * * * *

■ 58. Amend appendix A to subpart B of part 395 as follows:

■ a. In the table below, for each section indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 5.4.3 introductory text | the Director, Office of Carrier Driver, and Vehicle Safety Standards | FMCSA. |
| 5.4.4(b) | the Director, Office of Carrier, Driver, and Vehicle Safety Standards | FMCSA. |
| 5.4.4(c) | the Director | FMCSA. |
| 5.4.4(d) | The Director, Office of Carrier, Driver, and Vehicle Safety Standards | FMCSA. |
| 5.4.4(d) | the Director | FMCSA. |
| 5.4.5(b) | the FMCSA Associate Administrator for Policy | FMCSA, ATTN: ELD Removal—Request for Administrative Review. |
| 5.4.5(c) and (d) | The Associate Administrator | FMCSA. |
| 5.4.5(c) | the Associate Administrator | FMCSA. |

■ b. In section 7.19, revise the entry for ''Data Range''.

The revision reads as follows:

**Appendix A to Subpart B of Part 395—Functional Specifications for All Electronic Logging Devices (ELDs)**

* * * * *

*7.19.* * * *

*Data Range:* For <{Total} Engine hours>, range is between 0.0 and 99999.9; for <{Elapsed} Engine hours>, range is between 0.0 and 99999.9.

* * * * *

## PART 396—INSPECTION, REPAIR, AND MAINTENANCE

■ 59. The authority citation for part 396 continues to read as follows:

**Authority:** 49 U.S.C. 504, 31133, 31136, 31151, 31502; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524, Public Law 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

**§§ 396.17, 396.19, and 396.21 [Amended]**

■ 60. In the table below, for each section indicated in the left column, remove the text indicated in the middle column from wherever it appears, and in its place add the text indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 396.17(a), (c) introductory text, and (f) | appendix G of this subchapter | appendix A to this part. |
| 396.17(g) | appendix G to this subchapter | appendix A to this part. |
| 396.19(a)(1) | appendix G of this subchapter | appendix A to this part. |
| 396.21(a)(5) | appendix G to this subchapter | appendix A to this part. |

■ 61. Amend newly redesignated appendix A to part 396 in section 1 in the table titled ''Clamp-Type Brake Chambers'' by revising the entry for type 36 chambers to read as follows:

**Appendix A to Part 396—Minimum Periodic Inspection Standards**

* * * * *

1. * * *

CLAMP-TYPE BRAKE CHAMBERS

| Type | Outside diameter | Brake readjustment limit: standard stroke chamber | Brake readjustment limit: long stroke chamber |
|---|---|---|---|
| * | * | * | * |
| 36 | 9 in. (229 mm) | 2½ in. (63.5 mm). | |

* * * * *

## PART 398—TRANSPORTATION OF MIGRANT WORKERS

■ 62. The authority citation for part 398 is revised to read as follows:

**Authority:** 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941; sec. 212, Pub. L. 106–159, 113 Stat. 1748, 1766; and 49 CFR 1.87.

**§ 398.4 [Amended]**

■ 63. Amend § 398.4 by removing the word ''insure'' and adding in its place the word ''ensure'' in paragraph (a).

**§ 398.7 [Amended]**

■ 64. Amend § 398.7 by removing the word ''insure'' and adding in its place the word ''ensure.''

Issued under authority delegated in 49 CFR 1.87.

**John Van Steenburg,**

*Executive Director.*

[FR Doc. 2021–21228 Filed 10–13–21; 8:45 am]

BILLING CODE 4910–EX–P

# Proposed Rules

Federal Register

Vol. 86, No. 196

Thursday, October 14, 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.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2021–0828; Project Identifier AD–2021–00303–T]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 2016–09–01, which applies to certain The Boeing Company Model 777–200 and –300 series airplanes. AD 2016–09–01 requires repetitive inspections for cracking of the left-and right-side forward outer chords of the pivot bulkhead, and related investigative and corrective actions if necessary. AD 2016–09–01 also provides a modification of the pivot bulkhead, which terminates the repetitive inspections. Since the FAA issued AD 2016–09–01, it has received reports that cracking of the left- and right-side forward outer chords of the pivot bulkhead were found at earlier compliance times than those specified in AD 2016–09–01 and determined that the inspection areas must be expanded, and that additional inspections are needed in areas that were modified as specified in AD 2016–09–01. This proposed AD would retain certain requirements of AD 2016–09–01. This proposed AD would require doing repetitive detailed and high frequency eddy current (HFEC) inspections of the longeron fitting and, for certain airplanes, the bulkhead assembly structure, for any cracking and doing all applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by November 29, 2021.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0828.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0828; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Luis Cortez-Muniz, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: (206) 231–3958; email: *Luis.A.Cortez-Muniz@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0828; Project Identifier AD–2021–00303–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

### Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Luis Cortez-Muniz, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: (206) 231–3958; email: *Luis.A.Cortez-Muniz@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

### Background

The FAA issued AD 2016–09–01, Amendment 39–18499 (81 FR 26109, May 2, 2016) (AD 2016–09–01), for certain The Boeing Company Model 777–200 and –300 series airplanes. AD

2016–09–01 was prompted by reports of fatigue cracking of the forward outer chord of the station (STA) 2370 pivot bulkhead. AD 2016–09–01 requires repetitive inspections for cracking of the left- and right-side forward outer chords of the pivot bulkhead, and related investigative and corrective actions if necessary. AD 2016–09–01 also provides a modification of the pivot bulkhead, which terminates the repetitive inspections. The agency issued AD 2016–09–01 to address fatigue cracking of the outer flanges of the left and right side forward outer chords of the STA 2370 pivot bulkhead, which could result in a severed forward outer chord and consequent loss of horizontal stabilizer control.

**Actions Since AD 2016–09–01 Was Issued**

Since the FAA issued AD 2016–09–01, it has received reports that cracking of the left- and right-side forward outer chords of the pivot bulkhead were found at earlier compliance times than those specified in AD 2016–09–01 due to a combination of a stress concentration and high stress from complex loading at the structure of the transition radius of the forward outer chord flange. Boeing reopened the safety investigation and asked operators to gather additional data, which showed 32 airplanes with crack findings below the inspection threshold specified in AD 2016–09–01. Based on those findings, it has been determined that the compliance times must be reduced and the inspection areas for cracking must also be expanded to include the longeron fitting and, for post-repair and post-modification inspections, the bulkhead assembly structure. In addition, the FAA has determined that additional inspections are needed in areas that were modified as specified in AD 2016–09–01.

**FAA's Determination**

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed Boeing Alert Service Bulletin 777–53A0075, Revision 2, dated February 22, 2021. This service information specifies procedures for, depending on configuration, doing repetitive detailed and HFEC inspections of the STA 2370 pivot bulkhead forward outer chord and the longeron fitting for any cracking; doing repetitive post-repair inspections of the pivot bulkhead forward outer chord, longeron fitting, and bulkhead assembly structure for any cracking; doing repetitive post-modification inspections of the pivot bulkhead forward outer chord, longeron fitting, and bulkhead assembly structure for any cracking; and doing all applicable on-condition actions. On-condition actions include modifying the left and right forward outer chords and upper splice angles, and repair.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Proposed AD Requirements in This NPRM**

Although this proposed AD does not explicitly restate the requirements of AD 2016–09–01, this proposed AD would retain certain of the requirements of AD 2016–09–01. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (g) of this proposed AD. This proposed AD would reduce the compliance times for the inspections, add new inspection areas for any cracking, and add repetitive post-modification inspections. This proposed AD would also require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0075, Revision 2, dated February 22, 2021, described previously.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0828.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 63 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Detailed and HFEC inspections of the longeron fitting and pivot bulkhead forward chord. | Up to 15 work-hours × $85 per hour = Up to $1,275 per inspection cycle. | $0 | Up to $1,275 per inspection cycle. | Up to $80,325 per inspection cycle. |
| Post-repair inspections | Up to 13 work-hours × $85 per hour = Up to $1,105 per inspection cycle. | 0 | Up to $1,105 per inspection cycle. | Up to $69,615 per inspection cycle. |
| Post-modification inspections | 18 work-hours × $85 per hour = $1,530 per inspection cycle. | 0 | $1,530 per inspection cycle | $96,390 per inspection cycle. |

The FAA estimates the following costs to do any necessary modifications that would be required based on the results of the proposed inspection. The FAA has no way of determining the number of aircraft that might need this modification:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Modification | Up to 137 work-hours × $85 per hour = Up to $11,645 | $34,086 | Up to $45,731. |

The FAA has received no definitive data on which to base the cost estimates for the repairs specified in this proposed AD.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2016–09–01, Amendment 39–18499 (81 FR 26109, May 2, 2016), and

■ b. Adding the following new AD:

**The Boeing Company:** Docket No. FAA–2021–0828; Project Identifier AD–2021–00303–T.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) action by November 29, 2021.

**(b) Affected ADs**

This AD replaces AD 2016–09–01, Amendment 39–18499 (81 FR 26109, May 2, 2016) (AD 2016–09–01).

**(c) Applicability**

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 777–53A0075, Revision 2, dated February 22, 2021.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by reports of fatigue cracking of the forward outer chord of the station (STA) 2370 pivot bulkhead, and the determination that the compliance times need to be reduced, post-modification inspections must be done, and the inspections areas need to be expanded due to additional cracking found prior to the inspection times required by AD 2016–09–01. The FAA is issuing this AD to address fatigue cracking of the outer flanges of the left and right side forward outer chords of the STA 2370 pivot bulkhead, which could result in a severed forward outer chord and consequent loss of horizontal stabilizer control.

**(f) Compliance**

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

**(g) Required Actions**

Except as specified by paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0075, Revision 2, dated February 22, 2021, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0075, Revision 2, dated February 22, 2021.

**(h) Exceptions to Service Information Specifications**

(1) Where the ''Effectivity'' paragraph and the Condition and Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Service Bulletin 777–53A0075, Revision 2, dated February 22, 2021, use the phrase ''the Revision 2 date of this Service Bulletin,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Service Bulletin 777–53A0075, Revision 2, dated February 22, 2021, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

**(i) Alternative Methods of Compliance (AMOCs)**

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(4) Except as specified by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

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

**(j) Related Information**

(1) For more information about this AD, contact Luis Cortez-Muniz, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des

Moines, WA 98198; phone and fax: (206) 231–3958; email: *Luis.A.Cortez-Muniz@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on September 16, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–22251 Filed 10–13–21; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0794; Project Identifier AD–2021–00400–T]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–400, –400D, and –400F series airplanes. This proposed AD was prompted by reports of burned Boeing Material Specification (BMS) 8–39 urethane foam, and a report from the airplane manufacturer that airplanes were assembled with seals throughout various areas of the airplane (including flight deck and cargo compartments) made of BMS 8–39 urethane foam, a material with fire-retardant properties that deteriorate with age. This proposed AD would require replacing the system tube/wire seals made of BMS 8–39 urethane foam in certain areas of the airplane. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by November 29, 2021.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0794.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0794; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Julie Linn, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3684; email: *julie.linn@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0794; Project Identifier AD–2021–00400–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

### Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Julie Linn, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3684; email: *julie.linn@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

### Background

The FAA has received reports of burned BMS 8–39 urethane foam, and a report from the airplane manufacturer that airplanes were assembled with seals throughout various areas of the airplane (including flight deck and cargo compartments) made of BMS 8–39 urethane foam, a material with fire-retardant properties that deteriorate with age. The fire retardants in BMS 8–39 urethane foam are mixed into, but are not chemically connected with, the remaining components of the foam, which causes the fire retardants to have decreased fire resistance over time. The degraded material can be an unacceptable fuel source for a fire if exposed to an ignition source. This condition, if not addressed, could result in failure of the urethane seals to maintain sufficient Halon concentrations in the cargo compartments to extinguish or contain fire or smoke, and to prevent penetration of fire or smoke in areas of the airplane that are difficult to access

for fire and smoke detection or suppression.

**Related AD**

The FAA issued AD 2013–11–04, Amendment 39–17464 (78 FR 33193, June 4, 2013) (AD 2013–11–04), which applies to certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; Model 767–200, –300, –300F, and –400ER series airplanes; and Model 777–200, –200LR, –300, and –300ER series airplanes. AD 2013–11–04 requires replacing certain seals made of BMS 8–39 urethane foam. AD 2013–11–04 was prompted by operator or in-service reports of burned BMS 8–39 urethane foam, and a report from the airplane manufacturer indicating that airplanes were assembled, throughout various areas of the airplane (including flight deck and cargo compartments), with seals made of BMS 8–39 urethane foam, a material with fire-retardant properties that deteriorate with age.

**Actions Since AD 2013–11–04 Was Issued**

Since AD 2013–11–04 was issued, the FAA has determined that additional replacements of system tube/wire seals made of BMS 8–39 urethane foam are necessary for certain Model 747–400, –400D, and –400F series airplanes. These new proposed actions apply only to certain airplanes and would not replace or terminate the actions required by AD 2013–11–04.

**FAA's Determination**

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed Boeing Special Attention Service Bulletin 747–25–3381, Revision 3, dated February 19, 2021. This service information specifies procedures for replacing BMS 8–39 urethane foam seals with BMS 1–68 silicone foam rubber seals (including doing a general visual inspection of the foam for any tube or wire penetrations and sealing any penetrations that go through the insulation blankets). This service information adds the work instructions for Group 11, Configuration 2; Group 13 and 14, Configuration 4; and Group 16, 17, and 19, Configuration 5 airplanes.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

**Proposed AD Requirements in This NPRM**

This proposed AD would require accomplishing the actions specified in the service information already described. For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0794.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 131 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Replacement (including GVI) | Up to 32 work-hours × $85 per hour = Up to $2,720 ..... | $ * | Up to $2,720 ..... | Up to $356,320. |

* The FAA has received no definitive data on which to base the parts cost estimates for this proposed AD.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**The Boeing Company:** Docket No. FAA–2021–0794; Project Identifier AD–2021–00400–T.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by November 29, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 747–400, –400D, and –400F series airplanes, certificated in any category,

identified as Group 11, Configuration 2; Group 13 and 14, Configuration 4; and Group 16, 17, and 19, Configuration 5, in Boeing Special Attention Service Bulletin 747–25–3381, Revision 3, dated February 19, 2021.

**(d) Subject**

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

**(e) Unsafe Condition**

This AD was prompted by reports of burned Boeing Material Specification (BMS) 8–39 urethane foam, and a report from the airplane manufacturer that airplanes were assembled with seals throughout various areas of the airplane (including flight deck and cargo compartments) made of BMS 8–39 urethane foam, a material with fire-retardant properties that deteriorate with age. The FAA is issuing this AD to prevent failure of the urethane seals to maintain sufficient Halon concentrations in the cargo compartments to extinguish or contain fire or smoke, and to prevent penetration of fire or smoke in areas of the airplane that are difficult to access for fire and smoke detection or suppression.

**(f) Compliance**

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

**(g) BMS 8–39 Urethane Foam Seal Replacements**

Within 72 months after the effective date of this AD: Replace the BMS 8–39 urethane foam seals in the forward cargo compartment system tube/wire (including doing a general visual inspection of the foam for any tube or wire penetrations and sealing any penetrations that go through the insulation blankets) with BMS 1–68 silicone foam rubber seals, as applicable, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–25–3381, Revision 3, dated February 19, 2021.

**(h) Alternative Methods of Compliance (AMOCs)**

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

**(i) Related Information**

(1) For more information about this AD, contact Julie Linn, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3684; email: *julie.linn@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on September 16, 2021.

**Gaetano A. Sciortino,**

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

[FR Doc. 2021–22252 Filed 10–13–21; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2021–0820; Airspace Docket No. 21–ASO–29]**

**RIN 2120–AA66**

## Proposed Amendment of Class E Airspace; Covington, GA

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace extending upward from 700 feet above the surface for Covington Municipal Airport, Covington, GA. The FAA is proposing this action as a result of an airspace review caused by the decommissioning of the ALCOVY Non-directional Beacon (NDB) and cancellation of the associated approaches. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

**DATES:** Comments must be received on or before November 29, 2021.

**ADDRESSES:** Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2021–0820; Airspace Docket No. 21–ASO–29 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class E airspace for Covington Municipal Airport, Covington, GA, to support IFR operations in the area.

### Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic,

environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2021–0820 and Airspace Docket No. 21–ASO–29) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0820 Docket No. 21–ASO–29.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

## Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes and reporting points.

## The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface at Covington Municipal Airport, Covington, GA, as the ACOVY NDB is being decommissioned. The Class E airspace extending upward from 700 feet above the surface would be amended by increasing the radius from 6.3 miles to 6.5 miles and eliminating the extension to the east. This action would also update geographic coordinates of the airport to coincide with the FAA database.

Class E airspace designations are published in Paragraph 6005, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

## Regulatory Notices and Analyses

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

## Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'', prior to any FAA final regulatory action.

## Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

**ASO GA E5 Covington, GA [Amended]**

Covington Municipal Airport, GA
(Lat. 33°37′56″ N, long. 83°50′48″ W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Covington Municipal Airport.

Issued in College Park, Georgia, on October 7, 2021.

**Andreese C. Davis,**

*Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2021–22289 Filed 10–13–21; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Parts 3 and 21

**RIN 2900–AP67**

## Apportionments

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations to limit the circumstances in which benefits will be apportioned and to stop apportioning certain benefits. Currently, in limited situations, VA may pay a portion of a VA beneficiary's monetary benefits directly to the

beneficiary's dependents. This is referred to as apportionment of benefits. Most claims for apportionment involve complex issues of family law, issues that are best suited to the expertise and authority of state courts. VA claims adjudicators have limited ability to analyze these complex and fact-intensive claims, to include both technical expertise as well as an ability to compel participation in necessary accounting measures. When VA awards apportionments, decisions rendered can disturb state court support awards, requiring a state court to expend additional resources to revisit a prior determination. Finally, due to their intricacy, a significant amount of information is needed to properly adjudicate apportionment claims. While this information is typically already available to state courts, VA must attempt to gather this information from the VA beneficiary and beneficiary's dependent, which is unavoidably a time-consuming process and often cannot result in a comprehensive evidentiary picture. The additional time and effort needed to gather this information increases VA workloads and results in the potential for delays of all VA claims processes, to include apportionment awards. Because VA apportionment awards often conflict with the awards of better-situated state family courts and because VA lacks the authority and expertise to make fully-informed, accurate, and economically appropriate awards, VA is proposing to amend its regulations to discontinue making apportionment awards in most circumstances and to stop apportioning certain benefits.

**DATES:** Comments must be received on or before December 13, 2021.

**ADDRESSES:** Written comments may be submitted through *www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AP67—Apportionments''. Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Korrie Shivers, Policy Analyst, Part 3 Regulations & Forms Staff (211D), Compensation Service (21C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:**

## General

VA proposes to discontinue awarding apportionments of the compensation and pension benefits of veterans and surviving spouses in most circumstances by removing most of its apportionment-specific regulations and amending other regulations that have apportionment provisions. VA intends to continue making apportionment awards where a veteran or surviving spouse is incarcerated or where an incompetent veteran, who does not have a fiduciary, is institutionalized at government expense, without regard to financial contributions to the claimant. VA does not intend to discontinue as a result of this rulemaking any apportionments currently being paid.

## Apportionment Authority

Congress has provided VA broad discretionary authority under several statutes to pay apportionments out of a VA beneficiary's monetary benefits. In 38 U.S.C. 5307, Apportionment of benefits, Congress provided that VA may apportion compensation and pension benefits, including dependency and indemnity compensation (DIC) and rehabilitation subsistence allowances paid under 38 U.S.C. Chapter 31. This authority was at the discretion of the Secretary of Veterans Affairs. In 38 U.S.C. 5313(b)(1), Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony, Congress provided that the Secretary may apportion benefits. Similarly, in 38 U.S.C. 5502(d), Payment to and supervision of fiduciaries, and 38 U.S.C. 5503(a)(2), Hospitalized veterans and estates of incompetent institutionalized veterans, Congress provided that VA may apportion benefits. Notably, each apportionment authority in title 38 of the United States Code is permissive, but not required, as shown by the use of the word ''may'' or the phrase ''may be apportioned as prescribed by the Secretary''.

The statutory authority shows that Congress has given VA significant discretion on whether to apportion VA benefits. After reviewing the apportionment procedures and the impact of apportionment on veterans and surviving spouses, VA has determined that some types of its apportionments undermine the processes established in state courts for distributing resources when an individual is not contributing to the support of his or her dependents. When viewed alongside the significant employee work-hours VA expends to process these requests, VA proposes to exercise the discretionary authority Congress gave it by discontinuing awarding new apportionments in most situations.

## Current Procedure

When VA receives a claim for an apportionment from a spouse, child, or dependent parent, VA must first determine if the apportionment claimant is a proper claimant. This requires VA to request evidence of the claimed relationship from the VA beneficiary and the apportionment claimant, unless the evidence is already in VA's possession or the dependent is already established on the beneficiary's award. Concurrently, VA must develop for evidence of the financial situation of both the VA beneficiary and the apportionment claimant. Developing for this evidence provides both the VA beneficiary and the apportionment claimant the opportunity to support their claims with financial records and data. In addition, developing for certain evidence provides the VA beneficiary with due process, as he or she has a property interest in the VA compensation benefit. VA requests this information from the beneficiary and the claimant, giving both 65 days to respond. Frequently, the information provided is not complete because either the claimant or the beneficiary does not submit all the requested information. Once financial information development is complete, or the 65-day development period has lapsed, VA then determines if the claimant needs the apportionment and if the beneficiary can afford an apportionment without undue hardship. As part of the determination of whether the claimant needs the apportionment, VA must determine if the VA beneficiary is currently reasonably contributing to the support of the claimant. If the beneficiary is already reasonably contributing to the support of the claimant, then there is no need to apportion the VA beneficiary's monetary award and the apportionment claim is denied. However, if the VA beneficiary is not reasonably contributing to the claimant's support, then an apportionment is justified if it does not cause undue hardship to the beneficiary. In the cases where an apportionment is justified, VA must determine the amount of apportionment to be taken from the VA beneficiary's award.

To determine the amount of the apportionment, VA first compares the relative economic hardship of an apportionment on the beneficiary with the economic circumstances of the claimant. VA then considers factors such as the amount of compensation or pension the veteran or surviving spouse is paid; the number of dependents who would receive the apportionment; other

resources, income, and benefits available to the veteran or surviving spouse and apportionee; and any special needs of the veteran or surviving spouse and apportionee. All of these factors are weighed against the regulatory limit and consistency requirements found in 38 CFR 3.451. This section provides that the amount apportioned ''should be generally consistent with the total number of dependents involved.'' In addition, § 3.451 provides that, ordinarily, an apportionment of more than 50 percent of the veteran's or surviving spouse's compensation or pension would constitute undue hardship, while apportionment of less than 20 percent of the compensation or pension would not provide a reasonable amount for the apportionee.

Once the amount of the apportionment is decided, the apportionment is processed and the beneficiary and apportionee are notified of the decision. Following notification, both the beneficiary and the apportionee have the opportunity to appeal the decision to award an apportionment, the amount of the apportionment, or the effective date of the apportionment.

**State Judicial Systems**

When VA's apportionment system is compared to existing state courts, it highlights the inefficiencies of the VA apportionment system and shows why the VA system is redundant and unnecessary in most apportionment cases.

State family courts already provide the same, and arguably better, avenues for claimants as the VA apportionment system. For example, each state's judicial system already has a procedure for determining the allocation of financial resources when a veteran and veteran's spouse are estranged; this is commonly termed ''spousal support.'' In addition, each state's judicial system also has a procedure for determining the allocation of financial resources when a veteran and veteran's child are not living in the same household; this is commonly termed ''child support.''

We are aware that state courts do not have the authority to order VA to pay compensation directly to dependents. However, state courts can adequately take account of the interrelationship between veterans, their dependents, and VA benefits in other ways. In determining the level or monetary amount of support, the state court will examine the relative financial needs and abilities of the parties to determine the amount of child support or spousal support when the married couple separates or when the child resides with someone other than the veteran or surviving spouse. To do this, the judge or magistrate may compel the production of financial records which include information concerning the amount of compensation, pension, dependency and indemnity compensation (DIC), or vocational rehabilitation subsistence allowance the veteran or surviving spouse receives from VA. The judge or magistrate makes a decision based on more complete information of the available assets and the needs of the party than is realistically available to VA.

Usually, by the time VA has received the information necessary to determine if an apportionment is appropriate, and if so, how much should be apportioned, the state court system has already determined an allocation of the primary beneficiary's assets and the apportionment claimant's assets. VA's subsequent apportionment determination, often based on less complete evidence than is available to the state court, may disturb the court's asset allocation by taking assets assumed by the state court to be for the benefit of the primary beneficiary and allocating those assets to the apportionment claimant. When this occurs, the parties must either go back to court to re-allocate the assets or appeal VA's apportionment determination. These conflicting systems typically result in inconvenient and unfair results to the primary beneficiary and the apportionment claimant and workload increases for both the state's court system and VA.

Furthermore, 42 U.S.C. 666(f) requires that each state have in effect the Uniform Interstate Family Support Act (UIFSA), which establishes a ''one-order'' nationwide enforcement model to preclude conflicting orders in multiple jurisdictions. *See Construction and Application of Uniform Interstate Family Support Act,* 90 A.L.R. 5th 1,2. UIFSA, adopted by each state, provides the mechanisms and procedures for modifying state support orders. *See* Unif. Interstate Fam. Support Act sections 205, 211, 613; *https://www.acf.hhs.gov/css/parents.*

In comparing state family court support determinations to VA's apportionment system, the state court system provides for a far more accurate and complete determination. State courts already make determinations for the same kinds of claims that the VA apportionment system does, but state courts do so with more consistent and fair results.

Furthermore, a state court's allocation of resources is enforceable across state lines. The Social Security Act, codified in pertinent part at 42 U.S.C. Chapter 7, subchapter IV, sections 651 through 669B, provides for enforcement of another state's child and spousal support payments either through direct levy of the assets held by a financial institution or levy through that state's enforcement organization (Title IV–D agencies, named after subchapter IV–D of the Social Security Act). See also Direct Imposition of Liens and Levies Across State Lines, PIQ–99–06, U.S. Department of Health and Human Service, Administration for Children and Families, Office of Child Support Enforcement, August 16, 1999, *http://www.acf.hhs.gov/programs/css/resource/direct-imposition-of-liens-and-levies-across-state-lines,* last viewed March 2, 2021. Specifically, 42 U.S.C. 666(f) requires all states to adopt the UIFSA. The UIFSA establishes a ''one-order'' nationwide enforcement model to preclude conflicting orders in multiple jurisdictions. *See Construction and Application of Uniform Interstate Family Support Act,* 90 A.L.R.5th 1, 2.

Although 38 U.S.C. 5301(a)(1) generally exempts VA benefits from any legal or equitable process, such as garnishment, Congress created an exception to section 5301(a) for alimony and child support obligations by enacting the Child Support Enforcement Act under 42 U.S.C. 659. Under section 659, VA disability compensation payable to a veteran who has waived a portion of his or her military retired pay to receive the VA benefit could be subject to garnishment for alimony or child support obligations. This means that section 659 authorizes VA, pursuant to proper service of a valid state court order, to withhold, or garnish, a portion of a veteran's disability compensation for alimony or child support when a veteran has waived a portion of his or her military retired or retainer pay to receive the VA benefit. Additionally, the United States Supreme Court in *Rose* v. *Rose,* 481 U.S. 619 (1987), held that state courts may consider the availability of VA benefits in determining the amount of a veteran's child support obligation and, in fact, may set a support award in an amount that would necessarily require that part of the support award be paid out of VA benefits once they have been received by the veteran. *See* id. Further, the majority of courts considering the issue of spousal support have applied *Rose* to hold that ''veterans' disability benefits are not exempt from claims for alimony, spousal support and child support.'' *Case* v. *Dubaj,* C.A. No. 08–347 Erie, 2011 U.S. Dist. LEXIS 96808 at *4 (W.D. Pa. Aug. 29, 2011) (citing 52 A.L.R.5th 221 section 28[a] (''With few exceptions,

the cases hold that payments arising from service in the Armed Forces . . . , though exempt as to the claims of ordinary creditors, are not exempt from a claim for alimony, support, or maintenance . . .'').

**Apportionment Expenditure**

As noted previously, many claims for apportionment involve complex issues of family law, and are often very fact-intensive. Due to the complex nature of these claims, they require significant adjudicative processing time. For example, in fiscal year (FY) 2013, the Veterans Benefits Administration completed 6,570 apportionment claims. VA's Automated Standardized Performance Elements Nationwide (ASPEN) work actions credit shows that it required 13 full-time equivalent (FTE) employees per year to process those claims (6,570 claims times 3.26 hours per claim (per M21–4) divided by 1,645 hours, which VA estimates is the number of available work hours for a full-time employee in one year based on the Office of Personnel Management's total hours of 2,087 for a general schedule employee (5 U.S.C. 5504(b)(1))).

By discontinuing adjudication of most VA apportionment claims, VA would avoid possible conflict with state court determinations and free up existing employees to process other claim actions. By only processing apportionment claims for incarcerated veterans and incompetent veterans hospitalized at government expense, without consideration of financial contributions to the claimant, these proposed rules will reduce the number of FTE needed each year for apportionment claims from 13 to two. The time of the additional 11 FTEs could then be dedicated to processing other claims.

**Alternatives Considered**

*1. Maintain the current apportionment provisions unchanged.*

VA considered maintaining the current apportionment provisions without change. However, in VA's view, the expertise of state courts undercuts the need for a dual VA apportionment system, and, as discussed above, VA apportionment actions may create unnecessary disruption to the decisions made by state courts. Accordingly, VA believes that a change is needed in the 115-year old apportionment system.

*2. Set the apportionment amount to be equal to that additional amount which the veteran receives for the apportionee as a dependent.*

If a veteran furnishes VA with evidence showing that he/she has a dependent (spouse, child, or parent) and the veteran is in receipt of compensation at the 30-percent disabled level or above, the veteran may receive additional compensation for their dependents. The additional amount paid for a dependent is in recognition that a veteran with an impaired earning capacity, who also has dependents, needs additional money to make up the difference between what the veteran is earning and what the veteran could earn without the disability and still care for his or her dependents.

By automatically limiting apportionments to the additional amount paid to the veteran because of the existence of a dependent, the veteran would still receive that amount which Congress intended the veteran to have. However, the dependent would receive that additional amount which was intended for the veteran to use for the dependent. For those veterans not in receipt of an additional allowance for dependent(s) (*i.e.,* a veteran rated 0-, 10-, or 20-percent disabled), VA would deny any apportionment claim, as an apportionment would be considered an undue hardship on the veteran. The advantage of this option is that it would make VA apportionments simple and consistent.

With this option, no consideration would be given to support orders that are currently in place in which the veteran or surviving spouse is making regular payments. As a result, it would still be possible for the apportionee to receive both an apportionment from the VA and the payments made as a result of the court order which already considered the benefits provided by VA in determining the amount of that court-ordered payment.

After considering this option, VA determined that this option also has the potential to disturb a state court's allocation of resources and also would require some expenditure of VA assets in processing the apportionment. An apportionee would generally receive a relatively low amount of benefits, set without regard to an apportionee's actual financial need. This option would still result in the problems presented by the current regulations, namely that VA will duplicate and potentially disturb state court efforts and unnecessarily occupy FTE that could be used to serve other claimants. For these reasons, VA chose not to propose this option.

*3. Eliminate all apportionments.*

VA considered eliminating all apportionments. Despite the advantages, if VA eliminated all apportionments there would be some inequitable results. Specifically, it would have negative consequences in two situations where VA currently pays benefits that are generally outside the scope of state courts. These two situations are incarcerated veterans and veterans institutionalized at government expense.

VA beneficiaries who are incarcerated will have their payment amounts reduced beginning with the 61st day of imprisonment for a felony. Due to imprisonment, the VA beneficiary is often not able to continue to financially care for his or her family. VA currently allows for the family members of an incarcerated beneficiary to apply for an apportionment of the beneficiary's benefit, ensuring that the incarceration does not interfere with continuation of prior financial support. This means that although the incarcerated beneficiary will have his or her payments reduced or terminated while incarcerated, the family could apply to have the benefits paid to them instead. To eliminate this kind of apportionment would hurt the families of incarcerated beneficiaries. In addition, very few work-hours (*e.g.,* two FTE per year) would be saved by not processing apportionments to an incarcerated veteran's or incarcerated surviving spouse's dependents.

Additionally, if VA eliminated all apportionments, the amount of the benefit not paid to the administrator of the institution caring for an incompetent veteran who is institutionalized at government expense would be unavailable to assist in supporting the institution caring for the veteran or the institutionalized veteran's dependents. Since a fiduciary is appointed in almost all of these situations, the time expended in processing the few remaining claims would be minimal.

After carefully considering all options, VA determined that elimination of all apportionments is not the best option and that apportionment of benefits to the dependents of an incarcerated beneficiary and to an incompetent veteran institutionalized at government expense should be continued, with slight modification. Specifically, VA determined it should remove consideration of financial need for an apportionment of an incarcerated beneficiary's award. In removing the financial need requirement for claims for apportionments of an incarcerated beneficiary's award, VA remains consistent with discontinuing needs-based apportionments for the same reasons set forth above. Additionally, this amendment to apportionments involving incarcerated beneficiaries better aligns with Congressional intent in establishing statutory authority for

VA to apportion certain benefits in 38 U.S.C. 5313(b)(1).

These amendments ensure that the veteran's or surviving spouse's benefits are used to support the veteran's or surviving spouse's dependents in those two instances where the state court system does not provide a mechanism to support a veteran's or surviving spouse's beneficiaries.

**Form for Requesting an Apportionment**

In conjunction with this rulemaking, VA also proposes amendments to current VA Form 21–0788, *Information Regarding Apportionment of Beneficiary's Award.* In accordance with 38 CFR 3.155, use of this standard form is required for all requests for an apportionment. While apportioned dollars are ''derivative benefits'' in the sense that they deal with the distribution of money VA already owes to a claimant rather than a separate assertion of entitlement to payment for, *e.g.,* a service-connected disability, apportionment is also a ''claim'' in the sense that it is an assertion of entitlement to receive funds from the government. Further, 38 CFR 3.400(e) explicitly recognizes apportionment as a ''claim.'' Accordingly, the claim initiation structure of 38 CFR 3.155 applies to apportionments. VA proposes to amend the current form by removing all sections requesting information that pertain to income, net worth, or financial contributions, as this information will no longer be used to render a decision. VA also proposes to add a section allowing the claimant to identify which status qualifies him/her for an apportionment award. Finally, VA proposes non-substantive amendments to the form with regard to identifying the Veteran, claimant, and beneficiary.

VA believes the proposed amendments to this form will assist beneficiaries in defining what information is necessary for VA to make its decision, improve VA's administrative efficiency in processing requests, and help provide timely decisions to those who request an apportionment of a beneficiary's award.

**Mechanics of the Amendments**

On November 27, 2013, VA published in the **Federal Register** (78 FR 71042) a proposed regulation titled ''VA Compensation and Pension Regulation Rewrite Project; Proposed Rule.'' Among other things, the rule proposed a rewritten and reorganized version of apportionment regulations. VA is using that proposed rule's reorganizational structure and much of the revised wording of those proposed regulations in this new proposed rule. The wording is changed to reflect the proposed policy to eliminate all need-based apportionments and to retain only apportionments where the primary beneficiary is incarcerated or where an incompetent veteran without a fiduciary is institutionalized at government expense.

*Section 3.31 Commencement of the Period of Payment*

In 38 CFR 3.31(c)(3), VA proposes removing the words ''original or increased'' because with this amendment there are only original claims for apportionments. For the reasons discussed above, no increases in current or future apportionments will be allowed under the proposed regulatory change.

*Section 3.210 Child's Relationship*

In 38 CFR 3.210(c)(1)(ii), VA proposes removing the last sentence of the paragraph. This amendment proposes to eliminate apportionment eligibility in the situation of a child adopted out of a veteran's family, so this reference to apportionment would no longer be correct.

*Section 3.252 Annual Income; Pension; Mexican Border Period and Later War Periods*

In 38 CFR 3.252(d), VA proposes to remove the last sentence of 3.252(d) to reflect the proposed change of the removal of 38 CFR 3.451.

*Section 3.400 General*

Section 3.400(e) contains effective date rules for beginning apportionments. In revised § 3.400(e), VA proposes to update this paragraph by stating, in simpler terminology, the rules for effective dates for apportionments. VA intends no substantive changes from the current rules, only to reword the provisions to provide greater detail and clarity. VA proposes removing the terminology referencing original and other than original claims since the proposed rules only provide for original claims. In subparagraph (e)(1), VA proposes to provide the general rule that apportionments are effective the first day of the month after the month in which VA receives an apportionment claim. Subparagraph (e)(2) provides three exceptions to the general rule. Subparagraph (e)(2)(i) proposes to provide that where a primary beneficiary's claim for benefits is pending, the effective date of any apportionment will be either the date of the primary beneficiary's award or the date entitlement arose, whichever is later. In subparagraph (e)(2)(ii), VA proposes to provide that if the apportionment claimant has not yet been established as a primary beneficiary's dependent or as the veteran's dependent, the effective date will be the date of the primary beneficiary's award or the date entitlement arose, whichever is later. In subparagraph (e)(2)(iii), VA proposes to refer to §§ 3.665 or 3.666 for the effective date rules for when the primary beneficiary is incarcerated.

*Sections 3.450 to 3.461*

VA proposes to remove and replace 38 CFR 3.450 to 3.461 with revised sections that change the wording of the concepts that it intends to keep for processing apportionments and that eliminate the need-based apportionment provisions. In addition to replacing these sections, VA proposes to renumber the sections, leaving some regulation paragraph numbers reserved so as to be able to insert additional regulations at a later time, if needed. The renamed and renumbered regulations are as follows:

§ 3.450 General apportionment
§ 3.451 Apportionment claims
§ 3.452 Veteran's benefits apportionable
§ 3.453 Veterans benefits not apportionable
§ 3.454 Apportionment of pension
§ 3.455 Apportionment of a surviving spouse's dependency and indemnity compensation
§§ 3.456–3.461 [Reserved]

Section 3.450 is a new regulation, not derived from any current regulation. VA proposes titling this regulation, General apportionment. VA is proposing to include two new provisions and to restate a previous provision concerning submission of an application that was implied, but not specifically stated, in the proposed-to-be-replaced regulations. In the proposed first paragraph, titled (a) Applicability, VA states that these changes to the apportionment provisions are applicable to all claims for apportionment received on or after the effective date of the rule, *i.e.,* 60 days after the date of publication in the **Federal Register**. In the proposed second paragraph, (b) Existing apportionments, VA states that apportionments being paid as of the effective date of the changes will continue until the circumstances providing entitlement to the apportionment no longer exist. In the third paragraph, (c) Apportionment application, VA states that claims for apportionment must be on a form prescribed by the Secretary.

VA proposes removing current § 3.451. This section contains provisions for determining relative hardship

between a primary beneficiary and an apportionment claimant. Because VA proposes to no longer apportion benefits in this manner, this section would no longer be applicable.

VA proposes titling the new § 3.451, Apportionment claims. In revised § 3.451, VA proposes to state the basic provisions for when a veteran's pension or compensation or a surviving spouse's DIC or pension may be apportioned. Proposed § 3.451 will explain that all or a portion of a pension or disability compensation award may be apportioned if the veteran is incompetent and hospitalized at government expense or is incarcerated and meets any of the conditions of §§ 3.665 or 3.666. Similarly, proposed § 3.451 explains that an award to a surviving spouse may be apportioned if the surviving spouse is incarcerated and meets the conditions of § 3.665 or 3.666. Furthermore, this proposed section will address when a child enters active duty and either claims or is in receipt of an apportionment, how certain death benefits will be apportioned amongst surviving children, and apportionment of death benefits for children not residing with a surviving spouse. While the concepts in this section are generally taken from current §§ 3.450 and 3.452 concerning what benefits may be apportioned, from whom, and to whom, VA proposes to remove those provisions relating to determining apportionments based on the relative need of the beneficiary and apportionment claimant and has rewritten the rest to improve clarity.

VA proposes removing the provisions concerning apportionments from a surviving spouse's compensation. Paragraph (a)(2) of current § 3.450 refers to apportioning the ''compensation . . . payable to the surviving spouse.'' Paragraph (d) of current § 3.450 states, ''Any amounts payable for children under §§ 3.459, 3.460, and 3.461 will be equally divided among the children.'' Given that § 3.459 explicitly governs death compensation, and the reference to ''compensation . . . payable to the surviving spouse'' in § 3.450(a)(2) appears in a sentence that separately lists dependency and indemnity compensation, the reference to compensation in current § 3.450(a)(2) and the reference to the current § 3.459 in § 3.450(d) both pertain to the apportionment of death compensation. VA is not referring to compensation payable to a surviving spouse in § 3.451. VA is also not including an equivalent to current § 3.459 or any reference thereto. There are less than 300 beneficiaries currently receiving death compensation. Except for one small group of beneficiaries, death compensation is payable only if the veteran died prior to January 1, 1957. VA has not received a claim for death compensation in more than 10 years and does not expect to receive any claims for apportionment of death compensation. DIC is a much greater benefit than death compensation. Because of the small number of beneficiaries of death compensation and the unlikelihood of a claim for apportionment of such benefits, the provisions concerning apportionment of death compensation do not need to be carried forward.

In revised § 3.451(a), VA proposes retaining from the previous version of § 3.450(a) the provision that all or part of a veteran's pension or compensation or all or part of a surviving spouse's DIC may be apportioned to the spouse, child, or dependent parents. VA is also proposing to specify the two situations where VA will, on receipt of an application, apportion a veteran's or surviving spouse's benefits.

VA proposes retaining, in revised § 3.451(b), the provision from current § 3.450(b) that no apportionment will be made or changed solely because a child has entered active duty in the Armed Forces. VA proposes incorporating the provisions from current § 3.458(e) into this section to keep similar issues together.

VA proposes removing the provision from § 3.450(c) that no apportionment will be made when the veteran, veteran's spouse (when paid ''as wife'' or ''as husband''), surviving spouse, or fiduciary is providing for the dependents. Under this proposed rule, VA would no longer be basing apportionment determinations on whether the primary VA beneficiary is providing for the dependents.

VA proposes retaining the provision from § 3.450(d) and renumbering it as § 3.451(c), concerning division of apportionments paid to children of the veteran, but rewording the provision for clarity and revising the cross-reference to reference the revised, applicable regulations.

VA proposes revising the provisions from § 3.450(e) and renumbering it as § 3.451(a)(2). VA proposes removing the provision that provides that amounts payable to a surviving spouse for a child may be apportioned if the child or children are not residing with the surviving spouse and the surviving spouse is not reasonably contributing to the child's support. For reasons previously stated, state court processes are best suited to assess and address the surviving spouse's support obligations in such situations.

VA proposes removing current § 3.450(f) and not including it in these revised regulations. This section is redundant of provisions already found in the entirety of § 3.250 and does not need to be repeated.

VA proposes also removing the provisions of current § 3.450(g), which provide for apportionment of death pension by reference, because this section is no longer needed. VA is removing all the death pension provisions for the reasons stated earlier.

VA proposes renaming current § 3.452 from ''Situations when benefits may be apportioned'' to ''Veteran's benefits apportionable.'' VA proposes rewording some of the provisions for clarity, removing paragraphs (a) and (d), and re-designating the remaining paragraphs. Current paragraph (a) provides for apportionment when the veteran is not residing with the spouse and children, or not residing with his or her children. Under this proposed rule, the only two situations where VA would apportion benefits are when the primary beneficiary is incarcerated or when an incompetent veteran without a fiduciary is institutionalized at government expense. Therefore, this paragraph would no longer be necessary. Section 3.452(d) concerns apportionments to a dependent parent or parents when the veteran does not contribute to the support of the dependent parent or parents. As discussed above, VA proposes no longer apportioning benefits in situations requiring a need-based determination, so this paragraph is also proposed to be removed.

In § 3.452(a), formerly § 3.452(b), VA proposes restating without change that apportionment may be made pending appointment of a guardian or fiduciary.

In § 3.452(b), formerly § 3.452(c), VA has rewritten the proposed provisions for clarity, but retained the principles of the previous provisions concerning apportionments when a veteran is receiving hospital, domiciliary, or nursing home care, and added a provision that if a veteran's dependent parents are the only relations eligible for the apportionment, the parent or parents may receive the apportionment. These provisions are derived from § 3.454, which would be replaced.

VA proposes removing current § 3.453. This section referred the user to the previous § 3.451, which is also proposed to be removed. VA proposes replacing § 3.453 with a new § 3.453 titled, ''Veterans benefits not apportionable.'' The provisions in the proposed § 3.453 are derived from current § 3.458. In paragraph (a) VA proposes stating that no apportionment will be made unless an application for

an apportionment is received by VA. In § 3.453(c), VA has included a cross reference to the provisions on forfeiture for fraud (§ 3.901), treasonable acts (§ 3.902), and subversive activity (§ 3.903). Those regulations contain the complete rules on forfeiture and apportionments when benefits have been forfeited. In § 3.453(b) VA proposes combining the provisions contained in current §§ 3.458(f)(1), 3.901, and 3.902. Current § 3.458(f)(1) prohibits an apportionment for forfeitures declared before September 2, 1959, if a veteran's dependent ''is determined by [VA] to have been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies.'' Current §§ 3.901 (forfeiture for fraud) and 3.902 (forfeiture for treason), both permit apportionments to a beneficiary's dependents under certain circumstances if the forfeiture was declared prior to September 2, 1959, but prohibit an apportionment to any dependent who themself was guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies. Accordingly, proposed § 3.453(b) states that benefits will not be apportioned to any beneficiary's dependent who is determined by VA to have been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies. In paragraph (c), VA proposes providing that after September 1, 1959, no apportionment will be made for any dependent of a veteran or surviving spouse where benefits were forfeited due to fraud or a treasonable act, or where there was a conviction for subversive activity after September 1, 1959.

VA proposes replacing § 3.454 with a new section titled, ''Apportionment of pension.'' The provisions of this section are derived from the current § 3.454. Current § 3.454(a) specifies that if an incompetent veteran is receiving care in a government institution and is entitled to pension, VA will pay $25 per month as an institutional award and pay the balance of the pension to the veteran's spouse or child or, if the veteran has no spouse or child but has a dependent parent, apportion pension to the dependent parent as a special apportionment. VA has not included this specific information in proposed § 3.454 because it is outdated. To the extent that it provides that the balance of pension will be apportioned to a veteran's spouse or child, it is inconsistent with the approach VA would adopt through these proposed rules since it is based on a determination of hardship. VA is eliminating the hardship-based apportionments, so this provision is no longer needed. Because the amount of the institutional award is not fixed by regulation, VA determines the amount of the apportionment on a case-by-case basis.

Finally, VA does not apportion a veteran's pension to a dependent parent. A parent may not be a dependent for disability pension. Whereas a veteran receiving disability compensation may receive an additional allowance for dependent parents, Congress authorizes an increased maximum annual pension rate only for a spouse or child, not for a dependent parent. See 38 U.S.C. 1542.

VA would also not include § 3.454(b)(2). To the extent that § 3.454(b)(2) is based on a reduction under current § 3.551(d) (reducing Improved Pension for veterans receiving care before February 1, 1990), it is unnecessary. To the extent that § 3.454(b)(2) is purportedly based on a reduction under § 3.551(e), it is obsolete. VA no longer reduces Improved Pension to $60 under current § 3.551(e). The $60 amount was increased to $90, effective February 1, 1990, by Public Law 101–237, section 111, 103 Stat. 2062, 2064–65 (1989). VA proposes that § 3.454, in paragraph (a), would provide that a veteran's disability pension will be apportioned to the veteran's spouse, child or children, or dependent parents. In paragraph (b), VA proposes providing for payment of an apportionment for the three types of death pension: Old Law Death Pension, Section 306 Death Pension, and Improved Death Pension. These types of death pension may be apportioned to the veteran's child or children.

VA proposes adding § 3.455, ''Apportionment of a surviving spouse's dependency and indemnity compensation.'' The provisions in this section are derived from current § 3.461 but have been rewritten for clarity. In paragraph (a), VA proposes providing that the surviving spouse's DIC will only be apportioned if the surviving spouse is incarcerated and will only be apportioned for a child or children under 18 years of age, unless the child or children became permanently incapable of self-support before reaching the age of 18 years.

In paragraph (b), VA proposes referring to § 3.665 to determine the amount of DIC which may be apportioned.

VA proposes removing and reserving §§ 3.458–3.461 because these provisions are either not being carried forward after this proposed change or the provisions for those sections have been incorporated into other sections.

Current § 3.458 provides situations in which a veteran's benefits will not be apportioned by VA, to include provisions concerning not apportioning benefits where each of the apportionees would not receive a reasonable amount, where the spouse of the veteran had been found guilty of conjugal infidelity, where the spouse of the veteran lived with or held himself or herself out to be the spouse of another, and where the child of a veteran had been adopted, except for the additional amount the veteran was paid for the child.

Current § 3.458 also includes a provision concerning apportionment when a child enters active duty, which is included in proposed § 3.451(b). Additionally, the provision concerning the prohibition of paying an apportionment to a claimant where the apportionment claimant was guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies has been included in proposed § 3.453. Current § 3.458 also includes the provision requiring a formal claim for apportionment before any apportionment may be paid, and this provision is included in proposed § 3.450(c).

Current § 3.459 provides for apportionment of death compensation. As explained above, VA proposes not carrying the provisions for death compensation forward because there are fewer than 300 beneficiaries and it does not anticipate receiving any more claims for this benefit.

Current § 3.460 provides for apportionment of death pension. VA proposes to incorporate these provisions into § 3.454.

Current § 3.461 provides for apportionment of DIC. These provisions are proposed to be incorporated into § 3.455.

*Section 3.556 Adjustment on Discharge or Release*

In 38 CFR 3.556(a)(1), VA proposes removing the phrase at the end of the second sentence, ''unless it is determined that apportionment for a spouse should be continued.'' VA proposes to no longer apportion the veteran's benefits if the veteran is released from the hospital because the full amount of the benefit will be paid to the veteran. Once the veteran is released from the hospital, apportionments would only be made if the veteran is readmitted to the hospital or is incarcerated. Need-based apportionments would no longer be adjudicated.

In § 3.556(e), VA proposes amending the sentence providing for the possible continuation of an apportionment when

the veteran is discharged from the hospital. VA proposes no longer apportioning the veteran's benefits if the veteran is released from the hospital because the full amount of the benefit will be paid to the veteran. Once the veteran is released from the hospital, apportionments would only be made if the veteran is readmitted to the hospital or is incarcerated. Need-based apportionments would no longer be adjudicated.

VA also proposes to amend the third sentence to remove the reference to a competent veteran and delete the fourth sentence of paragraph (e) as these refer to obsolete provisions of former 38 CFR 3.551(b) (as in effect prior to December 27, 2001). See 38 CFR 3.558(b). Finally, VA proposes to delete the reference to adjustments in the second-to-last sentence of paragraph (e) as this proposed rule would eliminate any adjustments.

*Section 3.665 Incarcerated Beneficiaries and Fugitive Felons—Compensation*

In § 3.665(e)(1), VA proposes to remove the last part of the first sentence and to strike the remainder of the paragraph so the paragraph reads, ''Compensation. All of the compensation not paid to an incarcerated veteran may be apportioned to the veteran's surviving spouse, child or children (in equal shares), or dependent parent or parents (in equal shares).'' This will remove the requirement that the person in this situation requesting an apportionment demonstrate a need for the funds. In subparagraph (2), VA proposes amending the subparagraph to remove the wording that restricts the amount of apportionment that may be made based on the need of the surviving spouse or the veteran's child or children.

In paragraph (h), VA proposes to remove the last sentence which provides for an apportionee to reapply for apportionment when the primary beneficiary is released from incarceration. VA would no longer apportion benefits in these situations. Similarly, in paragraph (i)(1) and (2), VA is proposing to remove the language which implies that apportionment may be continued in some situations where the primary beneficiary is released from incarceration. VA would no longer apportion benefits in these situations because the full amount of the benefit will be paid to the primary beneficiary. Once the veteran is released from incarceration, apportionments would only be made if the veteran is again incarcerated. Need-based apportionments will no longer be adjudicated.

*Section 21.330 Apportionment*

Section 21.330 concerns the apportionment of a veteran's vocational rehabilitation subsistence allowance. This section provides that an apportionment will, if in order, be made in accordance with the provisions of part 3. Consistent with 38 U.S.C. 5307 and current regulations, apportionment of a veteran's vocational rehabilitation subsistence allowance is not authorized if a veteran is incarcerated and participating in a vocational rehabilitation program during incarceration. Because there are no longer any circumstances where a veteran's vocational rehabilitation subsistence allowance would be apportioned, VA is removing this entire section.

VA proposes removing § 21.330 and reserving the paragraph number. VA proposes to stop apportioning vocational rehabilitation subsistence allowances for the same reasons given above. Because VA is proposing to discontinue all apportionments except in situations specified in 38 U.S.C. 5307(a)(1) and 5313(b), VA is also proposing to discontinue apportionment of the vocational rehabilitation subsistence allowance. The current regulation prohibits apportioning the subsistence allowance when a veteran has been convicted of a felony and is incarcerated. Because VA is proposing to discontinue all vocational rehabilitation subsistence allowance apportionments, there will not be any exceptions.

**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.

The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

**Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply. The certification is based on the fact that no small entities or businesses determine entitlement to VA apportionment payments.''

**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 proposed rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(3)(vi).

As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted these information collection amendments to OMB for its review. Notice of OMB approval for this information collection will be published in a future **Federal Register** document. This rule will impose the following amended information collection requirements:

*Description of respondents:* The respondent population is composed of individuals who are requesting an apportionment of a beneficiary's award amount when that beneficiary is incarcerated or is deemed incompetent and hospitalized at government expense.

*Estimated frequency of responses:* Most claimants will use this form one time. However, the frequency may vary slightly for apportionees of incarcerated veterans dependent on the number of times the primary beneficiary is incarcerated. For a veteran that is

incompetent and institutionalized at government expense, a fiduciary will be appointed. Therefore, apportionment claims other than the initial claim will not be needed.

*Estimated number of respondents:* VA anticipates the annual estimated numbers of respondents for 2900–0666 (VA Form 21–0788) as follows:

2900–0666 (VA Form 21–0788)—In FY 2014, VA processed just over 800 hospital adjustments for veterans in receipt of benefits that were hospitalized or in a nursing home or in receipt of domiciliary care at VA expense, or whose payment rates were adjusted based on such care. Fewer than 800 of these veterans were incompetent and met the requirements for payment of an apportionment to a dependent. VA also completed 15 apportionments for incarcerated veterans. The approximately 815 claims completed each year is considerably fewer than was estimated in 2005 when VA Form 21–0788 was first approved, as published in the **Federal Register**, 70 FR 39866 on July 11, 2005. At that time it was estimated that VA would receive approximately 25,000 apportionment claims per year.

OMB Control Number 2900–0666 (VA Form 21–0788) is a collection of information for a particular apportionment of a benefit which is currently required by VA in order for these claims to be processed and adjudicated. Since VA requires these forms to be submitted when filing for an apportionment of a particular benefit, VA does not expect an increase in the annual number of respondents; VA anticipates a decrease in the number of claims. In addition, VA is reducing the substance of the collection of information on this OMB-approved collection of information and is not increasing the respondent burden.

*Estimated total annual reporting and recordkeeping burden:* 2900–0666 (VA Form 21–0788)—The annual burden is reduced from approximately 12,500 hours per year (25,000 claims at 30 minutes per claim form) to about 203 hours per year (815 claims per year at 15 minutes per claim form). The total estimated cost to respondents is reduced to $4,843.58 (203 hours × $23.86/hour). This submission does not involve any recordkeeping costs.

This rulemaking is proposing to mandate the use of the VA form in the processing and adjudication of apportionment claims. The proposed amendment to § 3.450 affects the estimated annual number of respondents and consequently, the estimated total annual reporting and recordkeeping burden, and reduces the effect of the existing collection of information that has already been approved by OMB. The proposed use of information and description of likely respondents will remain unchanged for this form. The frequency of responses is less than the previous number estimated. The estimated average burden per response is reduced from 30 minutes per response to 15 minutes per response. VA estimates the total incremental savings based on this revised information collection to be $293,656.42 ($298,500 under the current form—$4,834.58 for the revised form).

**Methodology for Estimated Annual Number of Respondents for Affected Forms**

VA has formulated the estimated total number of annual responses for apportionment claims by using the total number of apportionment claims completed in FY 2014.

**Catalog of Federal Domestic Assistance for 38 CFR Part 3**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

**Catalog of Federal Domestic Assistance for 38 CFR Part 21**

The Catalog of Federal Domestic Assistance numbers and titles for the programs that will be affected by this proposed rule are 64.116, Vocational Rehabilitation for Disabled Veterans, and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Defects.

**List of Subjects**

*38 CFR Part 3*

Administrative practice and procedure, Claims, Disability benefits, Pensions, Veterans.

*38 CFR Part 21*

Administrative practice and procedure, Claims, Veterans, Vocational education, Vocational rehabilitation.

**Signing Authority**

Denis McDonough, Secretary of Veterans Affairs, approved this document on September 30, 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.*

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR parts 3 and 21 as follows:

## PART 3—ADJUDICATION

### Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

**§ 3.31 [Amended]**

■ 2. Amend § 3.31(c)(3) introductory text by removing the words ''original or increased''.

**§ 3.210 [Amended]**

■ 3. Amend § 3.210(c)(1)(ii) by:

■ a. Removing the word ''apportionee,'' from the first sentence; and

■ b. Removing the last sentence.

**§ 3.252 [Amended]**

■ 4. Amend § 3.252 by removing the last sentence of paragraph (d).

■ 5. Revise § 3.400(e) to read as follows:

**§ 3.400 General.**

* * * * *

(e) *Apportionment.* (*§§ 3.450–3.455, 3.551*). (1) *General rule.* Except as provided in paragraph (2) of this section, the effective date of an apportionment is the first day of the month after the month in which VA receives an apportionment claim.

(2) *Exceptions to general rule*—(i) *Claim for benefits is pending.* If a veteran or surviving spouse (primary beneficiary) has a claim for benefits pending on the date that VA receives an apportionment claim, the effective date of the apportionment will be the effective date of the primary beneficiary's award, or the date the apportionment claimant's entitlement arose, whichever is later.

(ii) *Apportionment claimant not yet established as the beneficiary's dependent.* If VA receives an apportionment claim within 1 year of the award of benefits to the primary beneficiary and the apportionment claimant has not been established as a dependent on the primary beneficiary's

award, the effective date of the apportionment will be the effective date of the primary beneficiary's award, or the date the apportionment claimant's entitlement arose, whichever is later.

(iii) *The primary beneficiary is incarcerated.* The effective date of an apportionment when the primary beneficiary is incarcerated is specified in § 3.665 or 3.666.

* * * * *

■ 6. Revise § 3.450 to read as follows:

**§ 3.450 General apportionment.**

(a) *Applicability.* Sections 3.450 through 3.459 apply to all claims for apportionment VA receives on or after [EFFECTIVE DATE OF THE FINAL RULE].

(b) *Existing apportionments.* All apportionments being paid as of [EFFECTIVE DATE OF THE FINAL RULE] will continue to be paid until the circumstances which provided entitlement to the apportionment no longer exist, such as divorce of the veteran and spouse, death of the primary beneficiary, death of an apportionee, or other such circumstances which provided entitlement to the apportionment.

(c) *Apportionment application.* Claims for apportionment must be submitted to VA on a form prescribed by the Secretary.

(Authority: 38 U.S.C. 501(a))

■ 7. Revise § 3.451 to read as follows:

**§ 3.451 Apportionment claims.**

(a) *General*—(1) *Veteran.* All or part of the pension or disability compensation payable to any veteran may be apportioned if one of the following conditions exist:

(i) For his or her spouse, child, or dependent parents if the veteran is incompetent and is being furnished hospital treatment, nursing home, or domiciliary care by the U.S., or any political subdivision thereof.

(ii) The veteran is incarcerated and meets the conditions of § 3.665 or 3.666.

(2) *Surviving spouse.* Where a child or children of a deceased veteran is not living with the veteran's surviving spouse because the surviving spouse is incarcerated and meets the conditions of § 3.665 or 3.666, the dependency and indemnity compensation (DIC) or pension otherwise payable to the surviving spouse may be apportioned to the child or children. No apportionment shall be payable to a child who did not reside with the surviving spouse prior to incarceration.

(b) *Apportionment to a child on active duty.* No apportionment of disability or death benefits will be made or changed solely because a child has entered active duty. If an apportionment is claimed for a child on active duty on the date the apportionment claim is received by VA, no apportionment will be made. If an apportionment is being paid to the veteran's spouse and includes an amount for a child, and the child enters active duty, no change in the apportionment will be made.

(c) *Apportionment of death benefits.* Any amounts payable for children under §§ 3.456, Eligibility for apportionment of pension, and 3.458, Eligibility for apportionment of a surviving spouse's dependency and indemnity compensation, will be equally divided among the children.

(Authority: 38 U.S.C. 5307, 5502(d))

■ 8. Revise § 3.452 to read as follows:

**§ 3.452 Veteran's benefits apportionable.**

A veteran's benefits may be apportioned when the veteran is receiving hospital treatment, nursing home, or domiciliary care provided by the U.S. or a political subdivision, upon receipt by VA of an application:

(a) *Pending appointment of fiduciary.* Pending the appointment of a guardian or other fiduciary.

(b) *Veteran receiving hospital, domiciliary, or nursing home care*—(1) *Incompetent veteran*—(i) *Spouse or child.* Where an incompetent veteran without a fiduciary is receiving hospital treatment, nursing home, or domiciliary care provided by the U.S. or a political subdivision, his or her benefit may be apportioned for a spouse or child.

(ii) *Dependent parent.* Where an incompetent veteran without a fiduciary is receiving hospital treatment, nursing home, or domiciliary care provided by the U.S. or a political subdivision, his or her disability compensation may be apportioned for a dependent parent.

(2) *Competent veteran*—(i) *Section 306 Pension.* Where the amount of Section 306 Pension payable to a married veteran is reduced to $50 monthly under § 3.551, Reduction because of hospitalization, while a veteran is receiving hospital, domiciliary, or nursing home care, an apportionment may be made to such veteran's spouse. The amount of the apportionment generally will be the difference between $50 and the total amount of pension payable on December 31, 1978.

(ii) *Improved Pension.* Where the amount of Improved Pension payable to a married veteran under 38 U.S.C. 1521(b) is reduced to $90 monthly under § 3.551, Reduction because of hospitalization, an apportionment may be made to such veteran's spouse. The amount of the apportionment generally will be the difference between $90 and the rate payable if pension were being paid under 38 U.S.C. 1521(c), including the additional amount payable under 38 U.S.C. 1521(e) if the veteran is so entitled.

(Authority: 38 U.S.C. 501(a), 5307, 5502, 5503(a); Pub. L. 95–588, section 306, 92 Stat. 2497)

■ 9. Revise § 3.453 to read as follows:

**§ 3.453 Benefits not apportionable.**

VA will not apportion benefits:

(a) Unless the spouse of a veteran files a claim for an apportionment. If there is a child of the veteran, an apportionment will not be authorized unless a claim for an apportionment is filed by or for the child.

(b) To any beneficiary's dependent who is determined by VA to have been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the U.S. or its allies.

(c) After September 1, 1959, if a veteran, spouse, child, or dependent parent: or other primary beneficiary:

(1) Forfeited benefits due to fraud or a treasonable act; or

(2) Was convicted of subversive activity.

CROSS REFERENCE: §§ 3.900, General, 3.901, Fraud, 3.902, Treasonable acts, and 3.903, Subversive activity.

(Authority: 38 U.S.C. 5307, 6103(b), 6104(c), 6105(a))

■ 10. Revise § 3.454 to read as follows:

**§ 3.454 Apportionment of pension.**

(a) *Disability pension.* Disability pension will be apportioned to the veteran's spouse, or child or children, or dependent parents.

(b) *Death pension.* Old-Law Death Pension, Section 306 Death Pension and Improved Pension will be apportioned to the veteran's child or children.

(Authority: 38 U.S.C. 5307)

■ 11. Add § 3.455 to read as follows:

**§ 3.455 Apportionment of a surviving spouse's dependency and indemnity compensation.**

(a) *Conditions under which apportionment may be made.* The surviving spouse's award of dependency and indemnity compensation (DIC) will be apportioned where there is a child under 18 years of age and the surviving spouse is incarcerated and meets the provisions of § 3.665. DIC will not be apportioned under this paragraph (a) for a child over age 18 years unless the child is permanently incapable of self-support in accordance with the provisions of § 3.57.

(b) *Rates payable.* The amount of apportionment of DIC will be determined in accordance with the provisions of § 3.665.

(Authority: 101(4)(A), 104(a), 5307)

**§§ 3.456 and 3.457 [Added and Reserved]**

■ 12. Add and reserve §§ 3.456 and 3.457.

**§ 3.456 Reserved.**

**§ 3.457 Reserved.**

**§§ 3.458 through 3.461 [Removed and Reserved]**

■ 13. Remove and reserve §§ 3.458 through 3.461.

**§§ 3.458–3.461 [Reserved]**

■ 14. Amend § 3.556 as follows:

■ a. In paragraph (a)(1), remove the words ''unless it is determined that apportionment for a spouse should be continued''; and

■ b. In paragraph (e):

■ 1. Remove the words ''in the case of a competent veteran'' from the second sentence, and remove the third sentence; and

■ 2. Revise the fifth sentence.

The revision reads as follows:

**§ 3.556 Adjustment on discharge or release.**

* * * * *

(e) *Regular discharge.* * * * Where an apportionment was made under § 3.551(c), the apportionment will be discontinued effective the day preceding the date of the veteran's release from the hospital, unless an overpayment would result. In the excepted cases, the awards to the veteran and apportionee will be adjusted as of date of last payment. * * *

(Authority: 38 U.S.C. 5503)

* * * * *

■ 15. Amend § 3.665 by revising paragraphs (e), (h) and (i) to read as follows:

**§ 3.665 Incarcerated beneficiaries and fugitive felons—compensation.**

* * * * *

(e) *Apportionment*—(1) *Compensation.* All of the compensation not paid to an incarcerated veteran may be apportioned to the veteran's spouse, child or children (in equal shares), or dependent parent or parents (in equal shares).

(2) *DIC.* All of the DIC not paid to an incarcerated surviving spouse or other children not in the surviving spouse's custody may be apportioned to another child or children. All of the DIC not paid to an incarcerated child may be apportioned to the surviving spouse or other children (in equal shares).

* * * * *

(h) *Notice to dependent for whom apportionment granted.* A dependent for whom an apportionment is granted under this section shall be informed that the apportionment is subject to immediate discontinuance upon the incarcerated person's release or participation in a work release or halfway house program.

(i) *Resumption upon release*—(1) *No apportionment.* If there was no apportionment at the time of release from incarceration, the released person's award shall be resumed the date of release from incarceration if the Department of Veterans Affairs receives notice of release within 1 year following release; otherwise the award shall be resumed the date of receipt of notice of release. If there was an apportionment award during incarceration, it shall be discontinued date of last payment to the apportionee upon receipt of notice of release of the incarcerated person. Payment to the released person shall then be resumed at the full rate from date of last payment to the apportionee. Payment to the released person from date of release to date of last payment to the apportionee shall be made at the rate which is the difference between the released person's full rate and the sum of:

(i) The rate that was payable to the apportionee; and

(ii) The rate payable during incarceration.

(2) *Apportionment to a dependent parent.* An apportionment made to a dependent parent under this section cannot be continued beyond the veteran's release from incarceration unless the veteran is incompetent and the provisions of § 3.452(b)(1) are for application. When a competent veteran is released from incarceration, an apportionment made to a dependent parent shall be discontinued and the veteran's award resumed as provided in paragraph (i)(1) of this section.

* * * * *

(Authority: 38 U.S.C. 501(a), 5313, 5313B; Sec. 506, Pub. L. 107–103, 115 Stat. 996–997)

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart A—Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31

■ 16. The authority citation for part 21, subpart A continues to read as follows:

**Authority:** 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

**§ 21.330 [Removed and Reserved]**

■ 17. Remove and reserve § 21.330.

**§ 21.330 [Reserved]**

[FR Doc. 2021–21816 Filed 10–13–21; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

**RIN 2900–AQ89**

### State Approving Agency Jurisdiction Rule

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend existing regulations to clarify State Approving Agencies' (SAA) jurisdiction for approval of online distance learning courses and distinguish such courses from ''traditional classroom'' resident training courses and independent study-resident training courses (also known as ''hybrid'' courses), which are typically a combination of online and traditional training. Additionally, VA seeks to clarify SAA authority and jurisdiction with regard to approval and disapproval of any course, or licensing or certification test, and to clarify the adjudicatory outcomes available to an SAA when reviewing an approval application for any type of course (*i.e.,* approval, denial of an application for approval, suspension of approval, or withdrawal of approval).

**DATES:** Comments must be received by VA on or before December 13, 2021.

**ADDRESSES:** Comments may be submitted through *www.Regulations.gov.* Comments should indicate that they are submitted in response to RIN 2900–AQ89—State Approving Agency Jurisdiction Rule. Comments received will be available at regulations.gov for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Amitay, Chief, Policy and Regulation Development Staff (225C), Education Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9800. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** Currently, for purposes of determining SAA jurisdiction, VA's regulation divides courses into residential courses offered in the same state as the state in which the educational institution is located, 38 CFR 21.4250(a)(1), residential courses

offered in one state by an educational institution located in a different state, § 21.4250(a)(2), and courses offered by independent study or correspondence, § 21.4250(a)(3). Current § 21.4250(a)(3) provides that if an educational institution offers a program through independent study or by correspondence, only the SAA for the State where the school's main campus is located may approve the course for VA training. This rule, however, does not explicitly address online distance learning courses. Some stakeholders have thus erroneously concluded that this rule does not address the appropriate SAA of jurisdiction for online distance learning programs. VA views online distance learning as a subset of courses offered through independent study and, therefore, views current § 21.4250(a)(3) as controlling which SAA has jurisdiction to approve a course offered via online distance learning, *i.e.,* the SAA for the State in which the school's main campus is located has exclusive jurisdiction over the approval of online distance learning programs.

The relationship between independent study and online distance learning is further clarified in 38 CFR 21.4267(b). VA defines independent study in that section for the purposes of educational assistance programs as a program that ''consists of a prescribed program of study with provision for interaction between the student and [instructor] . . . through use of communications technology, including . . . videoconferencing, computer technology (to include electronic mail), and other electronic means'' and is ''offered without any regularly scheduled, conventional classroom or laboratory sessions.'' 38 CFR 21.4267(b)(1)(i) and (ii). The definition provided for independent study encompasses distance learning in VA's view, which includes courses offered online. Therefore, online distance learning is currently classified as independent study for the purposes of VA educational assistance programs. Consequently, when current § 21.4250(a)(3) states that the SAA for the State where the educational institution's main campus is located is the SAA of jurisdiction for the approval of independent study program, it is likewise stating that such SAA is the SAA of jurisdiction for the approval of online distance learning programs.

Nevertheless, stakeholders have informed VA that the connection between ''independent study'' in § 21.4250(a)(3) and the definition of that term in § 21.4267(b)(1), which incorporates online distance learning, is not apparent to them. Therefore, even though § 21.4250(a)(3) already addresses the appropriate SAA jurisdictional rules for independent study in VA's view, and § 21.4267(b)(1)(i) and (ii) appropriately classifies online distance learning as independent study for the purposes of VA educational assistance, VA proposes to amend § 21.4250(a)(3) to explicitly include the term ''online distance learning.'' Such an amendment would not substantively change the current definitions. Rather, it is proposed to curtail confusion among some SAAs and educational institutions while maintaining the status quo.

Furthermore, we propose to also include the qualifier ''solely'' to the type of courses addressed in our proposed amendment to § 21.4250(a)(3). The qualifier ''solely'' is appropriate and preferable to avoid confusion regarding jurisdiction for SAA evaluation of any training that is not solely through independent study (including online distance learning), correspondence, or any combination of independent study (including online distance learning) and correspondence. Unless training is offered ''solely'' via independent study (including online distance learning), correspondence, or any combination of independent study (including online distance learning) and correspondence, it is addressed in either § 21.4250(a)(1), or (2). Current paragraph (a)(1) addresses ''traditional classroom'' resident training and independent study-resident training, also known as ''hybrid'' training, which VA considers resident training for the purpose of VA approval when the resident training is offered in the same state in which the educational institution is located. Current and proposed paragraph (a)(2) addresses residential courses offered in one state by an educational institution located in a different state and ''hybrid'' training when the resident training is offered in one state by an educational institution located in a different state. VA defined ''resident training'' and ''independent study-resident training'' for purposes of the Selected Reserve Educational Assistance Program in 38 CFR 21.7520(b)(22) and (12), respectively, but generally understands those terms as they are defined in that section. The distinction between courses offered exclusively by independent study and those offered in part by independent study is also addressed in § 21.4267. Section 21.4267(b)(1) defines courses offered ''entirely by independent study,'' while § 21.4267(b)(2) defines courses offered ''in part by independent study.'' VA intends for § 21.4250(a)(1) or (2) to control jurisdiction unless the course is offered exclusively through independent study (including online distance learning), correspondence, or a combination of independent study (including online distance learning) and correspondence. If offered solely via independent study (including online distance learning), correspondence, or a combination of these methods, only the SAA for the state where the educational institution's main campus is located may approve independent study (including online distance learning), correspondence, and courses provided via a combination of independent study (including online distance learning) and correspondence, in accordance with § 21.4250(a)(3).

Additionally, current § 21.4250(b)(3), titled ''Failure to act,'' states that an SAA can respond to a school's application for program approval by issuing a notice to the school that the SAA does not intend to act on the school's application, and the school may, instead, request approval from the Secretary. Issuance of such a notice is not a program denial but rather serves as an attempted abdication of the SAA's prescribed role in 38 U.S.C. 3672(a)(1) and for which SAAs are reimbursed under 38 U.S.C. 3674(a)(1). Therefore, VA proposes to remove this exception and to require an SAA with jurisdiction to approve or disapprove any course for which a VA beneficiary seeks to use his or her VA educational benefits. However, expressly eliminating the authority of an SAA to take no action on an application arguably creates ambiguity as to what an SAA should do when a school submits an incomplete, insufficient, or otherwise unapprovable application, or when the SAA lacks jurisdiction to make a determination on the application. In those cases, the SAA should deny the application—an implicit authority VA views as naturally and obviously arising as the alternative to the explicit authority to approve an application. While SAAs already have this authority in VA's view, some SAAs have expressed a belief that they lack the authority to issue a denial of approval because that term is not specifically mentioned in any regulatory section.

To remove any potential ambiguity, VA proposes to amend § 21.4250(b) by removing the language currently following the heading ''State approving agencies'' and adding language to explicitly list ''Approval of an Application for Approval,'' ''Denial of an Application for Approval,'' ''Suspension of Approval,'' and ''Withdrawal of Approval'' as the four types of decision an SAA is authorized

to make under 38 U.S.C. 3672 and 3679. VA does not view this change as substantive in nature but, rather, is making the change to clarify existing authority based on stakeholder feedback.

Additionally, VA proposes to amend 38 CFR 21.4259 to include the new phrasing for the denial of an application in proposed § 21.4250(b). VA proposes to amend § 21.4259(a) to explicitly state that an SAA may deny an application when the program either fails to satisfy any approval criterion or when the program is outside the SAA's jurisdiction. VA proposes to include, in proposed § 21.4259(a)(3) and (b), denial of an application for approval in the list of reasons for which an SAA must send a notification of decision to the educational institution and VA, respectively. Additionally, VA proposes to amend § 21.4259(b) to explicitly state that the notification to VA must set forth the reasons for such denial, suspension, or withdrawal. Under 38 U.S.C. 3672(a) an SAA must notify VA of its reasons for disapproval of a previously approved course. VA intends to explicitly apply the requirement under 38 U.S.C. 3672(a) to every SAA action that may negatively impact a student's ability to use GI Bill benefits at a particular educational institution. The language requiring the SAA to set forth reasons for adverse approval action is being moved from current § 21.4250(b)(2), which contains vital notification requirements, to proposed § 21.4259(a)(3) and (b) because it appears to better fit with proposed § 21.4259. We propose to include a cross-reference in § 21.4250(b)(2) to indicate that requirements for an SAA's notice of denial, suspension, or withdrawal is covered in § 21.4259(a)(3) and (b). VA further proposes to relocate the sentence, ''It is incumbent upon the State approving agency to determine the conduct of courses and to take immediate appropriate action in each case in which it is found that the conduct of a course in any manner fails to comply with the requirements for approval,'' in a revised form, from current § 21.4259(a)(3) to proposed § 21.4259(a)(2) as a matter of style, not to have any substantive effect.

Lastly, VA would remove the term ''disapproval'' from § 21.4259 and replace it with the terms ''Denial of an Application for Approval'' and ''Withdrawal of Approval'' as applicable. VA interprets, as it always had, its authority to disapprove courses in 38 U.S.C. 3679 as including authority to deny applications for approval, suspend approvals, and withdraw approvals. This non-substantive change would provide consistency in the terminology used throughout proposed § 21.4259 and proposed § 21.4250(b).

In the interest of properly assisting SAAs in effectively and efficiently administering VA education benefits approval standards and resolve confusion expressed by some SAAs in recent years regarding how to respond to educational institutions seeking approval of strictly online distance learning training courses, it is necessary for VA to make these regulatory amendments. Additionally, these amendments would help ensure course approvals or denials are made by the correct SAA and to provide appropriate guidance regarding the denial of an application for approval.

**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. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

**Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). VA has determined there are no small entities involved with the approval of online distance learning courses or any involvement with administering VA's educational benefits. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

**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 proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

**Paperwork Reduction Act**

Although this action contains provisions constituting collections of information at 38 CFR 21.4250 and 21.4259 under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection requirements for §§ 21.4250 and 21.4259 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0051.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.027, Post-9/11 Veterans Educational Assistance; 64.028, Post-9/11 Veterans Educational Assistance; 64.032, Montgomery GI Bill Selected Reserve; Reserve Educational Assistance Program; 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance.

**List of Subjects in 38 CFR Part 21**

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, and Vocational rehabilitation.

**Signing Authority**

Denis McDonough, Secretary of Veterans Affairs, approved this document on September 14, 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.*

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 21 as set forth below:

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart D—Administration of Educational Assistance Programs

■ 1. The authority citation for part 21, subpart D continues to read as follows:

**Authority:** 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

■ 2. Amend § 21.4250 by revising paragraphs (a)(2) and (3), revising in paragraph (b) the introductory text following the paragraph heading, revising paragraph (b)(2), and removing paragraph (b)(3) to read as follows:

**§ 21.4250 Course and licensing and certification test approval; jurisdiction and notices.**

(a) * * *

* * * * *

(2) If an educational institution with a main campus in a State offers a resident course not located in the same State, only the State approving agency for the State where the educational institution's main campus is located may approve the course for VA training. If the State approving agency chooses to approve a resident course (other than a flight course) not leading to a standard college degree, it must also approve the class schedules of that course.

(3) If an educational institution offers a course solely by independent study as defined in § 21.4267(b)(1), which includes online distance learning, solely by correspondence, as addressed in § 21.4256, or solely by a combination of independent study and correspondence, only the State approving agency for the State where the educational institution's main campus is located may approve the course for VA training.

* * * * *

(b) * * * State approving agencies may make four types of decisions: Approval of an Application for Approval; Denial of an Application for Approval; Suspension of Approval; and Withdrawal of Approval.

(1) * * *

(2) *Notice of denial, suspension, or withdrawal.* See § 21.4259(a)(3) and (b).

* * * * *

■ 3. Revise § 21.4259 to read as follows:

**§ 21.4259 Denial of an Application for Approval, Suspension of Approval, or Withdrawal of Approval.**

(a)(1) A State approving agency may deny an application for approval of any course, or licensing or certification test, after reviewing the application and determining that either:

(i) The course, or licensing or certification test, fails to meet any of the requirements for approval; or

(ii) The State approving agency lacks jurisdiction under § 21.4250.

(2) With respect to any approved course, or licensing or certification test, it is incumbent upon the State approving agency to determine whether the course continues to comply with the requirements for approval and to take immediate appropriate action in each case in which the evidence of record establishes that the conduct of a course fails to comply with the requirements for approval. If so found, the State approving agency:

(i) Will suspend the approval of a course for new enrollments, or approval of a licensing or certification test, for a period not to exceed 60 days to allow the institution to correct any deficiencies; or

(ii) Will immediately withdraw the approval of the course, or licensing or certification test, if any of the requirements for approval that are not being met cannot be corrected within a period of 60 days.

(3) Upon denying an application for approval, or suspending or withdrawing an approval, the State approving agency will notify the educational institution by certified or registered letter with a return receipt secured (38 U.S.C. 3679). The notification will set forth the reasons for such denial, suspension, or withdrawal.

(b) Each State approving agency will immediately notify VA of each course, or licensing or certification test, for which it has denied an application for approval, or suspended or withdrawn the approval, and set forth the reasons for such action.

(c) VA will deny an application for approval, or suspend or withdraw the approval, of courses, or licensing or certification tests, under conditions specified in paragraph (a) of this section where it functions for the State approving agency. See § 21.4150(c).

(d) VA will immediately notify the respective State approving agency, if applicable, in each case VA suspends or withdraws approval of any school under 38 U.S.C. chapter 31.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0051)

(Authority: 38 U.S.C. 3672, 3679, 3689)

[FR Doc. 2021–21496 Filed 10–13–21; 8:45 am]

BILLING CODE 8320–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[CC Docket No. 02–6; FCC 21–107; FRS 51933]**

### Schools and Libraries Universal Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission propose to update the definition of library in the Commission's rules to provide clarity regarding the eligibility of Tribal libraries and promote increased participation of underrepresented Tribal libraries in the E-Rate Program. The Federal Communications Commission seeks to address a longstanding issue that has impeded Tribal libraries in seeking E-Rate support.

**DATES:** Comments are due on or before November 15, 2021, and reply comments are due on or before November 29, 2021.

**ADDRESSES:** All filings should refer to CC Docket No. 02–6. Comments may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

▪ *Electronic Filers:* Comments and replies may be filed electronically by using the internet by accessing ECFS: *http://www.fcc.gov/ecfs.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

▪ Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

▪ U.S. Postal Service first-class, Express, and Priority mail must be

addressed to 45 L St. NE, Washington, DC 20554.

▪ Effective March 19, 2020, and until further notice, the Federal Communications Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.

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

**FOR FURTHER INFORMATION CONTACT:** Kate Dumouchel, Wireline Competition Bureau, (202) 418–7400 or by email at *Kate.Dumouchel@fcc.gov.* The Federal Communications Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's (Commission) Notice of Proposed Rulemaking in CC Docket No. 02–6; FCC 21–107, adopted September 30, 2021 and released on October 1, 2021. Due to the COVID–19 pandemic, the Federal Communications Commission's headquarters will be closed to the general public until further notice. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.* The full text of this document is available at the following internet address: *https://www.fcc.gov/document/fcc-supports-broadband-tribal-libraries-through-e-rate-0.*

## I. Introduction

1. The E-Rate Program provides support to ensure that schools and libraries can obtain affordable, high-speed broadband services and internal connections to connect today's students and library patrons with next-generation learning opportunities and services. The Commission proposes to update the definition of library in the Commission's rules to provide clarity regarding the eligibility of Tribal libraries and promote increased participation of underrepresented Tribal libraries in the E-Rate Program. In doing so, the Commission seeks to address a longstanding issue that has impeded Tribal libraries in seeking E-Rate support.

## II. Discussion

2. Consistent with the 2018 amendments to the LSTA, the Commission proposes to update §§ 54.500 and 54.501(b)(1) of the Commission's rules to adopt the amended definition of library included in the LSTA and to clarify that Tribal libraries are eligible for support through the E-Rate Program. This amendment will remove the outdated reference to the 1996 version of the LSTA in the E-Rate rules, make the eligibility rules for the E-Rate Program consistent with those of the Emergency Connectivity Fund Program, and promote the increased participation of Tribal libraries in the E-Rate Program by making clear that Tribal libraries are eligible.

3. While some Tribal libraries have received E-Rate support to the extent the relevant State library administrative agencies determined they were eligible for assistance, they are still greatly underrepresented among the total number of E-Rate applicants. According to a report by the Institute of Museum and Library Services (IMLS) and the Association of Tribal Archives, Libraries, and Museums (ATALM), only 15 percent of Tribal libraries reported receiving E-Rate support, in part, due to eligibility requirements. When establishing the rules for the Emergency Connectivity Fund Program, the Commission clarified that Tribal libraries were eligible for support under the Emergency Connectivity Fund Program. The Commission now proposes to update the E-Rate rules in a consistent manner to add a Tribal library to the definition of library and remove references to the outdated Public Law 104–208. The Commission proposes these changes in order to clarify that because Tribal libraries are statutorily eligible for support from State library administrative agencies consistent with 2018 amendments to the LSTA, they are therefore eligible for support through the E-Rate Program—even if LSTA funds have not been received by a Tribal library. The Commission anticipates that this change will resolve existing confusion about Tribal libraries' eligibility and facilitate access to E-Rate funds. By making Tribal eligibility for E-Rate support clear, the Commission seeks to further the goal of increasing Tribal libraries' access to advanced telecommunications and information services, internal connections, and basic maintenance of internal connections through the E-Rate Program. The Commission seeks comment on this proposed rule change, as well as what impact, if any, such rule change may have on the administration of the E-Rate Program.

4. The Commission also seeks comment on whether the Commission should consider any other measures to ensure Tribal schools and libraries have access to the E-Rate Program. Are there opportunities to increase participation of these Tribal entities in the E-Rate Program, such as through additional trainings or outreach? In 2016, GAO issued recommendations to the Commission for expanding Tribal access to E-Rate funding. The Commission seeks comment on those recommendations here. Specifically, would consultation with other relevant federal agencies, such as IMLS or the Department of Interior Bureau of Indian Affairs, when developing and promoting such training programs and outreach improve their effectiveness? Are there ways to improve reporting on Tribal entities to gain a more complete understanding of Tribal participation in the E-Rate Program? Should the Commission consider developing performance goals and measures to track progress of achieving the Commission's goal of increasing access to affordable broadband for Tribal schools and libraries? If so, the Commission seeks comment on what these might include.

5. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all, including Indigenous and Native American persons, people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

## III. Procedural Matters

6. *Initial Regulatory Flexibility Analysis.*—As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Notice of Proposed Rulemaking. Written public

comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice of Proposed Rulemaking, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA. In addition, the Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**.

*A. Need for, and Objectives of, the Proposed Rules*

7. The Commission is required by Section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of Section 254. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Specifically, under the schools and libraries universal service support mechanism, also known as the E-Rate Program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, internet access, and internal connections.

8. Taking steps to close the digital divide is a top priority for the Commission. The E-Rate Program provides a vital source of support to schools and libraries, ensuring that students and library patrons across the nation have access to high-speed broadband and essential communications services. The rules the Commission proposes in the Notice of Proposed Rulemaking seek to update the E-Rate Program rules to be consistent with the amended LSTA and to clarify that Tribal libraries are eligible to apply for and receive E-Rate funding. The Commission seeks comment on these proposals as well as comments as to whether there are other measures the Commission can take to ensure Tribal schools and libraries have access to E-Rate funds, consistent with Section 254(h)(4).

*B. Legal Basis*

9. The proposed action is authorized pursuant to sections 1 through 4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403.

*C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

10. The RFA directs agencies to provide a description of and, where feasible, and estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

12. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

13. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

1. Schools and Libraries

14. As noted, a ''small entity'' includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally ''a non-profit institutional day or residential school that provides elementary education, as determined under state law.'' A secondary school is generally defined as ''a non-profit institutional day or residential school that provides secondary education, as determined under state law,'' and not offering education beyond grade 12. A library includes ''(1) a public library, (2) a public elementary school or secondary school library, (3) an academic library, (4) a research library [ ] and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.'' The proposals under consideration in the Notice of Proposed Rulemaking, if adopted, would update the definition of library to add Tribal libraries to the definition. For-profit schools and libraries, and schools and libraries with endowments in excess of $50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined for-profit, elementary and secondary schools and libraries having $6 million or less in annual receipts as small entities. In funding year 2017, approximately 103,699 schools and 11,810 libraries received funding under the schools and libraries universal service mechanism. Although the Commission is unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, the Commission estimates that fewer than 103,699 schools and 11,810 libraries might be affected annually by

this action, notwithstanding the fact that more Tribal libraries may be encouraged to apply for funding should the proposals in the Notice of Proposed Rulemaking be adopted.

2. Telecommunications Service Providers

15. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 indicate that 3,054 firms operated the entire year. Of this total, 2,964 operated with fewer than 250 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total 1,307 an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

16. The Commission has included small incumbent LECs in this RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in it field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has, therefore, included small incumbent carriers in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

17. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to IXCs. The closest NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 indicate that 3,054 firms operated the entire year. Of this total, 2,964 operated with fewer than 250 employees. According to internally developed Commission data, 359 companies reported that that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

18. *Competitive Access Providers (CAPs).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to CAPs. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under the SBA size standard a Wired Telecommunications Carrier is a small entity if it employs no more than 1,500 employees. U.S. Census Bureau data for 2017 indicate that 3,054 firms operated the entire year. Of this total, 2,964 operated with fewer than 250 employees. According to Commission data, 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

19. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments primarily engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this total, 2,837 firms had fewer than 250 employees and 56 had 250 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

20. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this total, 2,837 firms had fewer than 250 employees and 56 had 250 employees or more. Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

3. Internet Service Providers (ISPs)

21. *Internet Service Providers (Broadband).* Broadband internet service providers include wired (*e.g.,* cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 indicate that 3,054 firms operated the entire year. Of this total, 2,964 operated with fewer than 250 employees. Consequently, under this size standard the majority of firms in this industry can be considered small.

22. *Internet Service Providers (Non-Broadband).* Internet access service providers such as Dial-up internet service providers, VoIP service providers using client-supplied telecommunications connections and internet service providers using client-supplied telecommunications connections (*e.g.,* dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census Bureau data for 2017 shows that there were 1,079 firms

that operated for the entire year. Of these firms, a total of 1,039 had gross annual receipts of less than $25 million. Consequently, under this size standard a majority of firms in this industry can be considered small.

4. Vendors of Internal Connections

23. *Vendors of Infrastructure Development or ''Network Buildout.''* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are ''Radio and Television Broadcasting and Wireless Communications Equipment'' with a size standard of 1,250 employees or less and ''Other Communications Equipment Manufacturing'' with a size standard of 750 employees or less. U.S. Census Bureau data for 2017 show that for Radio and Television Broadcasting and Wireless Communications Equipment, 656 firms operated for the entire year. Of that number, 624 firms operated with fewer than 250 employees. For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2017 shows that 321 firms operated for the year. Of that number, 310 operated with fewer than 250 employees. Based on this data, the Commission concludes that the majority of Vendors of Infrastructure Development or ''Network Buildout'' are small.

24. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways. The SBA size standard for Telephone Apparatus Manufacturing is all such firms having 1,250 or fewer employees. U.S. Census Bureau data for 2017 show that there were 189 firms that operated for the entire year. Of this total, 177 operated with fewer than 250 employees. Thus, under this size standard, the majority of firms can be considered small.

25. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2017 show that 656 firms operated in this industry for the entire year. Of that number, 624 firms operated with fewer than 250 employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

26. The proposals under consideration in the Notice of Proposed Rulemaking, if adopted, should not result in new and/or modified reporting, recordkeeping and other compliance requirements for small or large entities. At this time, the Commission cannot quantify the cost of compliance with the potential rule changes in the Notice of Proposed Rulemaking, but the Commission anticipates that the result of any rule changes will produce requirements that are equal to existing requirements, and the Commission does not believe small entities will have to hire attorneys, engineers, consultants, or other professionals in order to comply. Updating the E-Rate rules to adopt the amended definition of library under the LSTA, for example, will clarify that Tribal libraries are eligible for support by statute—as they have been since Congress enacted the Museum and Library Services Act of 2018. Moreover, this clarity may also alleviate some of the issues that Tribal libraries face when seeking E-Rate support. Additionally, the Commission has sought comment on whether there are other measures the Commission can take to ensure Tribal schools and libraries have equal access to E-Rate funds. Regarding the Commission's proposal on what documentation should be used to validate a Tribal library, the Commission has sought comment on whether that approach is feasible or practicable for demonstrating eligibility.

*E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

27. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

28. In the Notice of Proposed Rulemaking, the Commission has taken steps to minimize the economic impact on small entities with the rule changes that the Commission has proposed. Under the current E-Rate rules, only libraries eligible for assistance from a State library administrative agency under the 1996 version of the LSTA are eligible for E-Rate funding. Absent a rule change, Tribal libraries continue to face uncertainty about eligibility which leads to them being underrepresented among E-Rate applicants. The Commission has therefore proposed updating the rules to add Tribal libraries to the definition of library, which, if adopted, may encourage Tribal libraries to apply for and receive E-Rate support. The Commission expects to more fully consider ways to minimize the economic impact and explore alternatives for small entities following the review of comments filed in response to the Notice of Proposed rulemaking.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

29. None.

30. *Paperwork Reduction Act.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

31. *Ex Parte Rules—Permit but Disclose.* Pursuant to section 1.1200(a) of the Commission's rules, this Notice of

Proposed Rulemaking shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

32. In light of the Commission's trust relationship with Tribal Nations and our commitment to engage in government-to-government consultation with them, the Commission finds the public interest requires a limited modification of the *ex parte* rules in this proceeding. Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act. However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission decision makers shall be exempt from the rules requiring disclosure in permit-but-disclose proceedings and exempt from the prohibitions during the Sunshine Agenda period. To be clear, while the Commission recognizes consultation is critically important, the Commission emphasizes that the Commission will rely in its decision-making only on those presentations that are placed in the public record for this proceeding.

33. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

34. Availability of Documents: Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

## IV. Ordering Clauses

35. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1 through 4, 201–202, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 202, 254, 303(r), and 403, this Notice of Proposed Rulemaking *is adopted.*

36. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send a* copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

## List of Subjects in 47 CFR Part 54

Communications common carriers, internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

## Proposed Rules

For the reasons set forth above, the Commission proposes part 54 of title 47 of the Code of Federal Regulations to be amended as follows:

## PART 54—UNIVERSAL SERVICE

■ 1. The authority for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, and 1601–1609, unless otherwise noted.

■ 2. Amend § 54.500 by revising the definition of ''library'' to read as follows:

### § 54.500 Terms and definitions.

* * * * *

*Library.* A ''library'' includes:

(1) A public library;

(2) A public elementary school or secondary school library;

(3) A Tribal library;

(4) An academic library;

(5) A research library, which for the purpose of this section means a library that:

(i) Makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and

(ii) Is not an integral part of an institution of higher education; and

(6) A private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.

* * * * *

■ 3. Amend § 54.501 by revising paragraph (b)(1) to read as follows:

### § 54.501 Eligible recipients.

* * * * *

(b) *Libraries.*

(1) Only libraries eligible for assistance from a State library administrative agency under the Library Services and Technology Act (20 U.S.C. 9122) and not excluded under paragraphs (b)(2) or (3) of this section shall be eligible for discounts under this subpart.

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[FR Doc. 2021–22102 Filed 10–13–21; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## 48 CFR Parts 332 and 352

**RIN 0991–AC32**

## Department of Health and Human Services Acquisition Regulation—Electronic Submission and Processing of Payment Requests

**AGENCY:** Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Health and Human Services (HHS or the Department) is proposing to amend the Department's Federal Acquisition Regulation Supplement, the HHS Acquisition Regulation (HHSAR), to support the HHS Electronic Invoicing Implementation Project and HHS's transition to the Department of the Treasury's Invoice Processing Platform. This complies with Office of Management and Budget (OMB) memorandum M–15–19, Improving Government Efficiency and Saving Taxpayer Dollars Through Electronic Invoicing, issued on July 17, 2015.

**DATES:** To be assured consideration, comments must be received at the address provided below, no later than 11:59 p.m. November 15, 2021.

**ADDRESSES:** You may submit comments through the Federal eRulemaking Portal: *https://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

*Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to comments received.

*Inspection of Public Comments:* All comments received before the close of the comment period will be available for viewing by the public, including personally identifiable or confidential business information that is included in a comment. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make. HHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov*. Follow the search instructions on that Website to view the public comments.

**FOR FURTHER INFORMATION CONTACT:** Shari Shor, Procurement Analyst, Department of Health and Human Services, Office of the Assistant Secretary for Financial Resources, Office of Acquisition Policy, 200 Independence Avenue SW, Washington, DC 20201. Email: *Shari.Shor@hhs.gov*. Telephone: (202) 731–3383.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Office of the Assistant Secretary for Financial Resources (ASFR) is in the process of implementing the HHS Electronic Invoicing Implementation Project in conjunction with the Unified Financial Management System team, the HHS Consolidated Acquisition System team, the Office of Acquisitions, the Office of Acquisition Business Systems, and the Office of Financial Policy. This project is needed to bring HHS in compliance with the OMB Memorandum issued on July 17, 2015, which directed federal agencies to transition to electronic invoicing for appropriate federal procurements. Immediately following the issuance of the OMB Memorandum, HHS initiated the project by evaluating different solutions, building consensus across the Department, developing a business case, and receiving approval from HHS governance bodies.

## II. Required Regulatory Analyses

### *A. Executive Orders 12866 and 13563*

E.O. 12866, ''Regulatory Planning and Review,'' and E.O. 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select regulatory approaches that maximize net benefits.

OMB determined that the rulemaking was not an economically significant regulatory action under these E.O.s. The preambles to this rule maintained that it primarily described procedural changes that would require Department expenditures to implement.

### *B. Regulatory Flexibility Act*

The Department has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* The RFA requires an agency to describe the impact of a proposed rulemaking on small entities by providing an initial regulatory flexibility analysis, unless the agency determines that the proposed rule will not have a significant economic impact on a substantial number of small entities, provides a factual basis for this determination, and proposes to certify the statement. 5 U.S.C. 603(a) and 605(b). The Department considers a proposed or final rule to have a significant economic impact on a substantial number of small entities if it has at least a three percent impact on revenue of at least five percent of small entities. The Department has determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small entities.

### *C. Executive Order 13132 (Federalism)*

E.O. 13132, ''Federalism,'' establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments or has Federalism implications. The Department has determined that this proposed rule would not impose such costs or have any federalism implications.

### *D. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

HHS has analyzed this proposed rule in accordance with the principles set forth in E.O. 13175. HHS has tentatively determined that the proposed rule does not contain policies that would 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. In accordance with the Department's Tribal consultation policy, the Department solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

### *E. National Environmental Policy Act*

HHS had determined that this proposed rule would not have a significant impact on the environment.

### *F. Paperwork Reduction Act of 1995*

In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, 44 U.S.C. 3501–3521; 5 CFR part 1320, appendix A.1, the Department has reviewed this proposed rule and has determined that it proposes no new collections of information.

### List of Subjects in 48 CFR Parts 332 and 335

Government procurement.

Accordingly, HHS proposes to amend 48 CFR chapter 3, parts 332 and 352, as follows:

## PART 332—CONTRACT FINANCING

■ 1. The authority citation for part 332 continues to read as follows:

**Authority:** 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

■ 2. Add subpart 332.70 to read as follows:

**Subpart 332.70—Electronic Submission and Processing of Payment Requests**

Sec.
332.7000 Scope of subpart.
332.7001 Definitions.
332.7002 Policy.
332.7003 Contract clause.

## Subpart 332.70—Electronic Submission and Processing of Payment Requests

### 332.7000 Scope of subpart.

This subpart prescribes policies and procedures for electronic submission and processing of payment requests.

### 332.7001 Definitions.

*Payment request,* as used in this subpart, is defined as a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), Content of invoices, and the applicable Payment clause included in this contract.

### 332.7002 Policy.

(a) Contracts shall require the electronic submission of payment requests, except for—

(1) Purchases paid for with a Government-wide commercial purchase card; and

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise classified information or national security.

(b) Where a contract otherwise requires the electronic submission of invoices, the Contracting Officer may authorize alternate procedures only if the Contracting Officer makes a written determination that:

(1) The Department of Health and Human Services (HHS) is unable to receive electronic payment requests or provide acceptance electronically;

(2) The contractor has demonstrated that electronic submission would be unduly burdensome; or

(3) The contractor is in the process of transitioning to electronic submission of payment requests, but needs additional time to complete such transition. Authorizations granted on the basis of this paragraph (b)(3) must specify a date by which the contractor will transition to electronic submission.

(c) Except as provided in paragraphs (a) and (b) of this section, HHS officials shall process electronic payment submissions through the Department of the Treasury Invoice Processing Platform or successor system.

(d) If the requirement for electronic submission of payment requests is waived under paragraph (a)(2) or (b) of this section, the contract or alternate payment authorization, as applicable, shall specify the form and method of payment request submission.

### 332.7003 Contract clause.

Except as provided in 332.7002(a), use the clause at 352.232–71, Electronic Submission of Payment Requests, in all solicitations and contracts.

## PART 352—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority citation for part 352 continues to read as follows:

**Authority:** 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

■ 4. Add section 352.232–71 to read as follows:

### 352.232–71 Electronic submission of payment requests

As prescribed in HHSAR 332.7003, use the following clause:

**Electronic Submission of Payment Requests (DATE TBD)**

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

(1) ''*Payment request*'' means a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), ''Content of Invoices'' and the applicable Payment clause included in this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests electronically using the Department of Treasury Invoice Processing Platform (IPP) or successor system. Information regarding IPP, including IPP Customer Support contact information, is available at *www.ipp.gov* or any successor site.

(c) The Contractor may submit payment requests using other than IPP only when the Contracting Officer authorizes alternate procedures in writing in accordance with HHS procedures.

(d) If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer's written authorization with each payment request.

(End of Clause)

Dated: October 4, 2021.

**Xavier Becerra,**

*Secretary.*

[FR Doc. 2021–21931 Filed 10–13–21; 8:45 am]

BILLING CODE 4151–19–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R5–ES–2021–0029; FF09E21000 FXES1111090FEDR 223]**

**RIN 1018–BF69**

## Endangered and Threatened Wildlife and Plants; Endangered Species Status for Bog Buck Moth

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list the bog buck moth (*Hemileuca maia menyanthevora*) (=*H.iroquois*), a moth that occurs in Oswego County, New York (NY), and Ontario, Canada, as an endangered species under the Endangered Species Act of 1973, as amended (Act). After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the bog buck moth as an endangered species under the Act. If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species. We have determined that designation of critical habitat for the bog buck moth is not prudent at this time.

**DATES:** We will accept comments received or postmarked on or before December 13, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 29, 2021.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the docket number or RIN for this rulemaking (presented above in the document headings). For best results, do not copy and paste either number; instead, type the docket number or RIN into the Search box using hyphens. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R5–ES–2021–0029, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

**FOR FURTHER INFORMATION CONTACT:** David A. Stilwell, Field Supervisor, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, NY 13045; telephone 607–753–9334. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Executive Summary

*Why we need to publish a rule.* Under the Act, if we determine that a species warrants listing, we are required to promptly publish a proposal in the **Federal Register**, unless doing so is precluded by higher-priority actions and expeditious progress is being made to add and remove qualified species to or from the List of Endangered and Threatened Wildlife and Plants. The Service will make a determination on our proposal within 1 year. If there is substantial disagreement regarding the sufficiency and accuracy of the available data relevant to the proposed listing, we may extend the final determination for not more than six months. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

*What this document does.* We propose to list the bog buck moth as an endangered species under the Act.

*The basis for our action.* Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the bog buck moth is at risk of extinction now throughout its range due to a combination of factors. Bog buck moth populations undergo boom and bust cycles and are highly vulnerable to threats during the bust phase (Factor E). All populations are isolated from one another (Factor E). All extant populations are experiencing some degree of habitat alteration from invasive plant species and habitat succession (Factor A). Flooding may drown various life stages of bog buck moths or reduce suitable habitat either by directly making it unavailable (under water) or reducing survival and growth of bog buckbean, an important food source for the bog buck moth larvae (Factor A). Flooding has increased at one New York population over the past several years due to increased winter and spring precipitation from climate change and high Great Lakes water levels (Factor E). Water level management has altered or has the potential to alter several bog buck moth sites (Factor A). Additionally, the sedentary nature of the bog buck moth means that colonization of neighboring fens does not occur naturally, further limiting the species' ability to respond to stochastic changes (Factor E).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. We have determined that designating critical habitat for the bog buck moth is not prudent because the moth co-occurs with another species that is highly collected and designating critical habitat for the moth would increase the risk of collection for the other species.

## Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties regarding this proposed rule.

We particularly seek comments concerning:

(1) The bog buck moth's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is threatened instead of endangered, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species.

*Public Hearing*

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and in local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

## Previous Federal Actions

We identified the bog buck moth (*Hemileuca* sp.) as a Category 2 candidate species for listing in the November 21, 1991, Annual Candidate Notice of Review (56 FR 58804). In the February 28, 1996, Annual Candidate Notice of Review (61 FR 7596), we announced our discontinuation of the designation of Category 2 species as candidates, which removed the species from the candidate list. We finalized our decision to discontinue the practice of maintaining a list of Category 2 species on December 5, 1996 (61 FR 64481).

At our discretion, we prioritized a status review for the species according to the Service's July 27, 2016, Methodology for Prioritizing Status Reviews and Accompanying 12-Month Findings on Petitions for Listing Under the Endangered Species Act (81 FR 49248) and added the species to the Endangered Species Program's National Listing Workplan (Workplan) for Fiscal Year 2021. Based on this process, we are making a determination on the bog buck moth's listing status in this proposed rule.

## Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the bog buck moth. The SSA team, composed of Service biologists and a New York State Department of Environmental Conservation (NYSDEC) biologist, conducted the SSA in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of six appropriate specialists regarding the SSA report. We received four responses. In addition, we sent the draft SSA report for review to Canadian partners, State partners, and scientists with expertise in fen ecology and bog buck moth biology, taxonomy, and conservation and received 11 responses.

## I. Proposed Listing Determination

*Background*

The bog buck moth is a large diurnal moth native to fens (groundwater-fed wetland) in Oswego County, NY, and Ontario, Canada. A thorough review of the taxonomy, life history, and ecology of the bog buck moth is presented in the SSA report (Service 2021, pp. 6–25).

Taxonomy

The bog buck moth is a silk moth (family = Saturniidae) in the buck moth genus (*Hemileuca*). The bog buck moth was first identified as a variant of the *maia* species group within *Hemileuca* in 1977 by John Cryan and Robert Dirig from four sites (two populations) along the southeast shore of Lake Ontario in Oswego County, NY, but was not formally named at that time (Legge *et al.* 1996, p. 86; Pryor 1998, p. 126; Cryan and Dirig 2020, p. 3). Four additional sites (two populations) were discovered in 1977 in eastern Ontario (Committee on the Status of Endangered Wildlife in Canada [COSEWIC] 2009, p. 7). Multiple common names have been used since then (*e.g.,* bogbean buckmoth, Cryan's buckmoth, fen buck moth).

For many years, the bog buck moth's taxonomic status has been confusing and uncertain. The bog buck moth was classified as part of the *Hemileuca maia* complex, which is a broadly distributed group of closely related taxa including *H. maia, H. lucina, H. nevadensis,* among others (Tuskes *et al.* 1996, p. 111). Tuskes *et al.* (1996, pp. 120–121) further refined the description of populations of buck moths in the Great Lakes region, including the bog buck moth, as the *H. maia* complex of Great Lakes Region Populations. Kruse (1998, p. 109) included *H. maia* and *H. nevadensis* as part of the Great Lakes complex; however, using genomewide single nucleotide polymorphisms (SNPs), Dupuis *et al.* (2018, p. 6) and Dupuis *et al.* (2020, p. 3) show that *H. nevadensis* is restricted to the west. The Annotated Taxonomic Checklist of the Lepidoptera of North America (Pohl *et al.* 2016, p. 735) included the Great Lakes populations of buck moths as part of *H. maia* (based on Tuskes *et al.* 1996), pending species-level taxonomic classification.

Recently, Dupuis *et al.* (2018, pp. 5–7) and Dupuis *et al.* (2020, pp. 2–3) used SNPs and found unambiguous results supporting the conclusion that both Ontario and Oswego County, NY, populations are part of the bog buck moth lineage that is divergent from *Hemileuca lucina, H. peigleri, H. slosseri,* and all other *H. maia.* They also found clear differentiation between the group formed by the Ontario and Oswego County, NY, populations and the group formed by Wisconsin and Michigan populations (Dupuis *et al.* 2020, p. 3).

In 2020, Pavulaan (2020, entire) was first to formally describe the bog buck moth as *Hemileuca maia menyanthevora* and stated that it may actually represent a full species. Pavulaan (2020, pp. 8–14) considered host plant use and morphology for the designation and included the Oswego County, NY, Marquette and Ozaukee County, WI, and Ontario fens as part of the range. All specimens that Pavulaan used for describing morphology were

from one location in Oswego County, NY, and he relied on host plant use discussed in Kruse (1998, entire) for inclusion of the two Wisconsin sites (Pavulaan pers. comm., 2020). Subsequently, Cryan and Dirig (2020, pp. 26–31) named the bog buck moth as *H. iroquois* and included only the Oswego County, NY, and Ontario populations in the designation. Official scientific naming follows the rule of publication priority under the International Code of Zoological Nomenclature; therefore, the official name of the bog buck moth is *H. maia menyanthevora* with the junior synonym of *H. iroquois.* We conclude that the bog buck moth is a valid taxon for consideration for listing under the Act.

Based upon the strong evidence provided by Dupuis *et al.* (2018, entire and 2020, entire), we consider the current range of *Hemileuca maia menyanthevora* as Oswego County, NY, and Ontario, Canada. The historical range also included Jefferson County, NY (see below). We find this genetic evidence documented by Dupuis *et al.* markedly more persuasive than the host plant information that Pavulaan (2020, entire; pers. comm., 2020) relied upon when he included the Wisconsin sites in his designation without specimens from those sites. The Oswego County, NY, and Ontario range is consistent with the range described when the Service originally considered the bog buck moth (*Hemileuca* sp.) as a Category 2 Candidate in 1991 (56 FR 58804, November 21, 1991). It is also consistent with the range described by NatureServe (2020, pp. 1–4), COSEWIC (2009, pp. 5, 7), and Cryan and Dirig (2020, entire).

Physical Description, Life History, and Range

Bog buck moth adults have black bodies and black/gray translucent wings with wide, white wing bands and an eyespot (COSEWIC 2009, p. 5; NatureServe 2015, p. 4). Bog buck moths have forewing lengths of 22 to 36 millimeters (mm) (0.9 to 1.4 inches [in]) (Tuskes *et al.* 1996, p. 121; Pavulaan 2020, p. 9). Males and females are generally similar in appearance with the following exceptions. Similar to all saturniids, males have highly branched, feather-like antennae with receptors that respond to female pheromones (Tuskes *et al.* 1996, p. 14), and females have simple antennae. Males also have a red-tipped abdomen while females do not; males are also slightly smaller than females (COSEWIC 2009, p. 5). In addition, both male and female adults are larger than other *Hemileuca maia* and have similar highly translucent wings as *H. lucina.* White wing bands are much larger than other *H. maia* (Cryan and Dirig 2020, p. 26; Pavulaan 2020, p. 9).

Late instar larvae are dark with reddish orange branched urticating (stinging) spines dorsally, and a reddish-brown head capsule and prolegs (COSEWIC 2009, p. 6). Initially egg rings are light green (Cryan and Dirig 2020, p. 26) and fade to light brown or tan (Sime, pers. comm.). Mature larvae are usually predominantly black with small white dots and lack yellow markings compared to other *Hemileuca maia* (COSEWIC 2009, p. 6; NatureServe 2015, p. 4; Cryan and Dirig 2020, p. 26).

The bog buck moth is restricted to open, calcareous, low shrub fens containing large amounts of *Menyanthes trifoliata* (COSEWIC 2009, p. 10) (referred to herein as bog buckbean, but also known by bogbean or buckbean). Fens are classified along a gradient that ranges from rich fens to poor fens based on their water chemistry and plant community structure. Rich fens receive more mineral-rich groundwater than poor fens, which results in higher conductivity, pH, and calcium and magnesium ion concentrations (Vitt and Chee 1990, p. 97). The sites in New York are considered medium fens (New York Natural Heritage Program [NYNHP] 2020a, p. 3). Medium fens are fed by waters that are moderately mineralized with pH values generally ranging from 4.5 to 6.5 (Olivero 2001, p. 15). Medium fens often occur as a narrow transition zone between a stream or lake and either a swamp or an upland community (Olivero 2001, p. 15). The dominant species in medium fens are usually woolly-fruit sedge (*Carex lasiocarpa*) and sweetgale (*Myrica gale*), with a variety of characteristic shrubs and herbs generally less than 5 meters (m) (16.4 feet [ft]) in height (NYNHP 2020b, pp. 5–11). Bog rosemary (*Andromeda glaucophylla*), leatherleaf (*Chamaedaphne calyculata*), cranberry (*Vaccinium macrocarpon*), spatulate-leaved sundew (*Drosera intermedia*), three-way sedge (*Dulichium arundinaceum* var. *arundinaceum*), and green arrow arum (*Peltandra virginica*) are characteristic only of medium fens, compared to any of the other calcareous fens found in New York (Olivero 2001, p. 14).

In Ontario, the bog buck moth is found in calcareous fens with bog buckbean. The fens are either low shrub dominated by sweetgale, bog birch (*Betula pumila*), bog willow (*Salix pedicellaris*) and other willows, but with patches of open fen dominated by sedges and water horsetail (*Equisetum fluviatile*) or primarily open fens dominated by sedges such as woolly-fruit sedge (*Carex lasiocarpa*), smooth sawgrass (*Cladium mariscoides*), and American common reed (*Phragmites australis* ssp. *americanus*) surrounded by conifer swamp (COSEWIC 2009, p. 10).

The life cycle of a bog buck moth is similar to other *Hemileuca* species and generally completed within 1 year (Tuskes *et al.* 1996, p. 103). Nonfeeding adults emerge in the fall. Males and females differ in flight patterns with males flying large, circular paths and females making short, low, direct frequent flights (Pryor 1998, p. 133). Adult males fly for longer periods as well, covering the open area of the fen for approximately 10 minutes compared to females flying short distances lasting a matter of seconds (Pryor 1998, p. 133). After mating, female buck moths lay one large cluster of eggs on sturdy stems of a variety of plant species. The eggs overwinter until the following spring when they hatch into larvae. While early instar larvae rely primarily on the host plant bog buckbean (Stanton 2000, p. 2), eggs are never laid on these plants as they die back each year rendering them unavailable for overwintering. Pupation occurs by mid-July, and the pupal stage lasts about 2 months. While not documented in bog buck moth, in other *Hemileuca* species (including *H. maia maia*), individual pupae may remain dormant until the following fall or possibly the fall after that (Cryan and Dirig 1977, p. 10; Tuskes *et al.* 1996, pp. 103, 114).

All populations are located within the beds of former glacial Lake Iroquois (Cryan and Dirig 2020, p. 27) and Champlain Sea (COSEWIC 2009, p. 9). The present distribution may be relict populations as a result of a postglacial expansion by *Hemileuca* from western North America, and subsequent isolation in fens and bogs as forests gradually reclaimed postglacial wetland habitats (Pryor 1998, p. 138). Glacial retreat left suitable habitat in disjointed patches (Gradish and Tonge 2011, p. 6). Based on genetic findings, bog buck moth populations may have been more historically widespread along the wetlands around Lake Ontario (Dupuis *et al.* 2020, p. 4).

While we do not have a full understanding of the historical bog buck moth distribution, there are records from three populations in New York and two in Ontario, Canada. Currently, there are four populations known. In Canada, the White Lake population comprises two sites or subpopulations (White Lake North and White Lake South). The Richmond Fen population comprises two sites or subpopulations (Richmond

Fen North and Richmond Fen South). In the United States, the Lakeside population occurs along the eastern shore of Lake Ontario in Oswego County, NY, and comprises five sites or subpopulations (referred to as Lakeside 1 to Lakeside 5). To the southwest, the Oswego Inland Site population occurs in Oswego County, NY, and is a single site with two fen openings with metapopulation dynamics operating at a smaller scale. The fifth historically known population located in Jefferson County, NY was identified based on specimens collected in the 1950s but the site is no longer suitable for the bog buck moth. The bog buck moth is sedentary (nonmigratory) and therefore present within suitable habitat year-round with small movements of 0.5 kilometers (km) (0.3 miles [mi]) within suitable habitat described as ''common'' (NatureServe 2015, p. 5). While bog buck moth populations were previously described as individuals separated by areas of unsuitable habitat greater than 2 km (1.24 mi) or areas of suitable habitat greater than 10 km (6.2 mi) with some infrequent dispersal events at slightly longer distances between unsuitable patches (NatureServe 2015, p. 5), movements are now described as ''should be capable of flying several to many kilometers, but seldom leaves habitat'' NatureServe (2020, p. 5). In NY, some movement likely occurs between sites that are close together. Isolation of populations is likely increased by the short-lived adult stage (not much time for adults to fly far) (COSEWIC 2009, p. 15). In addition, they seem to have no inclination or ability to fly long distances. Adult females that do make short flights are laden with hundreds of eggs.

Bog buck moth dispersal events were not observed by Pryor (1998, p. 138) but he suggested the potential for an adult bog buck moth to disperse with strong winds or powered flight if surrounding vegetation does not impede them. Three males were captured on sticky traps in unsuitable habitat located between the Lakeside 1 and Lakeside 2 sites in NY (Stanton 2004, p. 7) supporting some movement outside of suitable habitat but well within the 2 km (1.24 mi) discussed above. We conclude that most movements are likely to be limited to the highly localized fen habitat but that infrequent male dispersal events of a few kilometers are possible. In addition, though we would expect most wind events to primarily disperse males due to their longer localized flights, even less frequent, but possibly longer wind dispersal events of either sex may occur.

It is unlikely that other bog buck moth populations exist besides the ones mentioned above. Fairly extensive but unsuccessful searches for bog buck moths have been conducted at other potentially suitable wetland habitat in Ontario, and no new sites have been found (COSEWIC 2009, pp. 9–10). Given the degree of interest by naturalists in these natural areas and the diurnal habits of this large distinctive species, the probability of undiscovered Ontario bog buck moth populations is low (COSEWIC 2009, p. 10).

The story is similar in NY. Researchers sought out additional populations during years of exploring the bed of former glacial Lake Iroquois and its tributaries and outlets, and while they found some fens with bog buckbean, they found no additional sites with bog buck moths (Cryan and Dirig 2020, pp. 4–5). In addition, researchers have visited NY fens for many years and likely would have observed the highly conspicuous larvae on bog buckbean or adult male moths, which are readily visible due to their lengthy, localized flight pattern, had they been present.

## Regulatory and Analytical Framework

### *Regulatory Framework*

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

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

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

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

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

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

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

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

It is not always possible or necessary to define foreseeable future as a

particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

*Analytical Framework*

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS–R5–ES–2021–0029 on *http://www.regulations.gov.*

To assess bog buck moth viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of populations to withstand environmental and demographic stochasticity (*e.g.,* wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (*e.g.,* drought, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment *(e.g.,* climate change). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

**Summary of Biological Status and Threats**

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

*Individual, Subpopulation, and Species Needs*

The primary requirements for individual bog buck moths include the following: Suitable conditions that support fen ecosystems, perennial plants with bare sections of sturdy small stems above substrate near bog buckbean to provide shelter for the eggs, the presence of bog buckbean and other plants to provide shelter and food for the larvae, and appropriate flying weather of warm fall days with periods of no rain and low winds during the adult life stage.

Bog buck moths require medium fens (Olivero 2001, p. 15) with a variety of shrubs and herbs, including the bog buckbean, that are generally less than 5 m (16.4 ft) in height (NYNHP 2020b, pp. 5–11). Bog buck moths also depend on shifting mosaics of early successional fen habitat created by regular disturbance (such as periodic flooding) (Cryan and Dirig 2020, p. 28). Without disturbances, as with other early successional habitats, vegetation succession will occur; however, in fens with intact hydrology, this succession occurs very slowly.

The bog buck moth is univoltine (single adult flight period). The flight period lasts 4 weeks, generally from mid-September to October (Pryor 1998, p. 134; Stanton 2000, p. 15; Schmidt, pers. comm., 2020). Adults are diurnal (fly during the day) avoiding cooler fall night temperatures (Tuskes *et al.* 1996, p. 12; Pryor 1998, p. 133). Bog buck moths fly when temperatures are generally above 68 degrees Fahrenheit (° F) (20 degrees Celsius [° C]) and when winds are less than 24 kilometers per hour (kmph) (15 miles per hour [mph]) (Stanton 1998, pp. 19–20–20, 29).

Female bog buck moths mate once and deposit eggs (Pryor 1998, p. 129; Stanton 1998, p. 8) around bare sections of rigid, vertical plant stems (Stanton 2000, p. 11). Unlike other *Hemileuca* species (Tuskes *et al.* 1996, p. 103), bog buck moths do not lay eggs on their primary larval host plants (Legge *et al.* 1996, p. 88; Stanton 2000, pp. 2, 11). Eggs overwinter and hatch into larvae in the spring.

Bog buck moth larvae require bog buckbean and other host plant species. During the early instars, bog buckbean is the primary food source for the larvae; however, latter instars will feed on a larger variety of host plants. Overall, bog buckbean is essential, but other foodplants may be important, particularly in later larval stages. Please refer to the SSA report for a list of documented larval host plants and oviposition plants (Service 2021, pp. 13–14).

Healthy or resilient populations are those that are able to respond to and recover from stochastic events (*e.g.,* flooding, storms) and normal year-to-year environmental variation (*e.g.,* temperature, rainfall). Simply said, healthy populations are those able to sustain themselves through good and bad years. For the purpose of the SSA, we defined viability as the ability of the species to sustain populations in the wild over time. The bog buck moth needs multiple healthy (resilient) populations. The more populations, and the wider the distribution of those populations (redundancy), the less likely that the species as a whole will be negatively impacted if an area of the

species' range is negatively affected by a catastrophic event, and the more likely that natural gene flow and ecological processes will be maintained (Wolf *et al.* 2015, pp. 205–206). Species that are well distributed across their historical range are less susceptible to the risk of extinction as a result of a catastrophic event than species confined to smaller areas of their historical range.

Furthermore, diverse and widespread populations of bog buck moth may contribute to the adaptive diversity (representation) of the species if redundant populations are adapting to different conditions. In considering what may be important to capture in terms of representation for the bog buck moth, we identified two primary means of defining bog buck moth diversity: genetic differences and potential adaptation to variation in climatic conditions across latitudinal gradients.

Gene flow is influenced by the degree of connectivity and landscape permeability (Lankau *et al.* 2011, p. 320). Gene flow may be somewhat limited among bog buck moth populations due to their rare and patchy distributions and sedentary (nonmigratory) behavior. The Inland Oswego Site population is genetically distinct from the nearest of the Lakeside populations (about 30 km [18.6 mi] away), although there is or was likely some limited migration between them (Buckner *et al.* 2014, pp. 510–512). In addition, while an unambiguously close relationship was found between the bog buck moth specimens from Ontario and the populations in Oswego County, NY, both of these populations formed distinct sister clusters (Dupuis *et al.* 2020, pp. 2–3). Maintaining populations in both Canada and New York is important to conserve this genetic diversity.

The bog buck moth has a fairly narrow distribution; however, Lake Ontario influences local climatic conditions, and, at more northern latitudes, the Canadian populations experience colder winters. In Ottawa, Canada, average monthly temperatures range from 5.4 to 21.6 °F (−14.8 to −5.8 °C) in January to 60 to 79.7 °F (15.5 to 26.5 °C) in July, and average yearly snowfall is 88 in (2.23 m). In Oswego, NY (directly on Lake Ontario), temperatures range from 18 to 30 °F (−7.8 to −1.1 °C) in January to 63 to 79 °F (17.2 to 26.1 °C) in July, an average yearly snowfall is 141 in (3.58 m). Adult males have been documented to fly 3 to 5 days earlier at the Oswego Inland Site compared to Lakeside 2 and potentially due to the climate-tempering effects of Lake Ontario on the Lakeside 2 site (Stanton 1998, p. 26). Maintaining populations across historical latitudinal and climatic gradients increases the likelihood that the species will retain the potential for adaptation over time. Local adaptation to temperature, precipitation, host plants, and community interactions have all been identified for butterflies and is anticipated for the bog buck moth (Aardema *et al.* 2011, pp. 295–297).

*Risk Factors for the Bog Buck Moth*

The primary factors currently influencing bog buck moth population health are inherent factors (*e.g.,* narrow habitat niche) and several external factors resulting in loss or alteration of habitat or directly influencing demographic rates. As discussed above, bog buck moths are found in medium fens. Medium fens are listed as imperiled or vulnerable in New York (NYNHP 2020b, p. 2). Threats to medium fens include hydrological change, habitat alteration in the adjacent landscape, development, and recreational overuse (NYNHP 2020b, p. 3). Fens are especially sensitive to relatively small changes in hydrology (van Diggelen *et al.* 2006, p. 159). Additionally, several medium fens where bog buck moths occur in New York are negatively impacted by invasive species, such as purple loosestrife (*Lythrum salicaria*), reed grass (*Phragmites australis*), and buckthorn (*Rhamnus* spp.) (NYNHP 2020, p. 3). In Canada, the most significant threat to the buck moth is habitat degradation either due to alteration of water regime within the species' habitat or the invasion of habitat by nonnative plant species (COSEWIC 2009, p. 18; Environment Canada 2015, p. 7). Several sources of habitat alteration identified at bog buck moth sites are discussed below. We do not fully understand the cause of declines at bog buck moth sites, and so it is likely that additional factors (*e.g.,* predation, disease, pesticides) are important. For comprehensive discussion of the primary factors as well as these other likely stressors, please refer to the SSA report Chapter 3—Factors Influencing Viability (Service 2021, pp. 26–50).

Change in Water Levels

Water level changes can directly kill individuals (*e.g.,* flooding of pupae) or result in changes in habitat suitability and availability. Flooding can result in reductions in suitable oviposition sites, larval food sources and shelter, or pupation sites. Below we will discuss water management as it pertains to the Canadian and U.S. populations.

Water Level Management—Canadian Populations

Both White Lake subpopulations are influenced by manipulation of the White Lake outlet dam in the town of White Lake (Schmidt, pers. comm., 2020), and large fluctuations may cause mortality (COSEWIC 2009, p. 18). Alteration of the water regime can be mitigated or avoided through appropriate water management policies, actions, and land stewardship techniques; however, there were no clear prescriptive actions provided (Environment Canada 2015, p. 7). The Strategy for the Bogbean Buckmoth in Ontario (Ontario Recovery Strategy) includes recovery actions to understand the specific hydrology of Richmond Fen wetlands and the White Lake wetlands and to work with stakeholders to mitigate impacts from land use change, particularly water level manipulation at White Lake (Gradish and Tonge 2011, pp. 12–13). We have no information to indicate these actions have been initiated to date, and Ontario's 5-year review of the bog buck moth (OMNR 2017, pp. 11–17) does not mention anything about these specific actions. However, through regulation, Ontario formally designated ''habitat'' for the bog buck moth in 2014 (Environment Canada 2015, p. 9). Environment Canada then adopted the description of bog buck moth ''habitat'' as ''critical habitat'' in the Federal recovery strategy (Environment Canada 2015, p. 10). The designation includes a list of activities that alter the fen's water regime as those likely to destroy critical habitat for the buck moth (Environment Canada 2015, p. 17). We will discuss more information about Ontario and Canadian laws and regulations in *Conservation Measures,* below.

Water Level Management—U.S. Populations

Water level management resulted in the extirpation of a Jefferson County, NY, population in the 1970s (Bonanno and White 2011, p. 9) by flooding the fen habitat and creating a freshwater marsh. The site is currently being maintained by the New York State Office of Parks, Recreation and Historic Preservation as a marsh for flood control, septic system management, and New York State-listed endangered black tern (*Chlidonias niger*) habitat (Bonanno, pers. comm., 2020). However, it is no longer suitable habitat for the bog bug moth.

The Lakeside population is currently influenced by water levels associated with management of Lake Ontario through regulation of the Moses-

Saunders hydroelectric dam and precipitation events. The St. Lawrence River is located at the northeast end of Lake Ontario and is the natural outlet for the Great Lakes. Approximately 160 km (100 mi) downstream from Lake Ontario are the structures used to control the flow from Lake Ontario, most of which is used by the Moses-Saunders powerhouses (IJC 2014, p. 4). The International Joint Commission (IJC) and its International Lake Ontario—St. Lawrence River Board (Board) oversee management of these flows.

The Lake Ontario water level changes in response to the difference between the supply it receives and its outflow. The supply is uncontrolled, and the use of the Moses-Saunders Power Dam to change outflow provides some control over Lake Ontario water levels, but there are limits to the amount of water that can be released (IJC 2014, p. 5). Most of the episodic changes in Great Lakes water levels over the past century are attributable to corresponding changes in annual precipitation (Gronewold and Stow 2014, p. 1084). Prior to the construction of the dams on the St. Lawrence River, recorded lake levels of Lake Ontario from 1860 to 1960 show a pattern of variation with highs and lows captured within each decade or so (Wilcox *et al.* 2008, p. 302). The historical range of monthly average water levels was more than 1.8 m (6 ft) between low and high levels, and the IJC recommended regulating within a narrow 1.2-m (4-ft) target from April to November (IJC 2014, p. 8). This has resulted in compressing the range of Lake Ontario water levels to 0.7 m (2.3 ft) from 1.5 m (5 ft) (Wilcox *et al.* 2008, p. 302). The IJC (2014, p. 43) found that regulation of Lake Ontario has restricted the natural fluctuation of its water levels, both in terms of reducing its extremes and year-to-year variability.

The existing shoreline vegetation of the Great Lakes depends on regular fluctuation in water levels (Keddy and Reznicek 1986, p. 35). Fluctuating water levels increase the area of shoreline vegetation and the diversity of vegetation types and plant species (Keddy and Reznicek 1986, p. 35). High lake levels periodically eliminate dense-canopy emergent plants, and low lake levels allow less competitive understory species to grow (Keddy and Reznicek 1986, entire; Wilcox *et al.* 2008, p. 301).

Stabilization of Lake Ontario water levels after the construction of the Moses-Saunders Power Dam may have subsequently increased cattail (*Typha spp.*) dominance (Rippke *et al.* 2010, p. 814). Specifically, lack of low lake levels shifted the competitive advantage to the taller cattails resulting in loss of large expanses of sedge/grass meadows (Wilcox *et al.* 2008, p. 316). The IJC (2014, p. 43) found that the compressed lake level range has allowed trees and shrubs to grow closer to the water, and cattails and other emergent plants that tolerate persistent flooding to expand their range up the shoreline, reducing the sedge meadow plants that occurred in between. Increased cattails have been documented at Lakeside bog buck moth subpopulations including Lakeside 3 and Lakeside 4 (Bonanno, pers. comm., 2020; Sime 2019, p. 38). These changes in vegetation from *Carex* spp., sweet-gale, herbs, and shrubs to cattail marsh result in overall habitat loss through permanent reductions in the amount of suitable oviposition sites, larval food sources, and pupal habitat.

In addition to changes in vegetation discussed above, water levels can directly impact survival of bog buck moth in various life stages. The Lakeside population includes sites that have been described as physically ''protected wetlands'' located behind sandbars and connected to Lake Ontario by intermittent or indirect surface water openings or ground water (Vaccaro *et al.* 2009, p. 1038). Water levels in these sites are greatly influenced by precipitation and highly variable depending on their unique connection to Lake Ontario (Vaccaro *et al.* 2009, p. 1045). Barrier beaches along Lake Ontario restrict flow out of the wetlands, causing water levels to rise sharply in response to local precipitation events in the ''protected wetlands'' (Vaccaro *et al.* 2009, p. 1045). These sharp rises can result in flooding events. Though flood events may be related to water level management, they are more strongly connected to precipitation events (Gronewold and Stow 2014, p. 1084) and are further discussed below in the *Climate Change* section.

In addition to the larger scale water level management of Lake Ontario, more localized water level management may influence bog buck moth sites. Water levels may be influenced by impoundments (human or beaver) or roads that restrict flow into or out of the fens. Restriction of flow into fens results in drying of sites and increases in shrubs. Taller shrubs shade out bog buckbean, reducing optimal larval host plants.

One example of localized water level influences is the impact of a road at the Lakeside 1 and Lakeside 2 sites. Historically connected, these two sites became separated due in part to the construction of a road in the mid-1950s and impoundment in an adjacent management area (Bonanno 2006, p. 8). Fen habitat contracted from 6 to 2 ha (15 to 5 ac) at the Lakeside 1 site and 32.4 to 24.7 ha (80 to 61 ac) at the Lakeside 2 site from 1998 to 2001 (Olivero 2001, p. 10). This was corroborated with personal observations by Bonanno (2014, p. 6), who found that vegetation in the Lakeside 1 site was succeeding to a black spruce-tamarack bog forest with deep sphagnum, taller shrubs, and scarce bog buckbean. At the Lakeside 2 site, succession is documented to the point where significant habitat restoration is required (Bonanno 2014, p. 5; 2015, p. 7; 2016, p. 8).

Water levels on Lake Ontario have no direct effect on the Oswego Inland Site population, and we are unaware of any smaller scale water level management at this site; however, temperature, precipitation, and evaporation potential will impact hydrology (Stanton 2004, p. 11) (see *Climate Change,* below).

Change in Vegetation

Both invasive species and succession can reduce the amount of available suitable oviposition plants and/or larval host plants. Invasive species and later successional plants directly compete for space and nutrients or shade out bog buckbean. Changes in the quality or quantity of bog buckbean is a potential cause of documented declines in bog buck moths in New York (Stanton 2004, p. 11).

We evaluated the relative threats posed by invasive understory species and determined that *Typha* spp., common reed (*Phragmites australis*), and glossy buckthorn (*Frangula alnus*) are currently the primary species that could affect population-level dynamics of the bog buck moth. Common reed is abundant across the northern hemisphere including most of the United States and the southern portions of Canada (Galowitsch *et al.* 1999, pp. 739–741). Native fen plants like *Myrica gale* are reduced with the presence of common reed (Richburg *et al.* 2001, p. 253).

Glossy buckthorn is a shrub of Eurasian origin that is aggressive in bogs and fens. Drier portions or less frequently inundated sections of wetlands with available hummock surfaces are more readily invaded (Berg *et al.* 2016, p. 1370). Glossy buckthorn displaces or shades out native fen plant species (Fiedler and Landis 2012, pp. 41, 44, 51). Bog buckbean typically does not grow well in shade (Hewett 1964, p. 730); although it can be found in shaded areas of some fens (Helquist, pers. comm., 2020). Glossy buckthorn transpiration in mid-summer has been shown to lower the water table (Godwin

1943, p. 81) resulting in faster decomposition rates and reduction of hummocks in sites (Fiedler and Landis 2012, pp. 41, 44, 51). Sites with glossy buckthorn also have lower soil pH, although it is unclear whether buckthorn invaded these areas more frequently or created this change (Fiedler and Landis 2012, p. 51).

As stated above, in Canada, the most significant threat to bog buck moth populations includes habitat degradation from cattails, common reed, and glossy buckthorn (COSEWIC 2009, p. 18; Gradish and Tonge 2011, pp. 6–7; Environment Canada 2015, p. 7). These plants occur in or adjacent to all Ontario sites and pose an ongoing and future threat of habitat reduction. While invasive plant species have been found within or near all four sites where the buck moth is known to occur in Ontario, the risk posed by these species can be assessed regularly through targeted monitoring and, to the extent feasible, invasive plant control can be employed as appropriate and necessary to help mitigate this threat (Environment Canada 2015, p. 7). Invasive vegetation control would likely require long-term management.

These species are also documented at the New York sites. For example, glossy buckthorn makes up a substantial portion of the shrubby component at Lakeside 5 and is present at the Oswego Inland Site (Bonanno 2006, p. 7; 2013, p. 2). Cattail had been expanding at the Oswego Inland Site, and Bonanno (2013, p. 2) noted the only obvious change in potential drivers of vegetation was the large expansion of a subdivision along the lakeshore. Narrow-leaved cattail (*Typha angustifolia*) encroachment at the Oswego Inland Site has been managed sporadically prior to 2016, and annually from 2016 to 2020 (Helquist, pers. comm., 2020). Other invasive species management projects have also been undertaken at the Oswego Inland Site and Lakeside 5; however, invasive plants remain at these sites. In addition, several clones of both the introduced and the native phragmites occur near bog buck moth habitat at Lakeside 3 (Bonanno 2004, p. 9).

There may be multiple sources of vegetation succession, including natural succession from early successional to late successional plant species, as well as human-induced or accelerated succession from sources such as increased nutrient input (enrichment) and altered wetland hydrology (discussed above in *Water Level Management*). Here we provide some additional details about nutrient input.

Fens are characterized by a very low supply of nitrogen and phosporous (Bedford and Godwin 2003, p. 614), and many fens in New York are degraded by altered hydrology or by nitrate moving in ground water, by phosphate adsorbed to sediment in runoff, or by altered water chemistry caused by development within fen watersheds (Drexler and Bedford 2002, p. 278; Bedford and Godwin 2003, p. 617). Drexler and Bedford (2002, pp. 276–278) observed that nutrient loading of a fen in New York (not a bog buck moth site) resulted in reductions in species richness of both vascular plants and bryophytes and increases in monotypic stands of bluejoint grass (*Calamagrostis canadensis*), lake sedge (*Carex lacustris*), hair willow herb (*Epilobium hirsutum*), and broadleaf cattail (*Typha latifolia*), especially in an area adjacent to a farm field. Dense cover reduces fen biodiversity through direct space competition, or by reducing seedling growth from decreased available light and increased litter layer (Jensen and Meyer 2001, pp. 173–179).

Increased nutrient inputs have been documented at both the Lakeside and Oswego Inland Site populations (Service 2021, p. 36). The Lakeside 3 and 4 sites are adjacent to a recreational vehicle (RV) campground that may contribute to nutrient enrichment encouraging growth and size of the common reed (*Phragmites australis*). The Lakeside 2 site is also subject to surface water inputs from the adjacent pond, the Lakeside 1 site is surrounded by seasonal camps and an RV campground, and the Lakeside 5 site is abutted by a very large RV campground. The Oswego Inland Site has seen recent residential development along the lake shoreline.

Parasitoids

Parasitoids are small insects whose immature stages develop within or attached to their host insects. Parasitoids eventually kill their hosts as compared to parasites that typically feed upon hosts without killing them. Most saturniids are attacked during the larval stage, and late instar larvae often suffer heavy losses (Tuskes *et al.* 1996, pp. 25–27). For the bog buck moth, parasitism of egg masses has been documented; while larval parasitoids have not been directly observed, they are also believed to be the cause of mortality (COSEWIC 2009, p. 17).

Nearly all of the bog buck moth egg masses found at the Lakeside 1 site since 1996 were parasitized by the native wasp *Anastatus furnissi* (Burks) (Stanton 2000, p. 4) and it is plausible that the wasp was the primary mortality factor at other Lakeside subpopulations (Stanton 2000, p. 13). Wasp parasitism of egg masses has also been documented at the Oswego Inland Site (Sime 2019, p. 15). The parasitism rates do not appear to be density-dependent as parasitism levels have been consistent at the Lakeside and Oswego Inland sites at 25 to 30 percent of egg clusters affected/year since 2009, while bog buck moth populations have undergone dramatic fluctuations in that time period (Sime 2019, p. 15).

Larval parasitoids are common in *Hemileuca* species (Tuskes *et al.* 1996, p. 103), Parasitoids can include native and nonnative species, such as the native ichneumonid wasp *Hyposter fugitivus* (Say) and tachinid fly *Leschenaultia fulvipes* (Bigot), and the introduced tachinid fly *Compsilura concinnata* (Meigen) for the control of gypsy moths (*Lymantria dispar*). Although *C. concinnata* is likely present at the Canadian sites, no evidence of parasitism of bog buck moth has been reported (Wood, pers. comm., 2020, as cited in COSEWIC 2009, p. 14). Parasitism is assumed to be occurring at the Canadian populations (COSEWIC 2009, p. 17). Similarly, while not documented at the bog buck moth sites in the United States, we find the New York populations are likely to be susceptible to larval parasitism from the tachinid fly and other parasitoids, and observed boom/bust cycles may be related to such parasitism. Bonanno (2016, p. 5) reported the 2016 crash of adult bog buck moths at the Oswego Inland Site after abundant larvae of all sizes were observed in May and June and suggested looking further into larval or pupal parasitoids as a possible cause.

If bog buck moths are not killed by predators (*e.g.,* small mammals and other invertebrates) or parasitoids, larval behavior may still be affected by the presence of predators or parasitoids. Early instar larvae tend to stay together and defend themselves while late instar larvae disperse, leading to increased subdivision of clusters (Cornell *et al.* 1987, p. 387). At sites with higher predator or parasitoid densities, buck moth larvae likely experience slower growth rates, prolonged development, and reduced body mass (Stamp and Bowers 1990, p. 1037) because they would be forced to forage closer to the center of plants where it is cooler and where older, lower quality leaves are present.

Climate Change

While there are many possible effects to bog buck moths from climate change into the future, here we focus on the effects to bog buck moths from observed

changes in precipitation and temperature to date.

Lake Ontario water levels naturally fluctuate within and among years; however, record high water levels have recently occurred, resulting in impacts to bog buck moth sites. Between 1951 and 2017, the total precipitation with the Great Lakes Basin increased by approximately 14 percent with heavy precipitation events increasing by 35 percent (Great Lakes Integrated Sciences and Assessments Program 2019, entire). After 15 years of below-average water levels on Lake Superior and Lake Michigan-Huron, water levels of the upper Great Lakes started rising in 2013 and have been well above-average for several years (Board 2020, p. 7). With all of the Great Lakes water levels above or near record-highs, the increase represented an unprecedented volume of water in the Great Lakes system funneled into Lake Ontario and out the St. Lawrence River (Board 2020, p. 7) resulting in the Lakeside population fens being vulnerable to flooding for an extended period of time. Flooding that negatively impacts bog buck moths can be described as longer duration flooding, as long-term flooding of bog buck moth fens submerges vegetation and makes the site unsuitable for most life stages and may directly kill individuals. In contrast, periodic flooding that is shorter in duration helps maintain habitat suitability. Furthermore, bog buck moth eggs can tolerate short-term submersion but are not viable after long-term flooding events (Service 2021, p. 34).

Two high-water events across the entire Great Lakes basin caused by above-normal precipitation (January to May 2017 and November 2018 through May 2019) compounded the already high-water levels in the Great Lakes basin (Board 2020, pp. 6–9). These events resulted in long-term submersion of bog buck moth eggs and subsequent crashes in adult flights at Lakeside 5. In addition to changes in water levels, climate change has also brought about changes in temperature. The Ontario Ministry of the Environment (2011, p. 1) reported the average temperature in Ontario has gone up by as much as 2.5 °F (1.4 °C) since 1948. Similarly, between 1951 and 2017, the average annual temperature in the Great Lakes Region has increased by 2.3 °F (1.3 °C) (GLISA 2019, entire). We have no detailed studies to assess whether observed declines in bog buck moth counts of the U.S. populations are related to these increased annual temperatures. However, seasonal changes in temperature can influence the form of precipitation and snowpack in winter and shifts in phenology. For example, the timing of fall flights may be shifting to later in September. Bog buck moth monitoring windows have been September 12 to 26 at the Oswego Inland Site and September 18 to October 1 at the Lakeside sites since surveys began, and in recent years there has been little or no activity near the beginning of the survey window (Bonanno 2019, pp. 1–2).

Throughout the Great Lakes Basin, average winter minimum and maximum temperatures increased from 1960 to 2009 by 3.24 and 1.98 °F (1.8 and 1.1 °C), respectively (Suriano *et al.* 2019, pp. 6–8). Increased winter temperatures are associated with decreases in Great Lakes ice cover and increases in winter precipitation occurring as rain. Increased temperatures may also reduce snowpack, impacting bog buck moth food sources. During the first half of the 20th century, the Great Lakes basin experienced an increase in snowfall; however, snowfall has declined through the latter half of the 20th and early 21st centuries (Baijnath-Rodino *et al.* 2018, p. 3947). Similarly, Suriano *et al.* (2019, p. 4) found a reduction in snow depth in the Great Lakes Basin of approximately 25 percent from 1960 to 2009. Trends during this timeframe are variable by subbasin, and there were no significant trends for the Lake Ontario subbasin (Suriano *et al.* 2019, p. 5). At a finer scale (1 degree latitude by 1 degree longitude grids), there were also no significant changes observed for snow depth or snowfall for the grid along Lake Ontario that includes the bog buck moth sites, but there was a significant increase of the number of ablation events (*i.e.,* snow mass loss from melt, sublimation, or evaporation) (Suriano *et al.* 2019, pp. 6–7). These events are associated with rapid snow melt and often lead to localized flooding.

Snowpack reductions lead to longer periods of frost, earlier disappearance of standing water, deeper frost levels and reduced bog buckbean biomass (Benoy *et al.* 2007, p. 505–508). Reduced bog buckbean will negatively affect bog buck moth larval growth and survival.

Reduced snowpack can also impact bog buck moths directly; however, limited research is available on the impacts to bog buck moth associated with the presence, depth, and duration of winter snow. The presence of a consistent seasonal snowpack can prevent freeze-thaw cycles. While bog buck moths overwinter in the egg stage, which is less vulnerable to freezing than other life stages, they may also periodically overwinter in the pupal stage, which would be vulnerable to these cycles. Their egg-clustering habit may decrease the amount of egg surface exposed to ambient conditions and reduce the possibility of desiccation (Stamp 1980, p. 369). However, eggs that are not covered by snowpack are exposed to increased risk of predation.

Increased temperatures in winter and early spring may lead to earlier egg hatch. As temperatures have increased, many insects have been emerging earlier (temperature-induced emergence) (Patterson *et al.* 2020, p. 2), resulting in phenological mismatch with host plants. For example, Karner blue butterfly (*Lycaeides melissa samuelis*) larvae have been known to hatch earlier than its host plant, wild blue lupine (*Lupinus perennis*), after unseasonably warm late-winter temperatures (Patterson *et al.* 2020, p. 6). Similar to the Karner blue butterfly, bog buck moth early instar larvae rely on specific host plants and are at greater risk of impacts from phenological mismatch than species with wide host plant usage. Earlier spring hatch followed by subsequent spring freezes also increases the risk of mortality of early instar larvae.

Overall, interacting changes in temperature and precipitation are highly influential in terms of flooding or drying out bog buck moth sites. There may be additional compounding effects from changes in temperature associated with shifts in phenology or reduced snowpack, but we lack sufficient information on those potential relationships.

## Conservation Measures

### New York Populations

The bog buck moth was listed as endangered by the State of New York in 1999 and is protected by Environmental Conservation Law section 11–0535 and the New York Code of Rules and Regulations (6 NYCRR Part 182). An incidental take permit is required for any proposed project that may result in a take of bog buck moths, including, but not limited to, actions that may kill or harm individual animals or result in the adverse modification, degradation, or destruction of habitat occupied by the bog buck moth. Additionally, the bog buck moth is a Species of Greatest Conservation Need in the NYSDEC's Comprehensive Wildlife Conservation Strategy (NYSDEC 2005, Appendix 5, pp. 14–17; NYSDEC 2015, not numbered). NYSDEC has a draft recovery plan for the bog buck moth (Bonanno and White 2011, entire) that has not been finalized.

All known populations are in conservation ownership and are

protected from effects from human-induced habitat destruction or alteration of the wetland itself (*e.g.,* wetland fill associated with roads or development). Habitat management has been conducted at a few of these sites, but invasive plants and/or vegetation succession have reduced the amount of available habitat at most sites and remain an ongoing threat. The State of New York provides protection for wetlands greater than 12.4 acres in size or of unusual local importance. Regulated activities within the wetland or adjacent buffer require permits from the NYSDEC. In addition, in accordance with section 404 of the Clean Water Act, the U.S. Army Corps of Engineers has the authority to regulate discharge of dredged or fill material into waters of the United States, including wetlands. In New York, placing fill into bogs and fens is not authorized under the Nationwide Permit Program.

Canadian Populations

The bog buck moth was recommended for listing as endangered by COSEWIC in 2009 (COSEWIC 2009, entire), listed as endangered under the Ontario Endangered Species Act in 2010, and listed as endangered on Schedule 1 of the Species at Risk Act (SARA) in 2012. These listings provided the bog buck moth protection from being killed, harmed, harassed, captured, or taken in Canada.

The Ontario Ministry of Natural Resources and Forestry (Ministry) published a recovery strategy for the bog buck moth on December 7, 2011 (Gradish and Tonge 2011, entire). Major actions identified in the plan include; improve monitoring standards to the bog buck moth, assess the risk posed by invasive species, and evaluate the hydrology of the species' habitat. In 2017, the Ministry published a 5-year review of progress towards the protection and recovery of the bog buck moth (Ministry 2017, pp. 11–17). Initial progress has been made towards assessing the risk posed to the bog buck moth by invasive species and, where appropriate, implementing invasive species control within and adjacent to occupied fen ecosystems.

Bog buck moth habitat has generally been afforded protection from authorized damage or destruction in Canada since the species was listed in Ontario in 2010. Bog buck moth habitat is further protected through Ontario habitat regulation and Federal critical habitat protection. Section 41(1)(c) of SARA requires that recovery strategies include an identification of the species' ''critical habitat,'' to the extent possible, as well as examples of activities that are likely to result in its destruction (Environment Canada 2015, p. 9). Environment Canada (2015, p. 10) adopted the description of the buck moth ''habitat'' under section 24.1.1.1 of Ontario Regulation 242/08 as ''critical habitat'' in the Federal recovery strategy. The area defined under Ontario's habitat regulation contains the biophysical attributes required by the buck moth to carry out its life processes. To meet specific requirements of SARA, the biophysical attributes of critical habitat were further detailed in the Federal strategy (Environment Canada 2015, p. 11). However, under SARA, specific requirements and processes are set out regarding the finalization of protection of critical habitat and whether the prohibition against destruction of critical habitat is extended to any non-Federal land. Protection of critical habitat under SARA was to be assessed following publication of the final bog buck moth Federal recovery strategy (Environment Canada 2015, p. 10). There is no indication that this assessment has occurred to date.

*Current Condition*

Similar to other *Hemileuca* species, bog buck moth populations (and subpopulations) experience boom and bust cycles. Table 1 and Figure 1 summarize male peak flight counts at four U.S. subpopulations. Three of the subpopulations have crashed and not recovered.

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**Table 1.** Bog buck moth fall flight information for the Oswego Inland Site and three Lakeside subpopulations, NY, 22-year record. Data are site mean of 5-minute counts on the peak date. Zero means a search was made, no moths seen. Empty cells indicate no data were collected at that site that year. Cells with counts higher than 100 are highlighted. Data from Bonanno (2018, p. 4; 2019, p. 4) and Bonanno and Rosenbaum 2020, p. 2).

| Date | Oswego Inland Site | Lakeside | | |
|---|---|---|---|---|
| | | Lakeside 5 | Lakeside 3 | Lakeside 2 |
| 1998 | 171.3 | | | 242.4 |
| 1999 | 49.6 | | 10.6 | 109.4 |
| 2000 | 7.1 | | 14.8 | 26.8 |
| 2001 | 16.4 | | 18.6 | 4.8 |
| 2002 | 37.1 | | 3.3 | 2.2 |
| 2003 | 46 | | 22.5 | 6.3 |
| 2004 | 153.2 | 64.6 | 21.2 | 20.2 |
| 2005 | 87.3 | 51.1 | | 14.4 |
| 2006 | 81.9 | 126.8 | | 26.3 |
| 2007 | 93.7 | 65.9 | 212.0 | 50.0 |
| 2008 | 63 | 23.0 | 5.8 | 14.2 |
| 2009 | 70 | 48.7 | 0.7 | 14.3 |
| 2010 | | | | 10.0 |
| 2011 | 20.2 | 141.1 | 0.1 | 9.4 |
| 2012 | 18.9 | 46.0 | 3.0 | 1.0 |
| 2013 | 21.4 | 1.0 | 0.3 | 0 |
| 2014 | 126.5 | 3.8 | 0 | 0 |
| 2015 | 98.7 | 6.7 | | 0 |
| 2016 | 5.0 | 27.7 | 0 | 0 |
| 2017 | 0.7 | 53.3 | | |
| 2018 | 0 | 30.7 | >0 (2 total moths) | 0 |
| 2019 | 0 | 44.4 | 0 | |
| 2020 | 0 | | | |

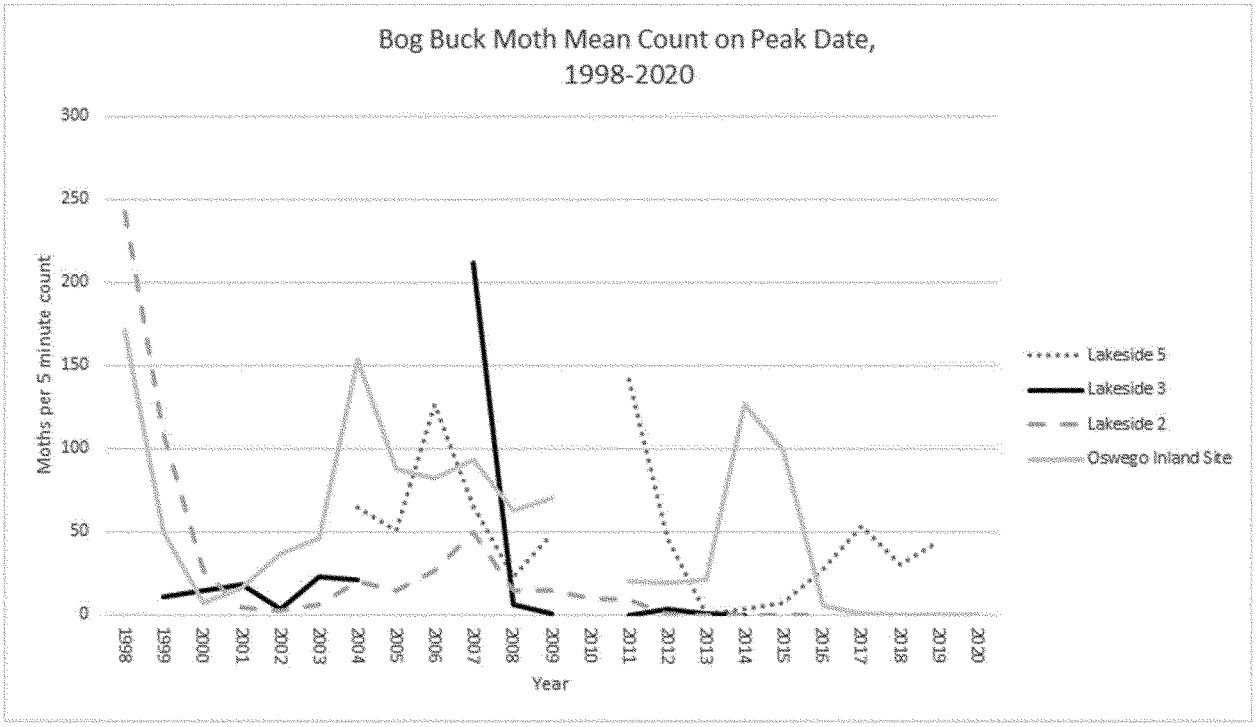


**Figure 1.** Mean male bog buck moth peak counts (1998 – 2020). Data from Bonanno (2018, p. 4; 2019, p. 4) and Bonanno and Rosenbaum 2020, p. 2).

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In Canada, the status of many of the populations is unknown due to a lack of surveys. Of the four sites found in Canada, only two were recently surveyed. The subpopulation at Richmond Fen South was visited in 2019 where an estimated minimum of 1,500 early instar larvae were found in a small portion of core habitat. Another site visit to the same location in early July 2020 documented the presence of hundreds of mid-instar larvae. At White Lake North, more than 100 adult moths were observed in mid-September 2020. Prior to 2020, larval surveys were conducted, and larvae were last observed in 2016, with no surveys in 2017, and larvae were absent in 2018 and 2019. The status of the two other subpopulations in Canada (Richmond Fen North and White Lake South) is unknown because no surveys have been conducted at those sites.

It is unlikely that there are other bog buck moth populations besides the ones mentioned above. Fairly extensive but unsuccessful searches for bog buck moths have been conducted at other potentially suitable wetland habitat in Ontario, and no new sites have been found (COSEWIC 2009, pp. 9–10). COSEWIC (2009, p. 10) found that given the degree of interest by naturalists in these natural areas and the diurnal habits of this large distinctive species, the probability of undiscovered Ontario buck moth populations is low.

The circumstances are similar in New York. Cryan and Dirig (2020, pp. 4–5) described several years of exploring the bed of former glacial Lake Iroquois and its tributaries and outlets, and while they found some fens with bog buckbean, they found no additional sites with bog buck moth. In addition, researchers had visited New York fens for many years and likely would have observed the highly conspicuous bog buckbean larvae or flying adult males had they been present. Bonanno and White (2011, p. 10) describe multiple visitations to possible habitat by NYNHP and researchers familiar with the bog buck moth without locating any individuals.

We evaluated the bog buck moth current condition by assessing whether there were multiple resilient populations spread across its geographical extent to maintain its ecological and genetic diversity and withstand catastrophic events (table 2). Information to date suggests that bog buck moths are genetically structured across their range and we believe the breadth of adaptive diversity can be captured by two representative units, Canadian and United States.

TABLE 2—ECOLOGICAL REQUIREMENTS FOR SPECIES-LEVEL VIABILITY

| 3Rs | Requisites | Metric |
|---|---|---|
| Resiliency (able to withstand stochastic events). | Healthy populations ..... | Populations with:<br>• Both sexes present.<br>• Sufficient survival of all life stages.<br>• Sufficient number of bog buck moths to survive bust portion of boom and bust cycles.<br>• Stable to increasing trend over last 10 years (10 generations). |

TABLE 2—ECOLOGICAL REQUIREMENTS FOR SPECIES-LEVEL VIABILITY—Continued

| 3Rs | Requisites | Metric |
|---|---|---|
| | | • Multiple occupied suitable habitat patches within metapopulation.<br>• Sufficient habitat size.<br>• Sufficient habitat quality.<br>• Intact hydrology and ecological processes. |
| Representation (to maintain evolutionary capacity). | Maintain adaptive diversity | Healthy populations distributed across areas of unique adaptive diversity (*e.g.,* across latitudinal gradients) with sufficient connectivity for periodic genetic exchange. |
| Redundancy (to withstand catastrophic events). | Sufficient distribution of healthy populations. | Sufficient distribution to guard against catastrophic events significantly compromising species adaptive diversity. |
| | Sufficient number of healthy populations. | Adequate number of healthy populations to buffer against catastrophic losses of adaptive diversity. |

We lacked specific demographic rates for most locations for most years; therefore, we used alternative metrics for assessing population resiliency (number of bog buck moth adult males observed, presence of bog buck moth at multiple subpopulations) and the condition of the supporting habitat (habitat quality) (table 3).

TABLE 3—METRICS FOR SCORING BOG BUCK MOTH POPULATION CONDITION

| Condition | Sufficient number | Connectivity | Suitable habitat |
|---|---|---|---|
| Unknown | Unknown | Unknown | Unknown. |
| Extirpated | Not applicable | Not applicable | Habitat is completely unsuitable due to alteration or loss. |
| Presumed Extirpated | No moths or any other life stage were observed during multiple subsequent surveys. | Not applicable | Habitat present and can be suitable or unsuitable given "sufficient N" results. |
| Poor | Negative trend over last 10 years | No subpopulations or if subpopulations are present each subpopulation did not have at least one >0 count within the last 5 years. | Insufficient suitable habitat for any of the life stages:<br>• Insufficient bog buckbean (<4% areal coverage).<br>• Relatively limited oviposition sites.<br>• Lack of suitable pupation sites. |
| Good | Neutral or positive trend over last 10 years. | Multiple subpopulations and >0 count for each subpopulation within the last 5 years. | Sufficient suitable habitat for all life stages:<br>• Sufficient bog buckbean (>4% areal coverage).<br>• Relatively abundant oviposition sites.<br>• Suitable pupation sites. |

As discussed above, we are aware of five bog buck moth populations, two in Canada and three in New York. We are unaware of any changes to the distribution in Canada; however, we have information from only two of the four subpopulations. In New York, the Jefferson County site was converted to a marsh, having been impounded decades ago by beavers, then maintained by management for park flooding control, septic management, and black tern habitat (Bonanno, pers. obs.). Of the Lakeside subpopulations, only the Lakeside 5 site remains extant. Lastly, the Oswego Inland Site population was recently presumed to be extirpated.

Using our ranking methods mentioned above, we find that for all the bog buck moth populations in the U.S. Representative Unit, one population has been extirpated since the 1970s, one is now presumed extirpated, and one is in poor condition (table 4). The Lakeside population has experienced multiple sources of habitat loss and degradation and remaining buck moths have faced high flood years. While these may or may not be the true cause of declines and site-level extirpations, they likely contributed to them. The cause of decline and the bog buck moth's inability to rebound at the Oswego Inland Site is unclear as flooding has not been a concern at this site and seemingly suitable habitat remains. Similar declines at sites with apparently suitable habitat have been documented for another endangered fen species, the Poweshiek skipperling (*Oarisma poweshiek*), suggesting that other factors (*e.g.,* contaminants, climate change, disease, and low levels of genetic diversity) may be driving the current distribution and losses (Pogue *et al.* 2019, pp. 383–386).

In the Canadian Representative Unit, both populations are in unknown/likely good condition. This assessment has a high degree of uncertainty given that it is based on current knowledge from half of the associated Canadian Representative Unit subpopulations (one out of the two subpopulations for each population). Most recently, Richmond Fen South had hundreds of mid-instar larvae in early July 2020 with ample suitable habitat. Richmond Fen North has not had any recent moth or larval surveys, but observations during a site visit in 2015 suggested that the habitat remains in good condition. At White Lake North, more than 100 bog buck moth adults were observed in September 2020. Prior to that, surveys were based on larvae, with larvae last observed in 2016 and none seen in 2018 or 2019. There is no information on White Lake South. Although both populations have been described as unknown/likely good, invasive species such as cattails, common reed, and glossy buckthorn have been identified in the habitat and are likely to have a negative effect and reduce the resiliency

of these populations (COSEWIC 2009, p. 18; Gradish and Tonge 2011, pp. 6–7; Environment Canada 2015, p. 7).

Overall, three subpopulations (White Lake North, Richmond Fen South, and Lakeside 5) associated with three separate populations are known to have remaining bog buck moths. While some genetic diversity remains through the current existence of at least one subpopulation within each of the representative units, there is no redundancy of healthy populations in the U.S. Representative Unit, and there is uncertainty about the status of the Canadian Representative Unit.

TABLE 4—SUMMARY OF BOG BUCK MOTH CURRENT CONDITION

| 3Rs | Requisites | Metric | Current condition |
|---|---|---|---|
| Resiliency (able to withstand stochastic events). | Healthy populations | Populations with:<br>• Both sexes present<br>• Sufficient survival of all life stages<br>• Sufficient number of bog buck moths to survive bust portion of boom and bust cycles.<br>• Stable to increasing trend over last 10 years (10 generations).<br>• Multiple occupied suitable habitat patches within metapopulation.<br>• Sufficient habitat size<br>• Sufficient habitat quality<br>• Intact hydrology and ecological processes. | Poor.<br>Of the 5 historically known populations:<br>1 extirpated.<br>1 presumed extirpated.<br>1 poor.<br>2 unknown/likely good. |
| Representation (to maintain evolutionary capacity). | Maintain adaptive diversity | Healthy populations distributed across areas of unique adaptive diversity (e.g., across latitudinal gradients) with sufficient connectivity for periodic genetic exchange. | Poor.<br>There are two potentially healthy populations in the Canadian Representative Unit and none in the U.S. Representative Unit. |
| Redundancy (to withstand catastrophic events). | Sufficient distribution of healthy populations. | Sufficient distribution to guard against catastrophic events significantly compromising species adaptive diversity. | Poor.<br>See above. |
| | Sufficient number of healthy populations. | Adequate number of healthy populations to buffer against catastrophic losses of adaptive diversity. | Poor.<br>See above. |

*Future Condition*

As part of the SSA, we developed two future condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the bog buck moth. Our scenarios assumed increased winter and spring precipitation, increased annual temperatures, and either continuation or increases in invasive plant species and succession. Because we determined that the current condition of the bog buck moth was consistent with an endangered species (see Determination section, below), we are not presenting the results of the future scenarios in this proposed rule; however, under both scenarios the future condition is projected to worsen. Please refer to the SSA report (Service 2021, pp. 67–83) for the full analysis of future scenarios.

**Determination of Bog Buck Moth's Status**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an endangered species as a species ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

*Status Throughout All of Its Range*

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we have determined that the bog buck moth is at risk of extinction now throughout its range due to a combination of factors. Bog buck moth populations undergo boom and bust cycles and are highly vulnerable to stochastic events or threats during the bust phase (Factor E). All populations are isolated from one another and cannot repopulate extirpated sites (Factor E). We find that past and ongoing stressors, including habitat alteration due to water level management, vegetative succession and invasive plant species (Factor A), and death of individuals due to flooding (Factor E) have caused and are highly likely to continue to cause a decline in the species' viability through reduction of resilience, redundancy, and representation to such a degree that the species is particularly vulnerable to extinction presently and is highly likely to become more vulnerable to extinction. We do not fully understand the cause of declines at bog buck moth sites, and so it is likely that additional factors are important such as inherent factors (*e.g.,* narrow habitat niche) (Factor E), parasitoids (Factor E), predation (Factor C), disease (Factor C), and pesticides (Factor E).

Of the three historical U.S. populations, two have been extirpated or presumed extirpated. The Jefferson County population was extirpated due to habitat conversion in the 1970s. The reason for the extirpation of the Inland Oswego County Site population is unclear, as the habitat still appears suitable. For the remaining U.S. population, the Lakeside population, the overall condition is poor with four of the five sites (Lakeside 1–4) presumed extirpated. Lakeside 5 is the last site with a confirmed moth

population as of 2019. However, even this site is considered to be in poor condition with severe habitat degradation.

The Canadian populations comprise two potentially healthy populations. However, there is high uncertainty about their status. Unlike the New York populations, no standardized transect counts are available to assess long-term trends. In addition, we have information on just two of the four subpopulations associated with these populations. While there are bog buck moths known at two of these subpopulations and suitable habitat remains, invasive plant species are present at these sites and active management is not underway.

All of the extant bog buck moth populations are currently facing a multitude of threats including water level changes, succession, and invasive species. Additionally, other factors, including parasitoids, predation, disease, and pesticides, as well as the species' limited dispersal range and small numbers, likely play a role in its decline. As studies in the New York population have shown, attempts at managing and controlling the spread of invasive plants or woody plants from succession in fens have proven to be extremely labor intensive and have limited effect. We find that the magnitude and imminence of threats facing the bog buck moth place the species in danger of extinction now, and therefore we find that threatened status is not appropriate. Thus, after assessing the best available information, we determine that the bog buck moth is in danger of extinction throughout all of its range.

*Status Throughout a Significant Portion of Its Range*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the bog buck moth is in danger of extinction throughout all of its range, and accordingly did not undertake an analysis of any significant portion of its range. Because the bog buck moth warrants listing as endangered throughout all of its range, our determination is consistent with the decision in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020), in which the court vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) that provided the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range.

*Determination of Status*

Our review of the best available scientific and commercial information indicates that the bog buck moth meets the definition of an endangered species. Therefore, we propose to list the bog buck moth as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline, and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our New York Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of New York would be eligible for Federal funds to implement management actions that promote the protection or recovery of the bog buck moth. Section 8(a) of the Act (16 U.S.C. 1537(a)) authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act (16 U.S.C. 1537(b) and (c)) also authorize the Secretary to encourage conservation programs for listed species found outside the US, and to provide assistance for such programs, in the form of personnel and the training of personnel. Information on our grant programs that are available to

aid species recovery can be found at: *http://www.fws.gov/grants*.

Although the bog buck moth is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

Federal agency actions that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on lands near bog buck moth subpopulations.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive: Normal recreational hunting, fishing, or boating activities that are carried out in accordance with all existing hunting, fishing, and boating regulations, and following reasonable practices and standards.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the bog buck moth, including import or export across State lines and international boundaries, except for properly documented antique specimens of the taxon at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Unauthorized modification, removal, or destruction of the wetland vegetation, soils, or hydrology in which the bog buck moth is known to occur;

(3) Unauthorized discharge of chemicals or fill material into any wetlands in which the bog buck moth is known to occur; and

(4) Unauthorized release of biological control agents that attack any life stage of the bog buck moth, including parasitoids, herbicides, pesticides, or other chemicals in habitats in which the bog buck moth is known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the New York Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## III. Critical Habitat

*Background*

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals). Additionally, our regulations at 50 CFR 424.02 define the word ''habitat'' as follows: ''For the purposes of designating critical habitat only, habitat is the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a species.''

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance,

propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

**Prudency Determination**

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

We find that designating critical habitat for the bog buck moth is not prudent based on the fifth category. Within the New York populations, the bog buck moth co-occurs with another federally listed species that was listed, in part, due to collection pressure, which has not abated and has been documented recently in New York. Designation of critical habitat requires the publication of maps and a narrative description of specific critical habitat areas in the **Federal Register**. The degree of detail necessary to properly designate critical habitat for the bog buck moth is considerably greater than the general descriptions of location provided in this proposal to list the bog buck moth as an endangered species. We find that the publication of maps and descriptions outlining the locations of bog buck moth would further facilitate unauthorized collection and trade of the co-occurring species, by providing heretofore unavailable precise location information. As such, we have determined that the increased collection risk to the co-occurring species outweighs the benefits that would be afforded to the bog buck moth from the designation of critical habitat.

In conclusion, we find that the designation of critical habitat is not prudent for the bog buck moth, in accordance with 50 CFR 424.12(a)(1), because the co-occurring listed species faces an ongoing threat of unauthorized collection and trade, and critical habitat designation can reasonably be expected to increase the degree of these threats to this co-occurring species. Critical habitat is just one conservation tool under the Act and is not required for recovery planning and implementation efforts for the bog buck moth.

**Required Determinations**

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility

to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. There are no known Tribal lands with bog buck moth populations. However, we will coordinate with Tribes to determine their interest in this proposed rule throughout the listing process as appropriate.

## References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the New York Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## Authors

The primary authors of this proposed rule are the staff members of the Service's Species Assessment Team and the New York Ecological Services Field Office.

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Moth, bog buck'' to the List of Endangered and Threatened Wildlife in alphabetical order under Insects to read as set forth below:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Common name | Scientific name | Where listed | Status | Listing citations and applicable rules |
|---|---|---|---|---|
| * | * | * | * | * |
| INSECTS | | | | |
| * | * | * | * | * |
| Moth, bog buck | *Hemileuca maia menyanthevora*) (=*H. iroquois).* | Wherever found | E | [**Federal Register** citation when published as a final rule]. |
| * | * | * | * | * |

* * * * *

**Martha Williams,**

*Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2021–21856 Filed 10–13–21; 8:45 am]

**BILLING CODE 4333–15–P**

# Notices

Federal Register
Vol. 86, No. 196
Thursday, October 14, 2021

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

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Siskiyou County Resource Advisory Committee

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of meeting.

**SUMMARY:** The Siskiyou County Resource Advisory Committee (RAC) will meet virtually via Microsoft Teams. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Klamath National Forest wthin Siskiyou County, consistent with the Federal Lands Recreation Enhancement Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/klamath/workingtogether/advisorycommittees*.

**DATES:** Meetings will be held on:

- Thursday, November 4, 2021, 11:00 a.m.–1:00 p.m., Pacific Standard Time; and
- Thursday, November 18, 2021, 11:00 a.m.–1:00 p.m., Pacific Standard Time.

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

**ADDRESSES:** The meetings will be held virtually via Microsoft Teams. Details for how to join the meetings are listed in the above website link under **SUMMARY**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Mt. Shasta Ranger Station. Please call ahead at 530–926–4511 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Lejon Hamann, RAC Coordinator, by phone at 530–410–1935 or via email at *lejon.hamann@usda.gov.*

Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours per day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to review the following:

1. Roll call;
2. Comments from the Designated Federal Office (DFO);
3. Approve minutes from last meeting;
4. Discuss, recommend, approve projects;
5. Public comment period; and
6. Closing comments from the DFO.

The meetings are open to the public. The agendas will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing by the Tuesday before each of the scheduled meetings, to be scheduled on the agenda for that particular meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lejon Hamann, RAC Coordinator, 3644 Avtech Parkway, Redding, California 96002; or by email to *lejon.hamann@usda.gov.*

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

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, political beliefs, income derived from a public assistance program, 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).

Dated: October 8, 2021.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2021–22420 Filed 10–13–21; 8:45 am]

BILLING CODE 3411–15–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Shasta County Resource Advisory Committee

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of meeting.

**SUMMARY:** The Shasta County Resource Advisory Committee (RAC) will meet virtually via Microsoft Teams. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Shasta-Trinity National Forest within Shasta County. RAC information can be found at the following website: *https://www.fs.usda.gov/main/stnf/workingtogether/advisorycommittees*.

**DATES:** The meetings will be held on:

• Wednesday, November 10, 2021, 9:30 a.m.–11:30 a.m., Pacific Standard Time; and

• Wednesday, November 17, 2021, 9:30 a.m.–11:30 a.m., Pacific Standard Time.

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

**ADDRESSES:** The meetings will be held virtually via Microsoft Teams. Details for how to join the meetings are listed in the above website link under **SUMMARY**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Shasta Lake Ranger Station. Please call ahead at 530–275–1587 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Lejon Hamann, RAC Coordinator, by phone at 530–410–1935 or via email at *lejon.hamann@usda.gov.*

Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours per day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to review the following:

1. Roll call;
2. Comments from the Designated Federal Officer (DFO);
3. Approve minutes from last meeting;
4. Discuss, recommend, approve projects;
5. Public comment period; and
6. Closing comments from the DFO.

The meetings are open to the public. The agendas will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing by the Friday before each of the scheduled meetings, to be scheduled on the agenda for that particular meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lejon Hamann, RAC Coordinator, 3644 Avtech Parkway, Redding, California 96002; or by email to *lejon.hamann@usda.gov.*

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

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, political beliefs, income derived from a public assistance program, 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).

Dated: October 8, 2021.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2021–22419 Filed 10–13–21; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Trinity County Resource Advisory Committee

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of meeting.

**SUMMARY:** The Trinity County Resource Advisory Committee (RAC) will meet virtually via Microsoft Teams. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Shasta-Trinity National Forest within Trinity County, consistent with the Federal Lands Recreation Enhancement Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/stnf/workingtogether/advisorycommittees.*

**DATES:** The meetings will be held on:

• Monday, November 8, 2021, 4:30 p.m.–6:30 p.m., Pacific Standard Time; and

• Monday, November 15, 2021, 4:30 p.m.–6:30 p.m., Pacific Standard Time.

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

**ADDRESSES:** The meetings will be held virtually via Microsoft Teams. Details for how to join the meetings are listed in the above website link under **SUMMARY**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Weaverville Ranger Station. Please call ahead at 530–623–2121 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Lejon Hamann, RAC Coordinator, by phone at 530–410–1935 or via email at *lejon.hamann@usda.gov.*

Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours per day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to review the following:

1. Roll call;
2. Comments from the Designated Federal Officer (DFO);
3. Approve minutes from last meeting;
4. Discuss, recommend, approve projects;
5. Public comment period; and
6. Closing comments from the DFO.

The meetings are open to the public. The agendas will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing by the Thursday before each of the scheduled meetings, to be scheduled on the agenda for that particular meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral

comments must be sent to Lejon Hamann, RAC Coordinator, 3644 Avtech Parkway, Redding, California 96002; or by email to *lejon.hamann@usda.gov.*

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

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, political beliefs, income derived from a public assistance program, 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).

Dated: October 8, 2021.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2021–22434 Filed 10–13–21; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Prince William Sound Resource Advisory Committee

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of meeting.

**SUMMARY:** The Prince William Sound Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as make recommendations on recreation fee proposals for sites on the Chugach National Forest within boroughs associated with the Prince William Sound RAC area, consistent with the Federal Lands Recreation Enhancement Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/chugach/workingtogether/advisorycommittees.*

**DATES:** The meeting will be held on Saturday, November 20, 2021 from 8:30 a.m.–5:00 p.m., Alaska Standard Time. If business is not concluded during the first meeting, a second meeting will be held on November 21, 2021 from 8:30 a.m.–12:30 p.m., Alaska Standard Time.

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

**ADDRESSES:** The meeting will be held virtually via telephone and/or video conference. Details for members of the public to participate in the meeting can be found at the website link listed above in the **SUMMARY**. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

**FOR FURTHER INFORMATION CONTACT:** Steven Namitz, Designated Federal Officer (DFO), by phone at 907–424–4747 or email at *steven.namitz@usda.gov* or Tanya Zastrow, RAC Coordinator, by phone at 907–424–4722 or email at *tanya.zastrow@usda.gov.*

Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss project proposals; and
2. Make funding recommendations on Title II projects;

Meetings are open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing by November 12, 2021, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Tanya Zastrow, Cordova Ranger District, 612 Second Street, Cordova, Alaska 99574; or by email to *tanya.zastrow@usda.gov.*

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

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, political beliefs, income derived from a public assistance program, 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).

Dated: October 8, 2021.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2021–22435 Filed 10–13–21; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–46–2021]**

### Foreign-Trade Zone (FTZ) 98—Birmingham, Alabama; Authorization of Production Activity; Mercedes-Benz U.S. International, Inc. (Electric Motor Vehicles and Battery Assemblies); Vance and Woodstock, Alabama

On June 10, 2021, Mercedes-Benz U.S. International, Inc. (MBUSI) submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 98A, in Vance and Woodstock, Alabama.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 32247, June 17, 2021). On October 8, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: October 8, 2021.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2021–22331 Filed 10–13–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States-Colombia Trade Promotion Agreement

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 5, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* Department of Commerce, International Trade Administration.

*Title:* Interim Procedures for Considering Requests under the Commercial Availability Provision of the United States-Colombia Trade Promotion Agreement.

*OMB Control Number:* 0625–0272.

*Form Number(s):* None.

*Type of Request:* Regular submission.

*Number of Respondents:* 16 (10 for Requests; 3 for Responses; 3 for Rebuttals).

*Average Hours per Response:* 8 hours per Request; 2 hours per Response; and 1 hour per Rebuttal.

*Burden Hours:* 89.

*Needs and Uses:* Title II, Section 203(o) of the United States-Colombia Trade Promotion Agreement Implementation Act (the ''Act'') [Pub. L. 112–42] implements the commercial availability provision provided for in Article 3.3 of the United States-Colombia Trade Promotion Agreement (the ''Agreement''). The Agreement entered into force on May 15, 2012. Subject to the rules of origin in Annex 4.1 of the Agreement, and pursuant to the textile provisions of the Agreement, a fabric, yarn, or fiber produced in Colombia or the United States and traded between the two countries is entitled to duty-free tariff treatment. Annex 3–B of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Colombia or the United States. The fabrics listed are commercially unavailable fabrics, yarns, and fibers, which are also entitled to duty-free treatment despite not being produced in Colombia or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.3, Paragraphs 5–7 of the Agreement. Under this provision, interested entities from Colombia or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3–B of the Agreement.

Chapter 3, Article 3.3, paragraph 7 of the Agreement requires that the President ''promptly'' publish procedures for parties to exercise the right to make these requests. Section 203(o)(4) of the Act authorizes the President to establish procedures to modify the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in either the United States or Colombia as set out in Annex 3–B of the Agreement. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (''CITA''), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (''OTEXA'') (See Proclamation No. 8818, 77 FR 29519, May 18, 2012).

The intent of the Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Colombian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Colombia, subject to Section 203(o) of the Act.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* As needed.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title II, Section 203(o) of the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0625–0272.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021–22306 Filed 10–13–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–878]**

### Glycine From Japan: Final Results of the Antidumping Administrative Review; 2018–2020; Correction

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Commerce (Commerce) published notice in the **Federal Register** of September 29, 2021, of the final results of the 2018–2020 administrative review of the antidumping duty order on glycine from Japan. This notice reflected an incorrect final weighted-average dumping margin for Yuki Gosei Kogyo Co., Ltd./Nagase & Co., Ltd. (YGK/Nagase) and an incorrect citation to the published preliminary results **Federal Register** notice.

**FOR FURTHER INFORMATION CONTACT:** John Drury or James Hepburn, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195 and (202) 482–1882, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Correction

In the **Federal Register** of September 29, 2021, in FR Doc 2021–21074, on page 53946, in the second column under the section titled, ''Final Results of the Review,'' correct the weighted-average dumping margin for YGK/Nagase from 27.21 to 27.71. In the first column, in footnote 1 (citing the *Preliminary Results* [1]), change the citation to ''*Glycine from Japan: Preliminary Results of the Antidumping Administrative Review; 2018–2020,* 86 FR 36105 (July 8, 2021).''

#### Background

On September 29, 2021, Commerce published in the **Federal Register** the final results of the administrative review of the antidumping duty order on glycine from Japan for the period of review, October 31, 2018, through May 31, 2020.[2] In the *Final Results,* we incorrectly stated that the final weighted-average dumping margin for YGK/Nagase was 27.21 percent. The correct final weighted-average dumping margin for YGK/Nagase is 27.71 percent.[3] The *Final Results* also included an incorrect citation to the *Preliminary Results.*[4] The correct citation to the *Preliminary Results* is ''*Glycine from Japan: Preliminary Results of the Antidumping Administrative Review; 2018–2020,* 86 FR 36105 (July 8, 2021).'' This notice serves to correct the final weighted-average dumping margin listed in the *Final Results* for YGK/Nagase from 27.21 percent to 27.71 percent and to correct the citation to the *Preliminary Results.* No other changes have been made to the *Final Results.*

#### Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 7, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2021–22447 Filed 10–13–21; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Glycine from Japan: Preliminary Results of the Antidumping Administrative Review; 2018–2020,* 86 FR 36105 (July 8, 2021) (*Preliminary Results*).

[2] *See Glycine from Japan: Final Results of the Antidumping Administrative Review; 2018–2020,* 86 FR 53946 (September 29, 2021) (*Final Results*).

[3] *See* Memorandum, ''Final Results Margin Calculations for Yuki Gosei Kogyo & Co., Ltd./Nagase & Co., Ltd.,'' dated September 22, 2021, at Attachment 2 (''Margin Program Calculation Output'').

[4] *Id.* at 53946, footnote 1.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XA888]**

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

**ACTION:** Notice; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. This Exempted Fishing Permit would allow a single commercial fishing vessel to participate in exploratory fishing Gulf of Maine, targeting haddock with 6-inch (15.24-cm) mesh gillnet gear. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notice to provide interested parties the opportunity to comment on Exempted Fishing Permit applications.

**DATES:** Comments must be received on or before October 29, 2021.

**ADDRESSES:** You may submit written comments by either of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''Comments on NESSN 6-Inch Mesh Gillnet EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on NESSN 6-Inch Mesh Gillnet EFP.''

**FOR FURTHER INFORMATION CONTACT:** Spencer Talmage, Fishery Management Specialist, 978–281–9232, *Spencer.Talmage@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The Northeast Sector Service Network (NESSN) submitted a complete application for an Exempted Fishing Permit (EFP) in support of an exploratory fishing project in the Gulf of Maine (GOM) Regulated Mesh Area (RMA). The EFP would exempt a single commercial fishing vessel from the 6.5-inch (16.51-cm) minimum mesh size restriction for day gillnet vessels fishing in the GOM RMA. The proposed EFP is intended to generate catch composition and gear comparison data to inform future studies on the feasibility of using 6-inch (15.24-cm) mesh gillnet gear to target GOM haddock while minimizing catch of GOM cod.

Activity under this EFP would occur from January 1, 2022 through May 31, 2022 within the GOM RMA. The participating vessel plans to take between 25 to 35 EFP trips, which will each average between 2 and 3 days in length. During each trip, the vessel would deploy 5 to 8 sets of 6-inch (15.24-cm) mesh gillnet gear. The maximum number of individual gillnets that would be deployed is 75. Soak time would not exceed 24 hours, and the vessel will not leave the fishing grounds while gear is fishing.

The participating vessel would also periodically deploy 6.5-inch (16.51-cm) mesh gillnet and/or longline gear alongside the exploratory gear to generate data for catchability comparisons between these different gear types. The 6.5 inch (16.51-cm) gillnet gear would consist of a single string of 12 to 24 nets, while the longline gear would be 1,000 to 2,400 hooks fished as a 1 to 4 strings.

A northeast fisheries at-sea monitor or observer will be deployed on all

groundfish trips taken under the EFP. Allowable discards will be discarded at-sea, while all other species will be retained, landed, and processed per normal commercial fishing procedures. Monitors will document all discards of allocated sub-legal catch. NESSN and the participating vessel are responsible paying for the additional monitoring for the EFP trips.

All catch, including landings and discards, will be deducted from Sector ACE as normal. Catch estimates for the project provided by NESSN are shown in Table 1, and based on previous catch by the participating vessel under normal fishing conditions.

TABLE 1—ESTIMATED TOTAL CATCH OF GROUNDFISH ON EFP TRIPS

| Stock | Estimated total catch | |
|---|---|---|
| | Legal sized catch | Sub-legal discards |
| Acadian Redfish | 50 lb (22.7 kg) | 0 lb. |
| American Plaice | 10 lb (4.5 kg) | 0 lb. |
| GOM Cod | 600 lb (272.2 kg) | 30 lb (13.6 kg). |
| Atlantic Halibut | 50 lb (22.7 kg) | 0 lb. |
| Atlantic Wolffish | 0 lb | 5 (2.3 kg). |
| GOM Haddock | 35,000 lb (15,875.7 kg) | 300 (136.1 kg). |
| Ocean Pout | 0 lb | 0 lb. |
| Pollock | 15,000 lb (6,803.9 kg) | 100 lb (45.4 kg). |
| White Hake | 1,000 lb (453.6 kg) | 50 lb (22.7 kg). |
| Witch Flounder | 10 lb (4.5 kg) | 0 lb. |
| N. Windowpane Flounder | 0 lb | 0 lb. |
| GOM Winter Flounder | 40 lb (18.1 kg) | 5 lb (2.3 kg). |
| CC/GOM Yellowtail Flounder | 40 lb (18.1 kg) | 5 lb (2.3 kg). |

The exemption from the mesh size restriction for day gillnet vessels at 50 CFR 648.80(a)(3)(iv)(B)(1) is necessary to allow the participating vessel to conduct exploratory fishing with 6-inch mesh gillnet gear under the proposed EFP.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: October 7, 2021.

**Jennifer M. Wallace,**

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

[FR Doc. 2021–22290 Filed 10–13–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

**[Docket ID: USA–2021–HQ–0008]**

### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Army, Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by November 15, 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.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* DoD Automated Biometric Identification System (ABIS); OMB Control Number 0702–0127.

*Type of Request:* Reinstatement.

*Number of Respondents:* 1,400,000.

*Responses per Respondent:* 1.

*Annual Responses:* 1,400,000.

*Average Burden per Response:* 7 minutes.

*Annual Burden Hours:* 163,333.33.

*Needs and Uses:* The DoD Automated Biometric Identification System (ABIS) is an authoritative biometrics data repository that processes, matches, and stores biometric identity information data, collected by global U.S. forces, during the course of military operations. The information processed by DoD ABIS (biometric, biographic, behavioral, and contextual data) is collected by DoD military personnel worldwide using hand-held biometric collection devices across the full range of military operations for DoD warfighting, intelligence, law enforcement, security, force protection, base access, homeland defense, counterterrorism, business enterprise purposes as well as in information environment mission areas. Biometric data may also be collected for use in field identification and recovery of persons, or their physical remains, who have been captured, detained, missing, prisoners of war, or personnel recovered from hostile control. The information collected and processed by DoD ABIS is shared, accessed, and leveraged by DoD partners, U.S. Government inter-agency agency and departmental stakeholders, and approved multi-national partners for intelligence, counterterrorism, military force protection, national security, and law enforcement purposes.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal**

**Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: October 8, 2021.

**Kayyonne T. Marston,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021–22323 Filed 10–13–21; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2021–OS–0102]**

### Proposed Collection; Comment Request

**AGENCY:** The Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (DoD).

**ACTION:** Information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Office of Local Defense Community Cooperation announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by December 13, 2021.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of Local Defense Community Cooperation, 2231 Crystal Drive, Arlington, VA 22202, ATTN: Mr. James Holland or call 703–697–2188.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* OLDCC Military Installation Sustainability Program of Assistance Grant Proposals; OMB Control Number 0704–MISP.

*Needs and Uses:* The Office of Local Defense Community Cooperation (OLDCC), in coordination with the other Federal Agencies, delivers a program of technical and financial assistance to enable states and communities to plan and carry out civilian responses to workforce, business, and community needs arising from Defense actions; cooperate with their military installations and leverage public and private capabilities to deliver public infrastructure and services to enhance the military mission, achieve facility and infrastructure savings as well as reduced operating costs; and increase military, civilian, and industrial readiness and resiliency, and support military families.

Respondents will be submitting information requesting OLDCC assistance for the Military Installation Sustainability program of assistance. Respondents will be States, United States Territories, counties, municipalities, other political subdivisions of a state, special purpose units of a state or local government, other instrumentalities of a state or local government, and tribal nations supporting a military installation or the defense industrial base. The collection instrument for the Military Installation Sustainability program of assistance will be a proposal package prepared in accordance to a Federal Funding Opportunity Announcement posted in the **Federal Register**. Proposals may be submitted electronically via email, or printed copy by mail or hand-delivered to OLDCC.

*Affected Public:* State, Local, or Tribal Government.

*Annual Burden Hours:* 480.

*Number of Respondents:* 12.

*Responses per Respondent:* 1.

*Annual Responses:* 12.

*Average Burden per Response:* 40 hours.

*Frequency:* Annually.

Proposals consist of the following information: A description of the proposed project, a description of the partner jurisdictions, agencies, organizations, key stakeholders, and their roles and responsibilities to carry out the proposed project, a description of the anticipated role of the installation(s) in the project and evidence of local installation support for the proposal, a summary of requested grant funds and other existing sources of funds, a sufficiently detailed project schedule, a description of metrics to be tracked and evaluated over the course of the project, evidence of the intended recipient's ability and authority to manage grant funds, and documentation that the Submitting Official is authorized by the respondent jurisdiction(s) and the respondent jurisdiction is an eligible entity to submit a proposal and subsequently apply for assistance. More specific details will be available in the Federal Funding Opportunity Announcement published in the **Federal Register**.

Dated: October 8, 2021.

**Kayyonne T. Marston,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021–22322 Filed 10–13–21; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2021–SCC–0086]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Study To Inform the 21st Century Community Learning Centers (CCLC) Program (Second Study Component)

**AGENCY:** Institute of Educational Science (IES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before November 15, 2021.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Erica Johnson, 202–245–7676.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* National Study to Inform the 21st Century Community Learning Centers (CCLC) Program (Second Study Component).

*OMB Control Number:* 1850–NEW.

*Type of Review:* A new information collection.

*Respondents/Affected Public:* Individuals and Households.

*Total Estimated Number of Annual Responses:* 1,922.

*Total Estimated Number of Annual Burden Hours:* 707.

*Abstract:* The 21st CCLC program funds services during non-school hours, primarily during the school year. The services aim to help students meet state academic standards, particularly for students in low-performing schools that serve high concentrations of low-income families. Most participants (71 percent) are students attending afterschool centers during the school year, with the remainder being family members (14 percent) or summer attendees (15 percent). Afterschool centers supported by program funds provide a broad range of activities and services, such as academic enrichment, physical activity, service learning, and activities to engage families. Program activities and services may play a crucial role in addressing the substantial learning loss and other challenges that have occurred as a result of the COVID–19 pandemic.

This study will have two components. The first is a national snapshot of strategies that afterschool centers in the 21st CCLC program use to serve their students and families. The national snapshot will complement and extend information from the program's annual performance measures by providing an in-depth understanding of the key outcomes centers aim to promote and the diverse ways their activities and services for students and families, supports for staff, and improvement strategies are designed to promote these outcomes. Describing these strategies can provide insights into ways that centers seek to address longer-term challenges, such as learning loss and trauma, stemming from the pandemic. The second component is an evaluation of a continuous quality improvement system implemented in the program's afterschool centers. The evaluation will examine the implementation and effectiveness of a system focused on improving staff practices that promote students' social and emotional skills. Promoting these skills may be particularly important to compensate for the effects of the pandemic, in light of evidence that remote learning has negatively affected students' social and emotional well-being.

This package is the second of two packages. It only requests clearance for data collection activities that will occur after March 2022 and impose burden on respondents. A previously submitted package (ICR Reference No. 202102–1850–003; OMB Control No. 1850–0964) requested clearance for data collection activities that will occur before March 2022.

Dated: October 8, 2021.

**Juliana Pearson,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2021–22325 Filed 10–13–21; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP21–467–000]**

### Texas Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Henderson County Expansion Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Henderson County Expansion Project (Project) involving construction and operation of facilities by Texas Gas Transmission, LLC (Texas Gas) in Henderson and Webster Counties, Kentucky and Posey and Johnson Counties, Indiana. The Commission will use the EIS in its decision-making process to determine whether Texas Gas's proposed Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the *Schedule for Environmental Review* section of this notice.

As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' By notice issued on July 29, 2021, in Docket No. CP21–467–000, the Commission opened a scoping period for the Project. Commission staff intends to prepare an EIS that will address the concerns raised during the initial scoping process and comments received in response to this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the EIS, including comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality

of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on November 8, 2021. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

As mentioned above, the Commission opened a scoping period which expired on August 30, 2021. All substantive comments provided during the initial scoping session will be addressed in the EIS. Therefore, if you previously submitted comments on this Project to the Commission you do not need to file those comments again.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not grant, exercise, or oversee the exercise of eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Texas Gas provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

## Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov*. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Project docket number (CP21–467–000) on your letter. 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.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

## Summary of the Proposed Project, the Project Purpose and Need, and Expected Impacts

Texas Gas proposes to construct and operate a new lateral and meter and regulator (M&R) station, upgrade an existing M&R station, and modify and add compression to Texas Gas' existing Slaughters Compressor Station. The Henderson County Expansion Project would provide up to 220 million standard cubic feet of natural gas per day to Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South (CenterPoint) at its existing AB Brown Generating Station in Posey County, Indiana. According to Texas Gas, its Project would support CenterPoint's retirement of four existing coal-fired units and implementation of new intermittent renewable resources (*i.e.,* solar and wind) by providing the reliability of intermittent natural gas service during natural fluctuations in wind and solar availability.

The Henderson County Expansion Project would consist of the following facilities:

- Henderson County Lateral—Construction of an approximately 24-mile-long, 20-inch-diameter natural gas transmission pipeline extending from a new tie-in facility in Henderson County, Kentucky to the new AB Brown M&R Station in Posey County, Indiana.
- AB Brown M&R Station and Point of Demarcation Site (Posey County, Indiana)—Construction of a delivery M&R station, receiver facility, and a 0.08-mile-long, 16-inch-diameter interconnecting pipeline terminating at the new Point of Demarcation Site which would serve as CenterPoint's tie-in for project facilities for its AB Brown Plant.
- Slaughters Compressor Station (Webster County, Kentucky)—Installation of a new 4,863-horsepower Solar Centaur 50 turbine compressor unit with piping modifications and other appurtenant facilities, abandonment in place of the existing Compressor Unit 5, and placement on standby of existing Compressor Units 6 and 7.
- New ancillary facilities including a main line valve and tie-in facility in Henderson County, Kentucky and upgrades to an existing M&R station in Johnson County, Indiana.

The general location of the project facilities is shown in appendix 1.[1]

Based on environmental information provided by the Company, construction of the proposed facilities would disturb about 402 acres of land for the aboveground facilities and the pipeline. Following construction, Texas Gas would maintain about 152 acres for permanent operation of the Project's facilities; the remaining acreage would be restored and revert to former uses. About 47.5 percent of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way.

Based on an initial review of Texas Gas's proposal and public comments received during scoping, Commission staff have identified expected impacts

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

that deserve attention in the EIS. These include: 2.29 acres of wetland disturbance; 110 waterbody crossings (71 ephemeral streams, 21 perennial streams, 17 intermittent streams, and 1 natural pond); visual impacts, greenhouse gas emissions, and potential impacts on wildlife management areas, special status species, environmental justice communities, and air quality.

**The NEPA Process and the EIS**

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- greenhouse gas and climate;
- air quality and noise; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

**Alternatives Under Consideration**

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.[3] Alternatives currently under consideration include:

- The no-action alternative, meaning the Project is not implemented; and
- a system alternative evaluating whether the Project purpose could be met by use of an existing pipeline system.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites and pipeline routes) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental impact.

**Consultation Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission initiated section 106 consultation for the Project in the notice issued on July 29, 2021, with the State Historic Preservation Offices, and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the project's potential effects on historic properties.[4] This notice is a continuation of section 106 consultation for the Project. The Project EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Schedule for Environmental Review**

On July 9, 2021, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final NEPA document for the Project. This notice identifies the Commission staff's planned schedule for completion of a final EIS for the Project, which is based on an issuance of the draft EIS in April 2022.

Issuance of Notice of Availability of the final EIS— August 25, 2022

90-day Federal Authorization Decision Deadline [5]—November 23, 2022

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

**Permits and Authorizations**

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

ENVIRONMENTAL PERMITS, APPROVALS, AND CONSULTATIONS

| Agency | Permit/approval/consultation |
|---|---|
| Federal Energy Regulatory Commission | Certificate of Public Convenience and Necessity under Section 7(c) of the Natural Gas Act. |
| U.S. Army Corps of Engineers—Louisville City District | Clean Water Act 404, Nationwide Permit 12. |
| U.S. Fish and Wildlife Service—Kentucky Ecological Services Field Office. | Endangered Species Act—Section 7 Consultation, Migratory Bird Treaty Act, Bald Eagle and Golden Eagle Protection Act. |
| U.S. Fish and Wildlife Service—Bloomington Ecological Services Field Office. | |
| Kentucky Energy and Environment Cabinet—Department of Environmental Protection. | Section 401 Water Quality Certification. |

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] 40 CFR 1508.1(z).

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

[5] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

ENVIRONMENTAL PERMITS, APPROVALS, AND CONSULTATIONS—Continued

| Agency | Permit/approval/consultation |
|---|---|
| Indiana Department of Environmental Management (IDEM).<br>Kentucky Heritage Council .....<br>Indiana Division of Historic Preservation. | *National Historic Preservation Act,* Section 106 Consultation. |

**Environmental Mailing List**

This notice is being sent to the Commission's current environmental mailing list for the Project which includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP21–467–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

*or*

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

**Additional Information**

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP21–467). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: October 7, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22378 Filed 10–13–21; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL21–102–000]**

### Panther Creek Power Operating, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On October 6, 2021, the Commission issued an order in Docket No. EL21–102–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation concerning the justness and reasonableness of Panther Creek Power Operating, LLC's Reactive Service rate schedule. *Panther Creek Power Operating, LLC,* 177 FERC ¶ 61,012, (2021).

The refund effective date in Docket No. EL21–102–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL21–102–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2020), within 21 days of the date of issuance of the order.

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* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* 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, Maryland 20852.

Dated: October 7, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–22398 Filed 10–13–21; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER22–48–000]**

### Gridflex Generation, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Gridflex Generation, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 27, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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 the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 7, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–22373 Filed 10–13–21; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* CP22–1–000.
*Applicants:* Gulf South Pipeline.
*Description:* Abbreviated Application of Gulf South Pipeline Company, LLC for Lease Abandonment Authorization under CP22-Application/Petition/Request Abandonment of Service or Facility.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5222.
*Comment Date:* 5 p.m. ET 10/22/21.

*Docket Numbers:* RP22–27–000.
*Applicants:* Tennessee Gas Pipeline Company, L.L.C.
*Description:* § 4(d) Rate Filing: Volume No. 2—The Brooklyn Union Gas Company SP371009 & Equinor SP101733 to be effective 11/1/2021.
*Filed Date:* 10/6/21.
*Accession Number:* 20211006–5123.
*Comment Date:* 5 p.m. ET 10/18/21.

*Docket Numbers:* RP22–28–000.
*Applicants:* MarkWest Pioneer, L.L.C.
*Description:* § 4(d) Rate Filing: Nonconforming Negotiated Rate Service Agreement to be effective 10/1/2021.
*Filed Date:* 10/7/21.
*Accession Number:* 20211007–5041.
*Comment Date:* 5 p.m. ET 10/19/21.

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.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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: October 7, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–22376 Filed 10–13–21; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER22–46–000]**

### Parkway Generation Essex, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Parkway Generation Essex, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 27, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access

who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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 the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 7, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–22372 Filed 10–13–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP21–501–000]**

### Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on September 27, 2021, Florida Gas Transmission Company, LLC (FGT), 1300 Main Street, Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to §§ 157.205, 157.208, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) and FGT's blanket certificate issued in Docket No. CP82–553–000, for authorization to isolate and abandon FGT's Oldsmar delivery lateral and delivery lateral loop lines at the take-offs originating from FGT's existing 12-inch diameter and 14-inch diameter St. Petersburg Lateral at approximate Mile Post (MP) Nos. 85.7 and 85.9 respectively. The facilities to be abandoned consist of approximately 4.4 miles of 6-inch diameter Oldsmar Lateral and approximately 2.2 miles of 8-inch diameter Oldsmar Lateral Loop facilities, and related appurtenances (collectively referred to as the Oldsmar Facilities). FGT also requests authorization to reserve the Oldsmar Facilities in place pursuant to Pipeline and Hazardous Materials Safety Administration (PHMSA) idling guidance/title 49 Regulations, and retain/maintain FGT's right-of-way (ROW)/easements and all related ROW/easement rights for future use, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this prior notice request should be directed to Blair Lichtenwalter, Senior Director, Certificates, Florida Gas Transmission Company, LLC, 1300 Main Street, P.O. Box 4967, Houston, Texas 77210–4967, at (713) 989–2605, or by email to *Blair.Lichtenwalter@energytransfer.com.*

#### Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on December 6, 2021. How to file protests, motions to intervene, and comments is explained below.

*Protests*

Pursuant to § 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in § 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is December 6, 2021. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

*Interventions*

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is December 6, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

*Comments*

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before December 6, 2021. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

*How To File Protests, Interventions, and Comments*

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP21–501–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below.[7] Your submission must reference the Project docket number CP21–501–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail at: 1300 Main Street, P.O. Box 4967, Houston, Texas 77210–4967, or email (with a link to the document) at: *Blair.Lichtenwalter@energytransfer.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: October 7, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22377 Filed 10–13–21; 8:45 am]

**BILLING CODE 6717–01–P**

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

[7] Hand-delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG22–1–000.
*Applicants:* Route 66 Solar Energy Center, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Route 66 Solar Energy Center, LLC.
*Filed Date:* 10/6/21.
*Accession Number:* 20211006–5133.
*Comment Date:* 5 p.m. ET 10/27/21.

*Docket Numbers:* EG22–2–000.
*Applicants:* Cypress Creek Fund 7 Tenant, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Cypress Creek Fund 7 Tenant, LLC.
*Filed Date:* 10/7/21.
*Accession Number:* 20211007–5099.
*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* EG22–3–000.
*Applicants:* Cypress Creek Fund 6 Tenant, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Cypress Creek Fund 6 Tenant, LLC.
*Filed Date:* 10/7/21.
*Accession Number:* 20211007–5100.
*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* EG22–4–000.
*Applicants:* Cypress Creek Fund 5 Tenant, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator of Cypress Creek Fund 5 Tenant, LLC.
*Filed Date:* 10/7/21.
*Accession Number:* 20211007–5101.
*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* EG22–5–000.
*Applicants:* CCP–PL Lessee, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of CCP–PL Lessee, LLC.
*Filed Date:* 10/7/21.
*Accession Number:* 20211007–5102.
*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* EG22–6–000.
*Applicants:* Hecate Energy Highland LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Hecate Energy Highland LLC.
*Filed Date:* 10/6/21.
*Accession Number:* 20211006–5142.
*Comment Date:* 5 p.m. ET 10/27/21

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER20–2282–001.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* Compliance filing: 2021–10–07_SA 2951 Northern States Power-MDU Sub 2nd Rev GIA (J316) to be effective 6/26/2020.
*Filed Date:* 10/7/21.
*Accession Number:* 20211007–5076.
*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER20–2283–003.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* Compliance filing: 2021–10–07_SA 3517 2nd Substitute NSP–

MDU FSA (J316) to be effective 7/1/2020.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5084.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER21–2886–001.

*Applicants:* Old Middleboro Road Solar, LLC.

*Description:* Tariff Amendment: Old Middleboro Road Solar LLC Revised MBR Filing to be effective 10/1/2021.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5093.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER21–2887–001.

*Applicants:* Leicester Street Solar, LLC.

*Description:* Tariff Amendment: Leicester Street Solar LLC Revised MBR Filing to be effective 10/1/2021.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5092.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–52–000.

*Applicants:* Northern Indiana Public Service Company LLC.

*Description:* Section 205(d) Rate Filing: NIPSCO–AEP Indiana Dark Fiber Lease to be effective 9/10/2021.

*Filed Date:* 10/6/21.

*Accession Number:* 20211006–5121.

*Comment Date:* 5 p.m. ET 10/27/21.

*Docket Numbers:* ER22–53–000.

*Applicants:* Portland General Electric Company.

*Description:* Section 205(d) Rate Filing: OATT Clean-up Filing to be effective 12/6/2021.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5003.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–54–000.

*Applicants:* Golden Spread Electric Cooperative, Inc.

*Description:* Section 205(d) Rate Filing: WPC Sched B Rider I and FRT Filing to be effective 2/1/2021.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5012.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–55–000.

*Applicants:* CenterPoint Energy Houston Electric, LLC.

*Description:* Section 205(d) Rate Filing: TFO Tariff Interim Rate Revision to Conform with PUCT-Approved Rate to be effective 10/4/2021.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5014.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–56–000.

*Applicants:* Hecate Energy Gedney Hill LLC, Sunset Hill Solar, LLC.

*Description:* Request for Limited Waiver of Hecate Energy Gedney Hill LLC and Sunset Hill Solar LLC.

*Filed Date:* 10/6/21.

*Accession Number:* 20211006–5135.

*Comment Date:* 5 p.m. ET 10/27/21.

*Docket Numbers:* ER22–57–000.

*Applicants:* SE Athos I, LLC.

*Description:* Section 205(d) Rate Filing: Filing of LGIA Co-Tenancy Agreement and Request for Waivers to be effective 10/8/2021.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5015.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–58–000.

*Applicants:* SE Athos II, LLC.

*Description:* Section 205(d) Rate Filing: Certificate of Concurrence to be effective 10/8/2021.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5039.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–59–000.

*Applicants:* Navajo Tribal Utility Authority.

*Description:* Petition for Limited Waiver of Navajo Tribal Utility Authority.

*Filed Date:* 10/6/21.

*Accession Number:* 20211006–5138.

*Comment Date:* 5 p.m. ET 10/27/21.

*Docket Numbers:* ER22–60–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Section 205(d) Rate Filing: Revisions to Attachment X to Clarify Financial Security Requirements to be effective 1/1/2022.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5064.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–61–000.

*Applicants:* San Diego Gas & Electric Company.

*Description:* Section 205(d) Rate Filing: Service Agreement No. 60 FERC Electric Tariff Volume No. 11 to be effective 10/8/2021.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5082.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–62–000.

*Applicants:* Southern California Edison Company.

*Description:* Section 205(d) Rate Filing: SCE Amended WDAT Attachment I GIP—QC14 to be effective 12/7/2021.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5085.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–63–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Section 205(d) Rate Filing: 3505R2 ENGIE Energy Marketing NA & Sunflower Meter Agent Agr to be effective 10/1/2021.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5090.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–64–000.

*Applicants:* Jersey Central Power & Light Company.

*Description:* Tariff Amendment: Notice of Cancellation of Agreements and Request for Waiver of Notice Requiremen to be effective 3/5/2021.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5091.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–65–000.

*Applicants:* PacifiCorp.

*Description:* Section 205(d) Rate Filing: OATT Formula Rate—Schedule 10 Dist System Loss Factor January 2022 to be effective 1/1/2022.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5097.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–66–000.

*Applicants:* Sundance Wind Project, LLC.

*Description:* Tariff Amendment: FERC Electric Tariff No. 1 to be effective 10/7/2021.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5103.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–67–000.

*Applicants:* Citizens Sunrise Transmission LLC.

*Description:* Section 205(d) Rate Filing: Annual TRBAA Filing October 2020 to be effective 1/1/2022.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5140.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–68–000.

*Applicants:* Citizens Sycamore-Penasquitos Transmission LLC.

*Description:* Section 205(d) Rate Filing: Annual Operating Cost True-Up Adjustment Informational to be effective 1/1/2022.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5148.

*Comment Date:* 5 p.m. ET 10/28/21.

*Docket Numbers:* ER22–69–000.

*Applicants:* Indeck Niles, LLC.

*Description:* Baseline eTariff Filing: MBR Tariff Application for Indeck NIles, LLC to be effective 10/15/2021.

*Filed Date:* 10/7/21.

*Accession Number:* 20211007–5163.

*Comment Date:* 5 p.m. ET 10/28/21.

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: October 7, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–22374 Filed 10–13–21; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2020–0634; FRL—9140–01–OMS]**

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for the Secondary Lead Smelter Industry (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for the Secondary Lead Smelter Industry (EPA ICR Number 1686.12, OMB Control Number 2060–0296), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2021. Public comments were previously requested via the **Federal Register** on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before November 15, 2021.

**ADDRESSES:** Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OAR–2020–0634, online using *www.regulations.gov* (our preferred method), by email to *dockets.oeca.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *https://www.epa.gov/dockets.*

*Abstract:* Owners and operators of secondary lead smelter facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 63, subpart A), as well as for the applicable specific standards in 40 CFR part 63 subpart X. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

*Form Numbers:* None.

*Respondents/affected entities:* Secondary lead smelter facilities.

*Respondent's obligation to respond:* Mandatory (40 CFR part 63, subpart X).

*Estimated number of respondents:* 12 (total).

*Frequency of response:* Semiannually.

*Total estimated burden:* 21,700 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $2,580,000 (per year), which includes $251,000 annualized capital/startup and/or operation & maintenance costs.

*Changes in the Estimates:* There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This situation is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years. The most recent amendments (85 FR 73854, November 20, 2020) included no change in burden. And (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2021–22301 Filed 10–13–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2020–0622; FRL–9141–01–OMS]**

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Wood Furniture Manufacturing Operations (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Wood Furniture Manufacturing Operations (EPA ICR Number 1716.11, OMB Control Number 2060–0324), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2021. Public comments were previously requested, via the **Federal**

**Register**, on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before November 15, 2021.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0622, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

*Abstract:* Owners and operators of wood furniture manufacturing facilities are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 63, subpart A, as well as the applicable specific standards in 40 CFR part 63 subpart JJ. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

*Form Numbers:* None.

*Respondents/affected entities:* Wood furniture manufacturing facilities.

*Respondent's obligation to respond:* Mandatory (40 CFR part 63, subpart JJ).

*Estimated number of respondents:* 230 (total), consisting of 142 existing major sources and 88 existing incidental/area sources.

*Frequency of response:* Quarterly and semi-annually.

*Total estimated burden:* 15,900 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $1,890,000 (per year), which includes $12,900 in annualized capital/startup and/or operation & maintenance costs.

*Changes in the Estimates:* There is a decrease in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to a decrease in the number of respondents subject to Subpart JJ. The estimated number of respondents is based on a review of affected facilities in EPA's Enforcement and Compliance History Online (ECHO) database and reflects consolidation within the industry. The regulations have not changed significantly over the past three years and are not anticipated to change significantly over the next three years. The growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no significant changes in the regulatory requirements and there is no significant industry growth, there are no changes in the capital/startup cost. There is a decrease in operation and maintenance (O&M) costs due to a decrease in the number of respondents with these costs. Operation and maintenance (O&M) costs have been updated from year 2001 to year 2019 using the CEPCI Index.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2021–22300 Filed 10–13–21; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2020–0625; FRL–9139–01–OMS]**

## Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Vinyl Chloride (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Vinyl Chloride (EPA ICR Number 0186.16, OMB Control Number 2060–0071), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2021. Public comments were previously requested, via the **Federal Register**, on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before November 15, 2021.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0625, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

*Abstract:* The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Vinyl Chloride (40 CFR part 61, subpart F) apply to existing facilities and new facilities that produce the following: (1) Ethylene dichloride (EDC) by reaction of oxygen and hydrogen chloride with ethylene; (2) vinyl chloride (VC) by any process; and (3) one or more polymers containing any fraction of polymerized VC. Owners and operators of affected facilities are required to comply with the recordkeeping and reporting requirements of the General Provisions (40 CFR part 61, subpart A), as well as the specific requirements at 40 CFR part 61, subpart F. This includes submitting initial notifications, performance tests, and periodic reports. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are used by EPA to determine compliance with the standards.

*Form Numbers:* None.

*Respondents/affected entities:* Ethylene dichloride and vinyl chloride plants.

*Respondent's obligation to respond:* Mandatory (40 CFR part 61, subpart F).

*Estimated number of respondents:* 16 (total).

*Frequency of response:* Initially, quarterly, and occasionally.

*Total estimated burden:* 6,540 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $1,490,000 (per year), which includes $720,000 in annualized capital/startup and/or operation & maintenance costs.

*Changes in the Estimates:* There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB. This situation is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. The estimate of the number of respondents is based on a review of data from EPA's Greenhouse Gas Reporting Program. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2021–22299 Filed 10–13–21; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9110–01–R6]**

## Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permit for Phillips 66 Company, Borger Refinery, Hutchinson County, Texas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final Order on Petition for objection to Clean Air Act title V operating permit.

**SUMMARY:** The Environmental Protection Agency (EPA) Administrator signed an Order dated September 22, 2021, granting in part and denying in part a Petition dated September 12, 2017 from the Environmental Integrity Project and Sierra Club. The Petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Texas Commission on Environmental Quality (TCEQ) to Phillips 66 Company (Phillips) for its Borger Refinery located in Hutchinson County, Texas.

**ADDRESSES:** The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office is currently closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed below if you need alternative access to the final Order and Petition, which are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

**FOR FURTHER INFORMATION CONTACT:** Aimee Wilson, EPA Region 6 Office, Air Permits Section, (214) 665–7596, *wilson.aimee@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The CAA affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issue arose after this period.

The EPA received the Petition from the Environmental Integrity Project and Sierra Club dated September 12, 2017, requesting that the EPA object to the issuance of operating permit no. O1440, issued by TCEQ to the Borger Refinery in Hutchinson County, Texas. The Petition claims the proposed permit improperly incorporated a State-only major source flexible permit, the proposed permit failed to specify monitoring sufficient to assure compliance with permits by rule (PBRs), flexible permit emission limits, and monitoring during maintenance, startup, and shutdown (MSS), the proposed permit did not properly incorporate by reference requirements from certified PBRs, and the proposed permit does not identify which emission units are subject to requirements in a minor NSR permit for MSS activities.

On September 22, 2021, the EPA Administrator issued an Order granting in part and denying in part the Petition. The Order explains the basis for EPA's decision.

Dated: October 6, 2021.

**David Garcia,**

*Director, Air and Radiation Division, Region 6.*

[FR Doc. 2021–22284 Filed 10–13–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2021–0643; FRL–9128–01–OAR]**

## Notice of Determination To Grant or Partially Grant Certain Petitions Submitted Under Subsection (i) of the American Innovation and Manufacturing Act of 2020

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to alert the public of the Administrator's decision to grant in full ten petitions and partially grant one petition submitted under subsection (i) of the American Innovation and Manufacturing Act of 2020. These petitions request that the Environmental Protection Agency restrict the use of certain regulated substances, as defined in the American Innovation and Manufacturing Act of 2020, in certain applications, pursuant to its authority under subsection (i) to promulgate rules that restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used. Information considered by the Agency in its evaluation of these petitions is available in the docket associated with this notice.

**DATES:** Petitions referenced in this notice were granted by the Administrator via letters signed on October 7, 2021.

**FOR FURTHER INFORMATION CONTACT:** Joshua Shodeinde, Stratospheric Protection Division, Office of Atmospheric Programs (6205T), Environmental Protection Agency, telephone number: 202–564–7037; email address: *shodeinde.joshua@epa.gov.* You may also visit EPA's website at *https://www.epa.gov/climate-hfcs-reduction* for further information.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Subsection (i) of the American Innovation and Manufacturing Act of 2020 (AIM Act or Act),[1] entitled ''Technology Transitions,'' provides that the Administrator may by rule restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used. Under subsection (i)(3) a person may petition the Administrator to promulgate a rule for the restriction on use of a regulated substance [2] in a sector or subsector which shall include a request that the Administrator negotiate with stakeholders in accordance with subsection (i)(2)(A). Once the Environmental Protection Agency (EPA) receives a petition, the AIM Act directs the Agency to make petitions publicly available within 30 days of receipt and to grant or deny the petition within 180 days of receipt, taking the factors listed in subsection (i)(4) into account to the extent practicable.

The Agency has received a number of petitions under subsection (i) of the AIM Act requesting that EPA promulgate rules to restrict the use of hydrofluorocarbons in certain refrigeration, air conditioning, foam and aerosol applications.[3] After reviewing information provided by petitioners, relevant information collected and summarized in technical memos available in the docket, the Administrator has made determinations concerning 11 petitions—specifically, to grant ten petitions and partially grant one petition. EPA's letters to petitioners are contained in the docket for this action, along with a number of technical memos and a summary and determination document that highlights the statutory factors considered for each petition and the rationale for EPA's decision. At this time, the Agency is not taking action on any other petitions or on certain elements of one petition (*i.e.,* California Resources Air Board et al.).

### II. Which petitions is EPA granting?

Table 1 lists the petitions that EPA is granting or partially granting.

TABLE 1—LIST OF GRANTED OR PARTIALLY GRANTED PETITIONS

| Petitioner | Topic | EPA determination |
|---|---|---|
| Natural Resources Defense Council (NRDC), Colorado Department of Public Health & Environment (CDPHE), and Institute for Governance & Sustainable Development (IGSD). | ''Replicate HFC Prohibitions from SNAP Rules 20 & 21'' | Grant. |
| DuPont | ''Replicate SNAP Rule 20 with Regard to the Phase-out of HFC-134a in Extruded Polystyrene Boardstock and Billet (XPS) End-use''. | Grant. |
| DuPont | ''Replicate SNAP Rule 21 with Regard to Rigid Polyurethane Low-pressure Two-component Spray Foam (2K-LP SPF) End-use''. | Grant. |
| American Chemistry Council's Center for the Polyurethanes Industry (CPI). | ''Replicate SNAP Rules 20 and 21 HFC prohibitions for the Polyurethane Industry''. | Grant. |
| Household & Commercial Products Association (HCPA) and National Aerosol Association (NAA). | ''Replicate SNAP Rules 20 and 21 HFC prohibitions for Aerosol Propellants''. | Grant. |
| Environmental Investigation Agency (EIA) et al | ''Restrict the Use of HFCs in Certain Stationary Refrigeration and Air Conditioning End-uses''. | Grant. |
| Air Conditioning, Heating, and Refrigeration Institute (AHRI) et al. | ''Restrict the Use of HFCs in Residential and Light Commercial Air Conditioners''. | Grant. |
| Air Conditioning, Heating, and Refrigeration Institute (AHRI) et al. | ''Restrict the Use of HFCs in Certain Commercial Refrigeration Equipment''. | Grant. |

[1] The AIM Act was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260).

[2] The Act provides that ''regulated substance'' refers to those substances included in the list of regulated substances in subsection (c)(1) of the Act and those substances that the Administrator has designated as a regulated substance under subsection (c)(3). Subsection (c)(1) lists 18 saturated hydrofluorocarbons (HFCs), and by reference their isomers not so listed, as regulated substances. This is the current list of regulated substances, as no additional substances have been designated as regulated substances under subsection (c)(3).

[3] A full list of petitions received to date under subsection (i) of the AIM Act with links to copies of the petitions can be found in the table at *https://www.epa.gov/climate-hfcs-reduction/petitions-under-aim-act.* The EPA has also opened a docket (Docket ID EPA–HQ–OAR–2021–0289–0044), where all subsection (i) petitions are posted, and where the public may submit information related to those petitions. We have also opened a separate docket, (Docket ID EPA–HQ–OAR–2021–0643) for the 11 petitions that have been granted or partially granted.

TABLE 1—LIST OF GRANTED OR PARTIALLY GRANTED PETITIONS—Continued

| Petitioner | Topic | EPA determination |
|---|---|---|
| Association of Home Appliance Manufacturers (AHAM) | ''Restrict the Use of HFCs in Certain Air Conditioners and Dehumidifiers''. | Grant. |
| International Institute of Ammonia Refrigeration (IIAR) et al. | ''Restrict the Use of HFCs in Certain Refrigeration End-Uses''. | Grant. |
| California Air Resources Board et al | ''Replicate HFC Prohibitions from SNAP Rules 20 & 21 and Issue Additional Federal Standards''. | Partial Grant. |

Subsection (i)(4) of the AIM Act identifies factors for the Agency to consider to the extent practicable when making a determination to grant or deny a petition. As stated above, EPA considered available information related to these factors in its determination to grant and partially grant the petitions listed in Table 1, and this information can be found in the docket with this notice.

## III. What happens after EPA grants a petition?

Where the Agency grants a petition submitted under subsection (i) of the AIM Act, the statute requires that EPA promulgate a final rule not later than two years from the date the Agency grants the petition. Per subsection (i)(1) of the AIM Act, EPA may issue rules that restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used. The Act establishes that no rule developed under subsection (i) may take effect earlier than one year after the rule promulgation date. In addition, prior to issuing a proposed rule under subsection (i), EPA must consider negotiating with stakeholders in the sector or subsector in accordance with negotiated rulemaking procedures.[4] If the Agency decides not to undergo a negotiated rulemaking, the AIM Act requires the Agency to publish an explanation of its decision not to use that procedure.[5]

**Cynthia A. Newberg,**

*Director, Stratospheric Protection Division.*

[FR Doc. 2021–22318 Filed 10–13–21; 8:45 am]

**BILLING CODE 6560–50–P**

[4] The negotiated rulemaking procedure is provided under subchapter III of chapter 5 of title 5, United States Code (commonly known as the ''Negotiated Rulemaking Act of 1990'').

[5] EPA intends to issue a separate notice in the **Federal Register** regarding its consideration of using negotiated rulemaking procedures for a rulemaking that responds to granted and partially granted petitions.

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2020–0636; FRL—9138–01–OMS]**

## Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Primary Lead Smelting (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Primary Lead Smelting (EPA ICR Number 1856.12, OMB Control Number 2060–0414), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2021. Public comments were previously requested, via the **Federal Register**, on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before November 15, 2021.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0636, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

*Abstract:* The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Lead Smelting apply to existing and new facilities engaged in producing lead metal from ore concentrates. The category includes, but is not limited to, the following smelting processes: Sintering, reduction, preliminary treatment, refining and casting operations, process fugitive sources, and fugitive dust sources. Owners and operators of primary lead smelting facilities are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 63, subpart A, as well as the applicable specific standards in 40 CFR part 63 subpart TTT. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports

by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 63, subpart TTT.

*Form Numbers:* None.

*Respondents/affected entities:* Primary lead smelters.

*Respondent's obligation to respond:* Mandatory (40 CFR part 63, subpart TTT).

*Estimated number of respondents:* 1 (total).

*Frequency of response:* Quarterly and semiannually.

*Total estimated burden:* 6,270 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $912,000 (per year), which includes $169,000 in annualized capital/startup and/or operation & maintenance costs.

*Changes in the Estimates:* There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This situation is due to two considerations: (1) The regulations have not changed significantly over the past three years and are not anticipated to change significantly over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. While there are not currently any primary lead smelters operating in the U.S. and no new facilities are being planned, this ICR continues to assume an average of one existing respondent for the purpose of estimating burden. Since there are no significant changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2021–22305 Filed 10–13–21; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK

**[Public Notice: 2021–6031]**

### Agency Information Collection Activities: Final Collection; Comment Request

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Submission for OMB review and comments request.

**SUMMARY:** The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. This form is to be completed by EXIM borrowers as required under certain EXIM long-term guarantee and direct loan transactions in conjunction with a borrower's request for disbursement for U.S. goods and services. It is used to summarize disbursement documents submitted with a borrower's request and to calculate the requested financing amount. It will enable EXIM to identify the specific details of the amount of disbursement requested for approval to ensure that the financing request is complete and in compliance with EXIM's disbursement requirements. This form will be uploaded into an electronic disbursement portal.

**DATES:** Comments should be received on or before December 13, 2021 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on *www.regulations.gov* (EIB 18–02) or by email to <*donna.schneider@exim.gov*>, or by mail to Donna Schneider, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571. The form can be viewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib18-04_itemized_statement_of_payments-us_costs_form%20Oct%202021.xlsx.*

**FOR FURTHER INFORMATION CONTACT:** To request additional information, please Donna Schneider. 202–565–3612.

**SUPPLEMENTARY INFORMATION:**

*Titles and Form Number:* EIB 18–04 Itemized Statement of Payments—Long-term Guarantees and Direct Loans—US Costs.

*OMB Number:* 3048–0056.

*Type of Review:* NEW.

*Need and Use:* The information collected will assist in determining compliance of disbursement requests for U.S. goods and services submitted to EXIM through an electronic disbursement portal under certain long-term guarantee and direct loan transactions.

*Affected Public:* This form affects EXIM borrowers involved in financing U.S. goods and services under certain long-term guarantee and direct loan transactions.

*Annual Number of Respondents:* 75.

*Estimated Time per Respondent:* 150 minutes.

*Annual Burden Hours:* 187.5 hours.

*Frequency of Reporting or Use:* As needed.

*Government Expenses:*

*Reviewing Time per Year:* 187.5 hours.

*Average Wages per Hour:* $42.50.

*Average Cost per Year:* $7,968.75 (time*wages).

*Benefits and Overhead:* 20%.

*Total Government Cost:* $9,562.50.

**Bassam Doughman,**

*IT Specialist.*

[FR Doc. 2021–22272 Filed 10–13–21; 8:45 am]

**BILLING CODE 6690–01–P**

## EXPORT-IMPORT BANK

**[Public Notice: 2021–2960]**

### Agency Information Collection Activities: Final Collection; Comment Request

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Submission for OMB review and comments request.

**SUMMARY:** The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. This form is to be completed by EXIM borrowers as required under EXIM Credit Guarantee Facility (CGF) transactions in conjunction with a borrower's request for disbursement for U.S. goods and services. It is used to summarize disbursement documents submitted with a borrower's request and to calculate the requested financing amount. It will enable EXIM lenders to identify the specific details of the amount of disbursement requested for approval to ensure that the financing request is complete and in compliance with EXIM's disbursement requirements.

**DATES:** Comments should be received on or before December 13, 2021 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 18–02) or by email to <*donna.schneider@exim.gov*>, or by mail to Donna Schneider, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571. The form can be viewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib18-02_itemized_statement_of_payments-us_costs_for_exim_cgf_-_Oct%202021.xlsx.*

**FOR FURTHER INFORMATION CONTACT:** To request additional information, please Donna Schneider. 202–565–3612.

**SUPPLEMENTARY INFORMATION:**

*Titles and Form Number:* EIB 18–02 Itemized Statement of Payments—US Costs for EXIM Credit Guarantee Facility.

*OMB Number:* 3048–0054.

*Type of Review:* NEW.

*Need and Use:* The information collected will assist in determining compliance of disbursement requests for U.S. goods and services submitted to EXIM lenders under CGF transactions.

*Affected Public:* This form affects EXIM borrowers involved in financing U.S. goods and services under CGF transactions.

*Annual Number of Respondents:* 12.

*Estimated Time per Respondent:* 150 minutes.

*Annual Burden Hours:* 30 hours.

*Frequency of Reporting or Use:* As needed.

*Government Expenses:* None.

This form is submitted by the borrower to the CGF lender for review. The lender reports information regarding the disbursement electronically to EXIM using OMB Number 3048–0046 CGF (EIB 12–02) Disbursement Approval Request Report.

**Bassam Doughman,**

*IT Specialist.*

[FR Doc. 2021–22270 Filed 10–13–21; 8:45 am]

**BILLING CODE 6690–01–P**

## EXPORT-IMPORT BANK

**[Public Notice: 2021–6030]**

### Agency Information Collection Activities: Final Collection; Comment Request

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Submission for OMB review and comments request.

**SUMMARY:** The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. This form is to be completed by EXIM borrowers as required under EXIM Credit Guarantee Facility (CGF) transactions in conjunction with a borrower's request for disbursement for local cost goods and services. It is used to summarize disbursement documents submitted with a borrower's request and to calculate the requested financing amount. It will enable EXIM lenders to identify the specific details of the amount of disbursement requested for approval to ensure that the financing request is complete and in compliance with EXIM's disbursement requirements.

**DATES:** Comments should be received on or before December 13, 2021 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 18–02) or by email to <*donna.schneider@exim.gov*>, or by mail to Donna Schneider, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571. The form can be viewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib18-03_itemized_statement_of_payments-local_costs_for_exim_cgf_-_Oct%202021.xlsx*.

**FOR FURTHER INFORMATION CONTACT:** To request additional information, please Donna Schneider. 202–565–3612.

**SUPPLEMENTARY INFORMATION:**

*Titles and Form Number:* EIB 18–03 Itemized Statement of Payments—Local Costs for EXIM Credit Guarantee Facility.

*OMB Number:* 3048–0055.

*Type of Review:* NEW.

*Need and Use:* The information collected will assist in determining compliance of disbursement requests for local cost goods and services submitted to EXIM lenders under CGF transactions.

*Affected Public:* This form affects EXIM borrowers involved in financing local cost goods and services under CGF transactions.

*Annual Number of Respondents:* 6.

*Estimated Time per Respondent:* 75 minutes.

*Annual Burden Hours:* 7.5 hours.

*Frequency of Reporting or Use:* As needed.

*Government Expenses:* None.

This form is submitted by the borrower to the CGF lender for review. The lender reports information regarding the disbursement electronically to EXIM using OMB Number 3048–0046 CGF (EIB 12–02) Disbursement Approval Request Report.

**Bassam Doughman,**

*IT Specialist.*

[FR Doc. 2021–22271 Filed 10–13–21; 8:45 am]

**BILLING CODE 6690–01–P**

## EXPORT-IMPORT BANK

**[Public Notice: 202–6032]**

### Agency Information Collection Activities: Final Collection; Comment Request

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Submission for OMB review and comments request.

**SUMMARY:** The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. This form is to be completed by EXIM borrowers as required under certain EXIM long-term guarantee and direct loan transactions in conjunction with a borrower's request for disbursement for local cost goods and services. It is used to summarize disbursement documents submitted with a borrower's request and to calculate the requested financing amount. It will enable EXIM to identify the specific details of the amount of disbursement requested for approval to ensure that the financing request is complete and in compliance with EXIM's disbursement requirements. This form will be uploaded into an electronic disbursement portal.

**DATES:** Comments should be received on or before December 13, 2021 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 18–02) or by email to <*donna.schneider@exim.gov*>, or by mail to Donna Schneider, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571. The form can be viewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib18-05_itemized_statement_of_payments-local_cost_form_-_Oct%202021.xlsx*.

**FOR FURTHER INFORMATION CONTACT:** To request additional information, please Donna Schneider, 202–565–3612.

**SUPPLEMENTARY INFORMATION:**

*Titles and Form Number:* EIB 18–05 Itemized Statement of Payments Long-term Guarantee and Direct Loan—Local Costs.

*OMB Number:* 3048–0057.

*Type of Review:* NEW.

*Need and Use:* The information collected will assist in determining compliance of disbursement requests for local cost goods and services submitted to EXIM through an electronic disbursement portal under certain long-

term guarantee and direct loan transactions.

*Affected Public:* This form affects EXIM borrowers involved in financing local cost goods and services under certain long-term guarantee and direct loan transactions.

*Annual Number of Respondents:* 25.

*Estimated Time per Respondent:* 30 minutes.

*Annual Burden Hours:* 12.5 hours.

*Frequency of Reporting or Use:* As needed.

*Government Expenses:*

*Reviewing Time per Year:* 12.5 hours.

*Average Wages per Hour:* $42.50.

*Average Cost per Year:* $531.25 (time*wages).

*Benefits and Overhead:* 20%.

*Total Government Cost:* $637.50.

**Bassam Doughman,**

*IT Specialist.*

[FR Doc. 2021–22273 Filed 10–13–21; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

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 whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

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 November 15, 2021.

*A. Federal Reserve Bank of Cleveland* (Bryan S. Huddleston, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *Double Bottomline Corp., Caldwell, Ohio;* to become a savings and loan holding company by acquiring Community Savings Bancorp, Inc., and indirectly acquiring its subsidiary federal savings association, Community Savings, both of Caldwell, Ohio.

Board of Governors of the Federal Reserve System, October 8, 2021.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2021–22454 Filed 10–13–21; 8:45 am]

**BILLING CODE P**

## FEDERAL TRADE COMMISSION

**[File No. 191 0153]**

### Board of Dental Examiners of Alabama; Analysis of Agreement Containing Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement; request for comment.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before November 15, 2021.

**ADDRESSES:** Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''Alabama Board of Dental Examiners; File No. 191 0153'' on your comment, and file your comment online at *www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Philip Kehl (202–326–2559), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Agreement Containing Consent Order to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 15, 2021. Write ''Alabama Board of Dental Examiners; File No. 191 0153'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *www.regulations.gov* website.

Due to protective actions in response to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Alabama Board of Dental Examiners; File No. 191 0153'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *www.regulations.gov,* you are solely

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

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

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing this matter. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 15, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

**Analysis of Agreement Containing Consent Order To Aid Public Comment**

**I. Introduction**

The Federal Trade Commission has accepted, subject to final approval, a consent agreement with the Board of Dental Examiners of Alabama (the ''Board''). The Board is an Alabama state agency comprised of six licensed dentists and one licensed dental hygienist. The Board is charged with administering dental licensing in Alabama and carrying out the provisions of the Alabama Dental Practice Act.

The consent agreement contains a proposed order addressing allegations in the proposed complaint that the Board has unreasonably excluded competition from providers of teledentistry-based teeth alignment products and services without adequate supervision from neutral state officials, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The proposed order has been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the consent agreement and the comments received and will decide whether it should withdraw from the consent agreement and take appropriate action or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint, the consent agreement, or the proposed order, or to modify their terms in any way. The consent agreement is for settlement purposes only and does not constitute an admission by the Board that the law has been violated as alleged in the complaint or that the facts alleged in the complaint, other than jurisdictional facts, are true.

**II. Challenged Conduct**

This matter involves allegations that the Board unreasonably impeded competition from new providers of clear aligner therapy in Alabama. The Board is a state regulatory agency controlled by practicing, Alabama-licensed dentists.

Braces and clear aligners (removable, fabricated molds) are treatment options for misalignment or incorrect relation between teeth (called malocclusion). Many patients are prescribed braces or clear aligners following a visit to a dentist's or orthodontist's office.

In recent years, several new firms have launched platforms that facilitate treatment for malocclusion using teledentistry. These firms typically offer clear aligner therapy at prices substantially below the prices associated with treatment using braces or clear aligners supplied by a dentist or orthodontist in a traditional office setting. To initiate treatment with a clear aligner platform, a prospective patient may visit a storefront location, where a non-dentist professional will perform a digital scan of the patient's teeth and gums to create a 3D image of the patient's mouth. The results of this intraoral scan are provided to a dentist working remotely, who determines whether the patient is a candidate for clear aligner therapy. For reasons of price and convenience, many consumers prefer clear aligner therapy supplied through a teledentistry model.

After the entry and expansion of clear aligner platforms in Alabama, in September 2017, the Board voted to amend Alabama Administrative Code § 270–X–3.10(o)(2). The Board's interpretation of that amendment, in conjunction with other existing Board regulations, operates to prohibit non-dentist personnel from taking intraoral scans without on-site supervision by a dentist. Following a Board vote, in September 2018, the Board sent SmileDirectClub, LLC (''SmileDirectClub''), a clear aligner platform, a letter directing SmileDirectClub to cease and desist from taking intraoral scans without on-site dentist supervision.

Because of the Board's conduct, consumers in Alabama have been deprived of full competition for the treatment of malocclusion. For example, because of the Board's conduct, SmileDirectClub has halted a planned expansion of storefronts in Alabama.

**III. Legal Analysis**

Section 5 of the FTC Act prohibits unfair methods of competition, including concerted action prohibited by Section 1 of the Sherman Act.[1] To establish a violation of Section 1, a plaintiff must show (1) concerted action that (2) unreasonably restrains competition.[2]

State regulatory boards comprised of active market participants can violate Section 1 by promulgating and

[1] 15 U.S.C. 45; see, *e.g., FTC* v. *Cement Inst.,* 333 U.S. 683, 693–94 (1948).

[2] 15 U.S.C. 1; see, *e.g., National Collegiate Athletic Ass'n* v. *Alston,* 141 S Ct. 2141, 2151 (2021); *Arizona* v. *Maricopa County Med. Soc.,* 457 U.S. 332, 342–43 (1982).

enforcing rules that harm competition in the industry in which board members participate.[3] The Board's rule amendment and cease-and-desist letter harmed competition by impeding consumer access to a low-cost and convenient option for the treatment of malocclusion.

The state action defense is not applicable here. Active market participants control the Board. Therefore, for the Board's conduct to constitute state action, neutral state officials must actively supervise the Board's conduct. The State's supervision mechanisms must provide ''realistic assurance that a private party's anticompetitive conduct promotes state policy, rather than merely the party's individual interests.'' [4]

Although the Board's rule amendment was reviewed by Alabama's Legislative Services Agency (''LSA''), that review did not satisfy the ''constant requirements'' of active supervision articulated by the Supreme Court.[5] The LSA did not review the substance of the rule amendment, specifically whether the rule comports with clearly articulated state policy to displace competition.[6] Additionally, the LSA lacked the authority to veto or modify the Board's decisions.[7] Furthermore, the Board's cease-and-desist letter to SmileDirectClub did not receive any review by the LSA or any other state officials.

## IV. Proposed Order

The proposed order seeks to remedy the Board's anticompetitive conduct by requiring the Board to cease and desist from requiring on-site supervision by dentists when non-dentists perform intraoral scans on prospective patients.

Section II of the proposed order addresses the core of the Board's anticompetitive conduct. Paragraph II.A. orders the Board to cease and desist from requiring non-dentists affiliated with clear aligner platforms to maintain on-site dentist supervision when performing intraoral scanning. Paragraph II.B. prohibits the Board from impeding clear aligner platforms, or dental professionals affiliated with clear aligner platforms, from providing clear aligner therapy through remote treatment.

Section III requires the Board to provide notice of the proposed order to Board members and employees, and to certain dentists and clear aligner platforms. Section IV requires the Board to notify the Commission of any changes to its rules related to intraoral scanning or clear aligner platforms. Section IX provides that the Order will terminate 10 years from the date it is issued.

By direction of the Commission.

**April J. Tabor,**

*Secretary.*

[FR Doc. 2021–22443 Filed 10–13–21; 8:45 am]

BILLING CODE 6750–01–P

[3] See *N.C. Bd. of Dental Exam'rs* v. *FTC,* 574 U.S. 494, 510–12 (2015).

[4] *Patrick* v. *Burget*, 486 U.S. 94, 101 (1988).

[5] *See N.C. Bd. of Dental Exam'rs,* 574 U.S. at 515 (''The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; and the mere potential for state supervision is not an adequate substitute for a decision by the State. Further, the state supervisor may not itself be an active market participant.'') (internal citations and quotations omitted).

[6] Instead, the LSA determined, without explanation, that the rule amendment ''does not affect competition at all.'' *See* Exhibit A to Brief in Support of Motion to Dismiss (Memo to File from Paula M. Greene, Feb. 12, 2018) at 13, 15, *Leeds* v. *Board of Dental Examiners of Alabama,* No. 2:18–cv–01679, (N.D. Ala. Nov. 21, 2018), ECF No. 33. Because the LSA made this determination, it did not review whether the rule was made pursuant to a clearly articulated state policy. *See* Ala. Code § 41–22–22.1.

[7] Alabama statutes provide a procedure by which certain Board action may be reviewed by the Alabama Legislature's Joint Committee on Administrative Regulation Review. *See* Ala. Code § 41–22–22.1. The Joint Committee did not review the actions at issue in this case.

## GENERAL SERVICES ADMINISTRATION

**[Notice MY–2021–02; Docket No. 2021–0021; Sequence No. 1]**

## Office of Shared Solutions and Performance Improvement (OSSPI); Chief Data Officers Council (CDO); Request for Information on Behalf of the Federal Chief Data Officers Council

**AGENCY:** Chief Data Officers (CDO) Council, General Services Administration (GSA).

**ACTION:** Notice.

**SUMMARY:** The Federal CDO Council was established by the Foundations for Evidence-Based Policymaking Act (*https://www.congress.gov/bill/115th-congress/house-bill/4174/text*), which also requires all federal agencies to appoint a CDO. The Council's vision is to improve government mission achievement and increase the benefits to the Nation through improvement in the management, use, protection, dissemination, and generation of data in government decision-making and operations. The CDO Council is publishing this Request for Information (RFI) for the public to provide input on key questions to support the council's mission and focus areas. Responses to this RFI will inform the Council's efforts and will be shared with the relevant groups in the Council.

**DATES:** We will consider comments received by November 15, 2021.

**ADDRESSES:** You should submit comments via the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments. All public comments received are subject to the Freedom of Information Act and will be posted in their entirety at *regulations.gov,* including any personal and/or business confidential information provided. Do not include any information you would not like to be made publicly available.

Written responses should not exceed six pages, inclusive of a one-page cover page as described below. Please respond concisely, in plain language, and specify which question(s) you are responding to in narrative format. You may also include links to online materials or interactive presentations but please ensure all links are publicly available. Each response should include:

- The name of the individual(s) and/or organization responding.
- A brief description of the responding individual(s) or organization's mission and/or areas of expertise.
- The section(s) (1, 2, 3, 4, 5 and/or 6) that your submission and materials are related to.
- A contact for questions or other follow-up on your response.

By responding to the RFI, each participant (individual, team, or legal entity) warrants that they are the sole author or owner of, or has the right to use, any copyrightable works that the submission comprises, that the works are wholly original (or is an improved version of an existing work that the participant has sufficient rights to use and improve), and that the submission does not infringe any copyright or any other rights of any third party of which participant is aware.

By responding to the RFI, each participant (individual, team, or legal entity) consents to the contents of their submission being made available to all Federal agencies and their employees on an internal-to-government website accessible only to agency staff persons.

Participants will not be required to transfer their intellectual property rights to the CDO Council, but participants must grant to the Federal government a nonexclusive license to apply, share, and use the materials that are included in the submission. To participate in the RFI, each participant must warrant that there are no legal obstacles to providing

the above-referenced nonexclusive licenses of participant rights to the Federal government. Interested parties who respond to this RFI may be contacted for a follow-on strategic agency assessment dialogue, discussion or event.

**FOR FURTHER INFORMATION CONTACT:** Issues regarding submission or questions can be sent to Ken Ambrose—phone number: 202–215–7330; or email: *CDOCStaff@gsa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

The Federal CDO Council was established by the Foundations for Evidence-Based Policymaking Act (Pub. L. 115–435) which also requires all federal agencies to appoint a CDO. The Council's vision is to improve government mission achievement and increase the benefits to the Nation through improvement in the management, use, protection, dissemination, and generation of data in government decision-making and operations. The CDO Council has over 80 member CDOs from across the Federal government, as well as representatives from the Office of Management and Budget, and other key councils and committees. The CDO Council has working groups that focus on critical topics as well as committees that help Federal agencies connect and collaborate. The CDO Council also works with other interagency councils on data related topics and activities. The CDO Council engages with the public and private users of Government data to improve data practices and access to data assets.

The CDO Council has five statutory purposes:

(1) Establish Governmentwide best practices for the use, protection, dissemination, and generation of data;

(2) promote and encourage data sharing agreements between agencies;

(3) identify ways in which agencies can improve upon the production of evidence for use in policymaking;

(4) consult with the public and engage with private users of Government data and other stakeholders on how to improve access to data assets of the Federal Government; and

(5) identify and evaluate new technology solutions for improving the collection and use of data.

Through this request for information (RFI), the CDOC seeks input, information, and recommendations from a broad array of public stakeholders on available methods, approaches, and tools that could assist in the CDOC's efforts. We anticipate that these stakeholders may include academia, state/tribal/local governments, civil society groups, standards organizations, industry, and others. The CDOC will share responses to the RFI with the appropriate working groups and other stakeholders so that they can inform the work of the council. The council also anticipates preparing a review of the RFI comments that will be shared publicly.

## Information and Key Questions

The CDO Council seeks input in the following areas:

*Section 1: General*

- Is the CDOC missing any critical aspects in our focus areas? Are there industry or academic trends that we need to be aware of?

*Section 2: Data Skills and Workforce Development*

The Federal CDO Council's Data Skills Working Group is chartered to help CDOs and their stakeholders improve the Federal government's data skills and data workforce development efforts, ultimately improving data acumen and closing data skills gaps.

- Early efforts on data skill development have focused on data science upskilling. When thinking about upskilling programs:
  - What are the roles and responsibilities and types of data acumen that make up a data driven organization?
  - What are the roles and responsibilities of an effective data team?
  - What upskilling programs exist for these roles?
  - How can upskilling programs support continuous learning and data driven decision making at all levels in an organization, including for organization leaders?
  - What are the key areas agencies should focus on to improve the data acumen of the Federal workforce, broadly?
  - How might we collaborate to incorporate public sector data and topics into data training curricula?
- How can the Federal government attract and retain people with data skills? How can the Federal government help applicants understand the wide array of skills and roles that are needed?
- How should federal agencies benchmark data management and analytics activities to support upskilling programs so that we can understand our progress, opportunities to improve, and identification of best practices? How can we support benchmarking and comparisons across agencies as well as with non-federal near peers?

*Section 3: Data Inventory*

The Federal CDO Council's Data Inventory Working Group is chartered to help CDOs improve the efficiency and effectiveness of their data inventory efforts. The group is working to better understand how agencies are using, and want to use, data inventories both internally and externally, thinking about how to harmonize across inventory standards (*e.g., data.gov* and *geoplatform.gov*), and more.

- How do you find Federal data? Are there better ways to find Federal data?
- How can data inventories best support how you identify Federal data that is valuable for your own use cases? How could existing platforms (*e.g., data.gov, geoplatform.gov* ) better support access to Federal data?
- Early Federal efforts on data inventories were focused on cataloguing publicly available data, and facilitating search and discovery. When thinking about inventory use cases:
  - What are the most valuable use cases for data inventories to support non-Federal entities, including state and local governments, academia, and the private sector?
  - What are the most valuable use cases for Federal agency operations?
  - What are the most valuable use cases for Federal agency data analysts?
  - How well do current data inventory standards meet those use cases?
- What is the best implementation of a data inventory you have seen? What are the characteristics that made it so successful?
- To date, inventories have relied on manual work to generate and maintain metadata. What best practices and tools are available to automate and reduce the manual workload associated with inventories?

*Section 4: Data Sharing*

The Federal CDO Council Data Sharing Working Group is chartered to develop a comprehensive view of data sharing purposes across the Federal government, understanding the challenges surrounding data sharing, and recommending solutions that make sharing easier while preserving privacy and confidentiality.

- What best practices could statistical agencies and non-statistical agencies use to better partner? Please share success stories and what led to that success.
- What are effective ways for Federal programs to share programmatic data in ways that protect the privacy of individuals and organizations? Specifically:
  - What are models of developing and using privacy protecting identifiers?

○ What policies are needed to ensure that privacy protecting identifiers are effective?

• What are the premier examples of public or private sector entities that aggregate, integrate, and share information? Think of entities that operate on the scale of Federal agencies with broad and diverse missions. In addition, we are interested in entities that have moved beyond one-to-one data sharing to using standardized and automated data sharing controls.

○ For the premier entity, can you outline the policies, frameworks, strategies, organizational constructs, operational capabilities, and value creation model?

• How can the Federal government engage with private sector data providers in a way that maximizes the ability to use the data or data derivatives across multiple agencies? How might we achieve this while ensuring a viable business model for data providers?

*Section 5: Value and Maturity*

As agencies formulate their data strategies, they are constantly looking for ways to deliver and communicate value. There is broad awareness of the value of Federal data. However, there is not a consensus on how to measure the value of that data.

• What are meaningful approaches to defining the value of government data?

○ How can we define the value of data to different stakeholders or purposes? (*e.g.* government agencies in decision-making, performance management, and program evaluation, as well as to researchers, states, localities, private industry and the general public)

• What are the best practices and practical experiences for conducting useful, high integrity maturity assessments in large, distributed, and decentralized federal agencies—balancing overhead and burden with utility, coverage, and alignment against ongoing efforts to implement data strategies?

○ Can you describe an example where mission or business leaders have championed maturity assessments as core to transformation initiatives they championed, why they did so, and how they did it?

• What approaches or models exist to calculate the return on investment in data products, data governance, and data management?

• How can we raise awareness of the value of data governance and data management in support of achieving agency value?

○ What steps do we need to take in order to integrate a data governance framework into the way of doing government business?

○ How should CDOs communicate progress on and value of data governance efforts?

*Section 6: Ethics and Equity*

The Federal Data Strategy, delivered in December 2019, recognized the importance of ethics in its founding principles. The Federal Data Strategy 2020 Action Plan required the development of a Data Ethics Framework that is intended to help agency employees, managers, and leaders make ethical decisions as they acquire, manage, and use data. The Framework and its Tenets are a ''living'' resource and are to be updated by the CDO Council and Interagency Council on Statistical Policy (ICSP) every 24 months to ensure the Framework remains current.

• How might the Federal Data Ethics Framework need to evolve to address racial equity and support for underserved communities? Does the Federal Data Ethics Framework sufficiently address concerns about the vulnerability of certain populations?

• Are there best practices for agencies to consider at the intersection of data ethics and diversity, equity, inclusion, and accessibility?

• How can we leverage Federal Data ethics to improve trust and transparency?

• What steps can the CDO Council and the ICSP take to ensure the Federal Data Ethics Framework serves as the foundation of partnerships between Federal agencies, academic and research partners, state, local, and tribal governments, community and advocacy groups, and other stakeholders?

• How might the Federal government encourage the adoption of the Federal Data Ethics Framework across the contractor, financial assistance communities, and other stakeholders?

*Section 7: Technology*

The Federal CDO Council is interested in better understanding the marketplace trends for both operational and analytic data management use cases.

• What frameworks should agencies use to evaluate their existing data infrastructure and to modernize technology with capabilities that break down organizational data silos and ensure the best available data is available?

○ What are the best examples of where you have seen this happen in the public and private sectors?

• Are advances in data management enabling new models for information sharing?

○ How are technologies evolving with new data management models?

○ What technology components are positioned to serve as the source for operationally authoritative data?

• Technology approaches go through a cycle of emphasizing integration of open source or commercial best of breed for targeted capabilities, or emphasis on integrated solutions or platforms with accompanying ecosystems.

○ Where are we in the cycle and why?

**Ken Ambrose,**

*Senior Advisor CDO Council, Office of Shared Solutions and Performance Improvement, General Services Administration.*

[FR Doc. 2021–22267 Filed 10–13–21; 8:45 am]

BILLING CODE 6820–14–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifiers: CMS–222–17, CMS–10142 and CMS–10552]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by December 13, 2021.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number____: Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:**

## Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–222–17 Independent Rural Health Clinic Cost Report

CMS–10142 Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP)

CMS–10552 Implementation of Medicare and Medicaid Programs;—Promoting Interoperability Programs (Stage 3) (CMS–10552)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

## Information Collection

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Independent Rural Health Clinic Cost Report; *Use:* Under the authority of sections 1815(a) and 1833(e) of the Social Security Act (42 U.S.C. 1395g), CMS requires that providers of services participating in the Medicare program submit information to determine costs for health care services rendered to Medicare beneficiaries. CMS requires that providers follow reasonable cost principles under 1861(v)(1)(A) of the Act when completing the Medicare cost report. Regulations at 42 CFR 413.20 and 413.24 require that providers submit acceptable cost reports on an annual basis and maintain sufficient financial records and statistical data, capable of verification by qualified auditors.

CMS requires Form CMS–222–17 to determine an RHC's reasonable costs incurred in furnishing medical services to Medicare beneficiaries and reimbursement due to or from an RHC. Each RHC submits the cost report to its contractor for a reimbursement determination. Section 1874A of the Act describes the functions of the contractor.

CMS regulations at 42 CFR 413.24(f)(4)(ii) requires that each RHC submit an annual cost report to their contractor in American Standard Code for Information Interchange (ASCII) electronic cost report (ECR) format. RHCs submit the ECR file to contractors using a compact disk (CD), flash drive, or the CMS approved Medicare Cost Report E-filing (MCREF) portal, [URL: *https://mcref.cms.gov*]. *Form Number:* CMS–222–17 (OMB control number: 0938–0107); *Frequency:* Yearly; *Affected Public:* Private Sector, State, Local, or Tribal Governments, Federal Government, Business or other for-profits, Not-for-profits institutions; *Number of Respondents:* 1,724; *Total Annual Responses:* 1,724; *Total Annual Hours:* 94,820. (For policy questions regarding this collection contact LuAnn Piccione at (410) 786–5423.

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* This collection dates back to 2005. Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), and implementing regulations at 42 CFR, Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval by the Centers for Medicare & Medicaid Services (CMS). MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The competitive bidding process defined by the ''The Medicare Prescription Drug, Improvement, and Modernization Act'' (MMA) applies to both the MA and Part D programs. It is an annual process that encompasses the release of the MA rate book in April, the bid's that plans submit to CMS in June, and the release of the Part D and RPPO benchmarks, which typically occurs in August. *Form Number:* CMS–10142 (OMB control number: 0938–0944); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 555; *Total Annual Responses:* 4,995; *Total Annual Hours:* 149,850. (For policy questions regarding this collection contact Rachel Shevland at 410–786–3026.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Implementation of Medicare and Medicaid Programs;—Promoting Interoperability Programs (Stage 3) (CMS–10552); *Use:* As discussed in the Final Rule published on October 16, 2016 (80 FR 62762), the Centers for Medicare & Medicaid Services (CMS) is requesting approval to collect information from eligible hospitals and critical access hospitals (CAHs). We are making further changes to this program as proposed in the FY 2022 Inpatient Prospective Payment System (IPPS)/Long-term Care Hospital Prospective Payment System (LTCH PPS) Proposed Rule (86 FR 25628), and as finalized in the FY 2022 Inpatient Prospective Payment System (IPPS)/Long-term Care Hospital Prospective Payment System (LTCH PPS) Final Rule (86 FR 45460).

The American Recovery and Reinvestment Act of 2009 (Recovery Act) (*Pub. L. 111–5*) was enacted on February 17, 2009. Title IV of Division B of the Recovery Act amended Titles XVIII and XIX of the Social Security Act (the Act) by establishing incentive payments to eligible professionals (EPs),

eligible hospitals and critical access hospitals (CAHs), and Medicare Advantage (MA) organizations participating in the Medicare and Medicaid programs that adopt and successfully demonstrate meaningful use of certified EHR technology (CEHRT). These Recovery Act provisions, together with Title XIII of Division A of the Recovery Act, may be cited as the ''Health Information Technology for Economic and Clinical Health Act'' or the ''HITECH Act.''

The HITECH Act created incentive programs for EPs and eligible hospitals, including CAHs, in the Medicare Fee-for-Service (FFS), MA, and Medicaid programs that successfully demonstrate meaningful use of certified EHR technology. In their first payment year, Medicaid EPs and eligible hospitals could adopt, implement, or upgrade to certified EHR technology. It also allowed for negative payment adjustments in the Medicare FFS and MA programs starting in 2015 for EPs, eligible hospitals, and CAHs participating in Medicare that are not meaningful users of CEHRT. The Medicaid Promoting Interoperability Program did not authorize negative payment adjustments, but its participants were eligible for positive incentive payments.

In CY 2017, we began collecting data from eligible hospitals and CAHs to determine the application of the Medicare payment adjustments. At this time, Medicare eligible professionals no longer reported to the EHR Incentive Program, as they began reporting under the Merit-based Incentive Payment System (MIPS). This information collected was also used to make incentive payments to eligible hospitals and critical access hospitals in Puerto Rico.

In the FY 2019 IPPS/LTCH PPS Final Rule (83 FR 41634), we focused on reducing burden on eligible hospitals and CAHs. We finalized a new scoring methodology for eligible hospitals and CAHs, removing the requirement to report on and meet the threshold for all objectives and measures. This approach required an eligible hospital or CAH to meet the requirements on six measures, with scoring based on performance. This approach reduced burden by decreasing the amount of time needed to report on measures. Additionally, we finalized two new optional opioid measures and one new care coordination measure to help address the opioid epidemic and improve interoperability.

In the FY 2020 IPPS/LTCH Final Rule (84 FR 42591), we established the EHR Reporting Period to be a minimum of any continuous 90-day period in CY 2021 for new and returning participants (eligible hospitals and CAHs) in the Medicare Promoting Interoperability Program attesting to CMS, as well as finalizing the removal of the Electronic Prescribing Objective's Verify Opioid Treatment Agreement measure beginning with the EHR reporting period in CY 2020.

In the FY 2021 IPPS/LTCH PPS Final Rule (85 FR 58966), we are finalizing as proposed changes that we believe will continue to be a low reporting burden on eligible hospitals and CAHs in the Medicare Promoting Interoperability Program while incentivizing the advanced use of CEHRT to support health information exchange, interoperability, advanced quality measurement, and maximizing clinical effectiveness and efficiencies. These finalized changes include continuing an EHR reporting period of a minimum of any continuous 90-day period in CY 2022, and maintaining the Query of PDMP measure as optional and worth 5 bonus points in CY 2021.

In the FY 2022 IPPS/LTCH PPS Proposed Rule (86 FR 25628), we proposed changes that we believe will continue to be a low reporting burden on eligible hospitals and CAHs in the Medicare Promoting Interoperability Program while incentivizing the advanced use of CEHRT to support health information exchange, interoperability, advance quality measurement, and maximize clinical effectiveness and efficiencies. The proposals include continuing an EHR reporting period of a minimum of any continuous 90-day period in CY 2023, maintaining the Query of PDMP measure as optional but worth 10 bonus points in CY 2022, the addition of a new Health Information Exchange Bi-Directional Exchange measure beginning in CY 2022 as an optional alternative to the two existing measures, a requirement of reporting 4 specific Public Health and Clinical Data Exchange Objective measures, the inclusion of a new SAFER Guides measure attestation response, and to adopt two new eCQMs to the Medicare Promoting Interoperability Program's eCQM measure set beginning with the reporting period in CY 2023 (in addition to removing three eCQMs from the measure set beginning with the reporting period in CY 2024, in alignment with the finalized changes to the Hospital IQR Program. In the FY 2022 IPPS/LTCH PPS Final Rule (86 FR 45460 through 45498), we finalized these proposals. We did not finalize a proposal to update the Provide Patients Electronic Access to their Health Information measure to include a data retention requirement; however, this proposal would not have affected our information collection burden estimate.

We note the previously approved PRA package under OMB control number 0938–1278 reflecting updates to information collection burden estimates based on policies finalized in the FY 2021 IPPS/LTCH PPS Final Rule include information collection burden estimates for 2021, which is the last year for including Medicaid eligible providers, eligible hospitals, and CAHs in the burden estimate as the Medicaid Promoting Interoperability Program concludes December 31, 2021. Therefore, this PRA request for information collection burden in 2022 does not include any burden under the Medicaid Promoting Interoperability Program. *Form Number:* CMS–10552 (OMB control number: 0938–1278); *Frequency:* Annually; *Affected Public:* State, Local or Private Government; Business and for-profit and Not-for-profit; *Number of Respondents:* 3,300; *Total Annual Responses:* 3,300; *Total Annual Hours:* 21,450. For policy questions regarding this collection, contact Jessica Warren at 410–786–7519.)

Dated: October 8, 2021.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2021–22448 Filed 10–13–21; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–372(S), CMS–10305, CMS–10148, CMS–10784, CMS–10715, CMS–10768, CMS–R–43 and CMS–10417]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of

information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by *November 15, 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*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Annual Report on Home and Community Based Services Waivers and Supporting Regulations; *Use:* We use this report to compare actual data to the approved waiver estimates. In conjunction with the waiver compliance review reports, the information provided will be compared to that in the Medicaid Statistical Information System (MSIS) (CMS–R–284; OMB control number: 0938–0345) report and FFP claimed on a state's Quarterly Expenditure Report (CMS–64; OMB control number: 0938–1265), to determine whether to continue the state's home and community-based services waiver. States' estimates of cost and utilization for renewal purposes are based upon the data compiled in the CMS–372(S) reports. *Form Number:* CMS–372(S) (OMB control number: 0938–0272); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 48; *Total Annual Responses:* 253; *Total Annual Hours:* 11,132. (For policy questions regarding this collection contact Ralph Lollar at 410–786–0777.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Part C and Part D Data Validation (42 CFR 422.516(g) and 423.514(j)); *Use:* Sections 1857(e) and 1860D–12 of the Social Security Act (''the Act'') authorize CMS to establish information collection requirements with respect to MAOs and Part D sponsors. Section 1857(e)(1) of the Act requires MAOs to provide the Secretary of the Department of Health and Human Services (DHHS) with such information as the Secretary may find necessary and appropriate. Section 1857(e)(1) of the Act applies to Prescription Drug Plans (PDPs) as indicated in section1860D–12. Pursuant to statutory authority, CMS codified these information collection requirements in regulation at §§ 422.516(g) Validation of Part C Reporting Requirements, and 423.514(j) Validation of Part D Reporting Requirements respectively.

Data collected via Medicare Part C and Part D reporting requirements are an integral resource for oversight, monitoring, compliance and auditing activities necessary to ensure quality provision of Medicare benefits to beneficiaries. CMS uses the findings collected through the data validation process to substantiate the data reported via Medicare Part C and Part D reporting requirements. Data validation provides CMS with assurance that plan-reported data are credible and consistently collected and reported by Part C and D SOs. CMS uses validated data to respond to inquiries from Congress, oversight agencies, and the public about Part C and D SOs. The validated data also allows CMS to effectively monitor and compare the performance of SOs over time. Validated plan-reported data may be used for Star Ratings, Display measures and other performance measures. Additionally, SOs can take advantage of the DV process to effectively assess their own performance and make improvements to their internal operations and reporting processes. *Form Number:* CMS–10305 (OMB control number: 0938–1115); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 761; *Total Annual Responses:* 761; *Total Annual Hours:* 20,945. (For policy questions regarding this collection contact Chanelle Jones at 410–786–8008.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* HIPAA Administrative Simplification (Non-Privacy/Security) Complaint Form; *Use:* The Secretary of Health and Human Services (HHS), hereafter known as ''The Secretary,'' codified 45 CFR parts 160 and 164 Administrative Simplification provisions that apply to the enforcement of the Health Insurance Portability and Accountability Act of 1996 Public Law 104–191 (HIPAA). The provisions address rules relating to the investigation of non-compliance of the HIPAA Administrative Simplification code sets, unique identifiers, operating rules, and transactions. 45 CFR 160.306, Complaints to the Secretary, provides for investigations of covered entities by the Secretary. Further, it outlines the procedures and requirements for filing a complaint against a covered entity.

Anyone can file a complaint if he or she suspects a potential violation. Persons believing that a covered entity is not utilizing the adopted Administrative Simplification provisions of HIPAA are voluntarily requested to file a complaint with CMS via the Administrative Simplification Enforcement and Testing Tool (ASETT) online system, by mail, or by sending an email to the HIPAA mailbox at *hipaacomplaint@cms.hhs.gov.* Information provided on the standard form will be used during the investigation process to validate non-

compliance of HIPAA Administrative Simplification provisions.

This standard form collects identifying and contact information of the complainant, as well as the identifying and contact information of the filed against entity (FAE). This information enables CMS to respond to the complainant and gather more information if necessary, and to contact the FAE to discuss the complaint and CMS' findings. *Form Number:* CMS–10148 (OMB control number: 0938–0948); *Frequency:* Occasionally; *Affected Public:* Private sector, Business or Not-for-profit institutions, State, Local, or Tribal Governments, Federal Government, Not-for-profits institutions; *Number of Respondents:* 21; *Total Annual Responses:* 21; *Total Annual Hours:* 12. (For policy questions regarding this collection contact Cecily Austin at 410–786–0895.)

4. *Type of Information Collection Request:* New collection (Request for a new OMB control); *Title of Information Collection:* The Home Health Care CAHPS® Survey (HHCAHPS) Mode Experiment; *Use:* The reporting of quality data by HHAs is mandated by Section 1895(b)(3)(B)(v)(II) of the Social Security Act (''the Act''). This statute requires that ''each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this clause.'' HHCAHPS data are mandated in the Medicare regulations at 42 CFR 484.250(a), which requires HHAs to submit HHCAHPS data to meet the quality reporting requirements of section 1895(b)(3)(B)(v) of the Act. This collection of information is necessary to be able to test updates to the HHCAHPS survey and administration protocols.

CMS proposes to conduct a mode experiment with the main goal of testing the effects of a web-based mode on response rates and scores as an addition to the three currently approved modes (OMB Control Number: 0938–1370). The addition of a web mode will give HHAs an alternative or an addition to the use of mail and telephone modes. CMS is also interested in testing a revised, shorter version of the HHCAHPS survey, based on feedback from patients and stakeholders.

The data collected from the HHCAHPS Survey mode experiment will be used for the following purposes:

- Test the shortened survey instrument, including several new items;
- Compare survey responses across the four proposed modes to determine if adjustments are needed to ensure that data collection mode does not influence results; and
- Determine if and by how much patient characteristics affect the patients' rating of the care they receive and adjust results based on those factors.

The mode experiment is designed to examine the effects of the shortened survey on response rates and scores and to provide precise adjustment estimates for survey items and composites on the shortened survey instrument. Information from this mode experiment will help CMS determine whether an additional mode of administration (*i.e.,* Web data collection) should be included and a shortened survey instrument should be used in the current national implementation of the HHCAHPS Survey. *Form Number:* CMS–10784 (OMB control number: 0938-New); *Frequency:* Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 6,280; *Total Annual Responses:* 6,280; *Total Annual Hours:* 1,049. (For policy questions regarding this collection contact Lori E. Teichman at 410–786–6684.)

5. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Transparency in Coverage; *Use:* The final rules titled ''Transparency in Coverage,'' published November 12, 2020 (85 FR 72158), establish requirements for group health plans and health insurance issuers offering non-grandfathered coverage in the individual and group markets to disclose to a participant, beneficiary, or enrollee (or an authorized representative on behalf of such individual) the consumer-specific estimated cost-sharing liability for covered items or services from a particular provider, thereby allowing a participant, beneficiary, or enrollee to obtain an accurate estimate and understanding of their potential out-of-pocket expenses and to effectively shop for covered items and services. Plans and issuers are required to make such information available for covered items and services through an internet-based self-service tool, and, if requested, in paper form. The internet-based self-service tool must allow participants, beneficiaries, or enrollees to search for cost-sharing information for a covered item or service by inputting the name of a specific in-network provider in conjunction with a billing code or descriptive term, as well as other relevant factors such as location of service, facility name, or dosage. In addition, the final rules require that the tool allow the user to refine and reorder search results based on geographic proximity of in-network providers. For covered items and services provided by out-of-network providers, the tool must provide the out-of-network allowed amount, percentage of billed charges, or other rates that provide a reasonably accurate estimate of the amount a plan or issuer will pay by allowing consumers to input a billing code, descriptive code, or other relevant factor, such as location.

The final rules also require plans and issuers to publicly disclose applicable rates with in-network providers, including negotiated rates; historical data outlining the different billed charges and allowed amounts a plan or issuer has paid for covered items or services, including prescription drugs, furnished by out-of-network providers; and negotiated rates and historical net prices for covered prescription drugs furnished by in-network providers through three machine-readable files (an In-network Rate File, Allowed Amount File, and Prescription Drug File). The machine-readable files must be posted publicly on an internet website and updated on a monthly basis. *Form Number:* CMS–10715 (OMB control number: 0938–1372); *Frequency:* Frequently; *Affected Public:* Public and Private sectors; *Number of Respondents:* 908; *Total Annual Responses:* 74,460; *Total Annual Hours:* 28,618,546. (For policy questions regarding this collection contact Russell Tipps at 301–492–4371.)

6. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* The ESRD Network Peer Mentoring Program; *Use:* The End Stage Renal Disease (ESRD) Network Peer Mentoring Program is a voluntary program designed to provide patient peer support to people with kidney disease. In part, the peer support is beneficial because patients can give each other something most practitioners do not have: Lived experience with kidney disease. The support and perspective of someone who has ''been there'' can help people better cope with their circumstances.

The ESRD Network Peer Mentoring Program is a partnership between dialysis facilities, ESRD Networks, and patient peer mentors and mentees that wish to engage in the program. The peer mentoring program is organized and published with educational opportunities for peer mentors and mentees, provides resources, and includes a complementary toolkit for ESRD Networks and dialysis facilities to

promote and operationalize the program.

Program applicants are people with ESRD who: (1) Are adults over the age of 18; have been receiving in-center or home dialysis or have been transplanted for at least six months; actively engage in the care plan; consistently demonstrate leadership qualities at facility Quality Assurance & Performance Improvement (QAPI) meetings, Lobby Days, and other facility activities; and wish to be a peer mentor; or (2) are over 18 years of age; are newly diagnosed patients but have been on in-center dialysis for at least six months; are looking for peer support to help them transition to their new reality; and are known as a peer mentee.

To participate in the ESRD Network Peer Mentoring Program, peer mentors and mentees will complete an online application form stored in Confluence. The application serves to validate the peer mentor or peer mentee interest in the ESRD Network Peer Mentoring Program. Information collection is important to the process of pairing peer mentors and mentees with similarly lived experience and interests with their kidney disease. In addition, the application collects information about the peers' interest in kidney disease, treatment modality, age range, preferred gender recognition, and attitudes toward their kidney disease diagnosis. It also supports aligning hobbies, and genders to support best matched peers with each other. *Form Number:* CMS–10768 (OMB control number: 0938–NEW); *Frequency:* Once; *Affected Public:* Individuals and Households; *Number of Respondents:* 75; *Total Annual Responses:* 75; *Total Annual Hours:* 19. (For policy questions regarding this collection, contact Lisa Rees at 816–426–6353.)

7. *Type of Information Collection Request:* Revision of a previously approved collection; *Title of Information Collection:* Conditions of Coverage for Portable X-ray Suppliers and Supporting Regulations; *Use:* The requirements contained in this information collection request are classified as conditions of participation or conditions for coverage. Portable X-rays are basic radiology studies (predominately chest and extremity X-rays) performed on patients in skilled nursing facilities, residents of long-term care facilities and homebound patients. The CoPs are based on criteria described in the law, and are designed to ensure that each portable X-ray supplier has properly trained staff and provides the appropriate type and level of care for patients. The information collection requirements described below are necessary to certify portable X-ray suppliers wishing to participate in the Medicare program. There are currently 506 portable X-ray suppliers participating in the Medicare program.

On September 30, 2019 (84 FR 51732), CMS updated the personnel requirements for portable X-ray technicians at 42 CFR 486.104(a), to focus on the qualifications of the individual performing services removing school accreditation requirements and simplifying the structure of the requirements. Additionally, CMS also revised the requirements for referral of service at 42 CFR 486.106(a) for portable X-ray requirements for orders. This change removed the requirement that physician or non-physician practitioner's orders for portable X-ray services must be written and signed and replacing the specific requirements related to the content of each portable X-ray order with a cross-reference to the requirements at 42 CFR 410.32, which also apply to portable X-ray services. *Form Number:* CMS–R–43 (OMB Control number: 0938–0338); *Frequency:* Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 506; *Total Annual Responses:* 1,012; *Total Annual Hours:* 324. (For policy questions regarding this collection contact James Cowher at 410–786–1948.)

8. *Title of Information Collection:* Medicare Fee-for-Service Prepayment Review of Medical Records; *Type of Information Collection Request:* Revision of a currently approved collection; *Use:* The Medical Review program is designed to prevent improper payments in the Medicare FFS program. Whenever possible, Medicare Administrative Contractors (MACs) are encouraged to automate this process; however, it may require the evaluation of medical records and related documents to determine whether Medicare claims are billed in compliance with coverage, coding, payment, and billing policies. Addressing improper payments in the Medicare fee-for-service (FFS) program and promoting compliance with Medicare coverage and coding rules is a top priority for the CMS. Preventing Medicare improper payments requires the active involvement of every component of CMS and effective coordination with its partners including various Medicare contractors and providers. The information required under this collection is requested by Medicare contractors to determine proper payment, or if there is a suspicion of fraud. Medicare contractors request the information from providers/suppliers submitting claims for payment when data analysis indicates aberrant billing patterns or other information which may present a vulnerability to the Medicare program. *Form Number:* CMS–10417 (OMB control number: 0938–0969); *Frequency:* Occasionally; *Affected Public:* Private Sector, State, Business, and Not-for Profits; *Number of Respondents:* 485,632; *Number of Responses:* 485,632; *Total Annual Hours:* 242,816. (For questions regarding this collection, contact Christine Grose at (410–786–1362).

Dated: October 8, 2021.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2021–22444 Filed 10–13–21; 8:45 am]

**BILLING CODE 4120–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2017–D–6841]**

### Select Updates for Unique Device Identification: Policy Regarding Global Unique Device Identification Database Requirements for Certain Devices; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of the draft guidance entitled ''Select Updates for Unique Device Identification: Policy Regarding Global Unique Device Identification Database Requirements for Certain Devices; Draft Guidance for Industry and Food and Drug Administration Staff.'' This draft guidance explains that there are certain class I devices for which FDA does not intend to enforce Global Unique Device Identification Database (GUDID) submission requirements and describes how a labeler of a class I device can determine if its device is one of these devices in the revised section III of this draft guidance. When this draft guidance is finalized, the updates in section III of this draft guidance would supersede the recommendations in section III of the guidance ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices and Certain Devices Requiring Direct Marking''

(''2020 UDI Compliance Policy Guidance,'' available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/unique-device-identification-policy-regarding-compliance-dates-class-i-and-unclassified-devices-and*). This draft guidance is not final nor is it in effect at this time.

**DATES:** Submit either electronic or written comments on the draft guidance by December 13, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2017–D–6841 for ''Select Updates for Unique Device Identification: Policy Regarding Global Unique Device Identification Database Requirements for Certain Devices; Draft Guidance for Industry and Food and Drug Administration Staff.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Select Updates for Unique Device Identification: Policy Regarding Global Unique Device Identification Database Requirements for Certain Devices; Draft Guidance for Industry and Food and Drug Administration Staff'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002; or the Center for Biologics Evaluation and Research, Office of Communication, Outreach and Development, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your request.

**FOR FURTHER INFORMATION CONTACT:** Steven Luxenberg, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3216, Silver Spring, MD 20993–0002, 301–796–5995; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance entitled ''Select Updates for Unique Device Identification: Policy Regarding Global Unique Device Identification Database Requirements for Certain Devices; Draft Guidance for Industry and Food and Drug Administration Staff.'' On September 24, 2013 (78 FR 58786), FDA published a final rule establishing a unique device identification system designed to adequately identify devices through distribution and use (the UDI Rule). Phased implementation of the regulatory requirements set forth in that final rule is based on a series of established compliance dates based primarily on device classification.

The UDI Rule requires a device to bear a UDI on its label and packages, unless an exception or alternative applies (see 21 CFR 801.20), and special labeling requirements apply to stand-alone software regulated as a device (21 CFR 801.50). The UDI Rule also requires that data pertaining to the key characteristics of each device required to bear a UDI be submitted to FDA's GUDID (§ 830.300 (21 CFR 830.300)). In addition, the UDI Rule added 21 CFR 801.18, which requires certain dates on device labels to be in a standard format.

For devices that: (1) Must bear UDIs on their labels and (2) are intended to be used more than once and reprocessed between uses, 21 CFR 801.45 requires the devices to be directly marked with a UDI. Compliance dates for these labeling, GUDID data submission, standard date format, and direct marking requirements can be found in the preamble to the UDI Rule (78 FR 58786 at 58815 to 58816). For more information about UDI compliance dates, please see the UDI web page, available at: *https://www.fda.gov/medical-devices/unique-device-identification-system-udi-system/compliance-dates-udi-requirements.*

For labelers of class I devices, FDA has developed this draft guidance to revise section III. ''Policy On Standard Date Formatting, UDI Labeling, and GUDID Submission Requirements for Class I and Unclassified Devices'' of the guidance entitled ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices and Certain Devices Requiring Direct Marking'' (''2020 UDI Compliance Policy Guidance'', available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/unique-device-identification-policy-regarding-compliance-dates-class-i-and-unclassified-devices-and*), which was issued on July 1, 2020. When this draft guidance is finalized, the updates in section III of this draft guidance would supersede the recommendations in section III of the 2020 UDI Compliance Policy Guidance. FDA considered comments received on the guidance that appeared in the **Federal Register** on July 1, 2020 (85 FR 39477) as the Agency revised the guidance.

This draft guidance explains that there are certain class I devices for which FDA does not intend to enforce GUDID submission requirements under § 830.300 and describes how a labeler of a class I device can determine if its device is considered a consumer health product. FDA has determined that the entry of UDI data into GUDID for these devices is burdensome to stakeholders. After undertaking a public health impact analysis, the Center for Devices and Radiological Health has a better understanding of the devices and device characteristics for which GUDID information is particularly useful in evaluating and improving device safety throughout a product life cycle, as well as the ones for which GUDID information may be less important in this regard. The policy proposed in this draft guidance is based on this analysis. We are proposing this change in policy through guidance to allow FDA and stakeholders an opportunity to fully assess its impact on public health. FDA will take the assessment into account in determining whether regulations on this subject should be amended in the future.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Select Updates for Unique Device Identification: Policy Regarding Global Unique Device Identification Database Requirements for Certain Devices; Draft Guidance for Industry and Food and Drug Administration Staff''. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations have been approved by OMB as listed in the following table:

| 21 CFR part | Topic | OMB control No. |
|---|---|---|
| 801 subpart B and 830 | Unique Device Identification | 0910–0720 |
| 800, 801, and 809 | Medical Device Labeling Regulations | 0910–0485 |

## III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics.* Persons unable to download an electronic copy of ''Select Updates for Unique Device Identification: Policy Regarding Global Unique Device Identification Database Requirements for Certain Devices; Draft Guidance for Industry and Food and Drug Administration Staff'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17029 and complete title to identify the guidance you are requesting.

Dated: October 7, 2021.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2021–22308 Filed 10–13–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–D–0055]**

### Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, Department of Health and Human Services (HHS).

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of a final guidance for industry entitled ''Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in

Commercially Processed, Packaged, and Prepared Foods.'' The guidance describes our views on voluntary short-term (2.5-year) goals for sodium reduction in a variety of identified categories of foods that are commercially processed, packaged, or prepared. These goals are intended to address the excessive intake of sodium in the current population and promote improvements in public health.

**DATES:** The announcement of the guidance is published in the **Federal Register** on October 14, 2021.

**ADDRESSES:** You may submit either electronic or written comments on FDA guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2014–D–0055 for ''Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:** Kasey Heintz, Center for Food Safety and Applied Nutrition, Office of Food Additive Safety, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1376; or Deirdre Jurand, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

**SUPPLEMENTARY INFORMATION:**

## I. Background

We are announcing the availability of a guidance for industry entitled ''Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods.'' We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

In the **Federal Register** of June 2, 2016 (81 FR 35363), we made available a draft guidance for industry entitled ''Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods.'' The draft guidance described our tentative views on voluntary short-term and long-term goals for sodium reduction in a variety of identified categories of foods that are commercially processed, packaged, or prepared. Section IV of the **Federal Register** notice, ''Issues for Consideration,'' listed eight specific questions (or ''issues'') (81 FR 35363 at 35366). The comment period for issues related primarily to short-term goals (Issues 1 through 4) was scheduled to close on August 31, 2016, and the comment period for issues related primarily to long-term goals (Issues 5 through 8) was scheduled to close on October 31, 2016. In the **Federal Register** of August 30, 2017 (81 FR 59640), we published a notice extending the comment period for Issues 1 through 4 until October 17, 2016, and for Issues 5 through 8 until December 2, 2016.

We received approximately 200 comments on the draft guidance. The comments generally recognized and

supported the benefit of sodium reduction efforts for public health. Many comments discussed the categories proposed in the draft guidance, including requests for greater clarity on our approach to establishing categories and suggestions for how certain categories should be changed. The comments also discussed sodium reduction efforts generally, including examples of successful sodium reduction across product categories or portfolios, examples of sodium reduction technologies, and examples of successful sodium reduction initiatives in other countries and jurisdictions. Some comments emphasized the barriers to sodium reduction, such as the time and cost associated with product reformulation, the standards of identity limitations for certain foods, and consumer preferences for certain kinds of ingredients. Several comments also requested more time to achieve the targets. Other general comments discussed the role of sodium in foods, recommended that we establish a monitoring plan, and recommended that we establish a comprehensive, national consumer education campaign for sodium reduction.

After careful review of the comments, we have modified the guidance to clarify the voluntary sodium targets, timeframe, product categories, and descriptions. The guidance is intended to support an average sodium intake reduction to 3,000 milligrams/day. In addition, we have extended the milestone date for the short-term goals from 2 years to 2.5 years from the publication of the final guidance. The 2.5-year goals are intended to balance the need for broad and gradual reductions in sodium and what is publicly known about technical and market constraints on sodium reduction and reformulation. We are not finalizing the long-term (10-year) sodium reduction targets discussed in the draft guidance at this time. We revised the layout as well as category names and descriptions of the sodium guidance target table to improve understanding and provide additional clarity as to how foods should be categorized, and made changes to categories where they were supported by scientific data (*e.g.,* we merged the ''Ready-to-Eat Cereal, Flakes'' category with the ''Ready-to-Eat Cereal, Puffed'' category and moved Provolone cheese from the ''Monterey Jack and Other Semi-Soft Cheese'' category to the ''Pasta Filata Cheese (soft)'' category). We also made technical corrections and editorial changes throughout the guidance to improve clarity, and included more recent data in our references.

The guidance announced in this notice finalizes the draft guidance with respect to the short-term sodium reduction goals.

## II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 101 have been approved under OMB control number 0910–0381. The collections of information in 21 CFR 101.11 have been approved under OMB control number 0910–0782.

## III. Electronic Access

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

## IV. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction or are not publications. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff or, in the case of non-publication references, at any website listed. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.


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Dated: October 8, 2021.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2021–22453 Filed 10–13–21; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2021–D–1047]**

### Q13 Continuous Manufacturing of Drug Substances and Drug Products; International Council for Harmonisation; Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is announcing the availability of a draft guidance for industry entitled ''Q13 Continuous Manufacturing of Drug Substances and Drug Products.'' The draft guidance was prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. The draft guidance provides clarification on continuous manufacturing (CM) concepts and describes scientific approaches and regulatory considerations specific to CM of drug substances and drug products. The draft guidance is intended to provide scientific and regulatory considerations for the development, implementation, operation, and lifecycle management of CM.

**DATES:** Submit either electronic or written comments on the draft guidance by December 13, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your

comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2021–D–1047 for ''Q13 Continuous Manufacturing of Drug Substances and Drug Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the guidance:* Sau Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4182, Silver Spring, MD 20993–0002, 301–796–2905; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

*Regarding the ICH:* Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993–0002, 301–796–5259, *Jill.Adleberg@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Q13 Continuous Manufacturing of Drug Substances and Drug Products.'' The draft guidance was prepared under the auspices of ICH. ICH has the mission of achieving greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and maintained in the most resource-efficient manner.

By harmonizing the regulatory requirements in regions around the world, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, standardized marketing application submissions, and made many other improvements in the quality of global drug development and manufacturing and the products available to patients.

The six Founding Members of the ICH are: FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. Additionally, the Membership of ICH has expanded to include other regulatory authorities and industry associations from around the world (refer to *https://www.ich.org*).

ICH works by involving technical experts from both regulators and industry parties in detailed technical harmonization work and the application of a science-based approach to harmonization through a consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA's guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In June 2021, the ICH Assembly endorsed the draft guideline entitled ''Q13 Continuous Manufacturing of Drug Substances and Drug Products'' and agreed that the guideline should be made available for public comment. The draft guideline is the product of the Quality Expert Working Group of the ICH. Comments about this draft will be

considered by FDA and the Quality Expert Working Group.

The draft guidance provides guidance on the development, implementation, operation, and lifecycle management of CM.

This draft guidance has been left in the original ICH format. The final guidance will be reformatted and edited to conform with FDA's good guidance practices regulation (21 CFR 10.115) and style before publication. The draft guidance, when finalized, will represent the current thinking of FDA on ''Q13 Continuous Manufacturing of Drug Substances and Drug Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

### II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; and the collections of information in 21 CFR parts 210 and 211 have been approved under OMB control number 0910–0139.

### III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents, or https://www.regulations.gov*.

Dated: October 8, 2021.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2021–22451 Filed 10–13–21; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the COVID–19 Health Equity Task Force

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice of meeting.

**SUMMARY:** As required by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (HHS) is hereby giving notice that the COVID–19 Health Equity Task Force (Task Force) will hold a virtual meeting on October 28, 2021. The purpose of this meeting is to present and vote on the Task Force Final Report with recommended Implementation Plan and Accountability Plan for mitigating inequities caused or exacerbated by the COVID–19 pandemic and for preventing such inequities in the future. This meeting is open to the public and will be live-streamed at *www.hhs.gov/live*. Information about the meeting will be posted on the HHS Office of Minority Health website: *www.minorityhealth.hhs.gov/healthequitytaskforce/* prior to the meeting.

**DATES:** The Task Force meeting will be held on Thursday, October 28, 2021, from 1 p.m. to approximately 4 p.m. ET (date and time are tentative and subject to change). The confirmed time and agenda will be posted on the COVID–19 Health Equity Task Force web page: *www.minorityhealth.hhs.gov/healthequitytaskforce/* when this information becomes available.

**FOR FURTHER INFORMATION CONTACT:** Samuel Wu, Designated Federal Officer for the Task Force; Office of Minority Health, Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Suite 100, Rockville, Maryland 20852. Phone: 240–453–6173; email: *COVID19HETF@hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Background:* The COVID–19 Health Equity Task Force (Task Force) was established by Executive Order 13995, dated January 21, 2021. The Task Force is tasked with providing specific recommendations to the President, through the Coordinator of the COVID–19 Response and Counselor to the President (COVID–19 Response Coordinator), for mitigating the health inequities caused or exacerbated by the COVID–19 pandemic and for preventing such inequities in the future. The Task Force shall submit a final report to the COVID–19 Response Coordinator addressing any ongoing health inequities faced by COVID–19 survivors that may merit a public health response, describing the factors that contributed to disparities in COVID–19 outcomes, and recommending actions to combat such disparities in future pandemic responses.

The meeting is open to the public and will be live-streamed at *www.hhs.gov/live*. No registration is required. A public comment session will be held during the meeting. Pre-registration is required to provide public comment during the meeting. To pre-register, please send an email to *COVID19HETF@hhs.gov* and include your name, title, and organization by close of business on Friday, October 22, 2021. Comments will be limited to no more than three minutes per speaker and should be pertinent to the meeting discussion. Individuals are encouraged to provide a written statement of any public comment(s) for accurate minute-taking purposes. If you decide you would like to provide public comment but do not pre-register, you may submit your written statement by emailing *COVID19HETF@hhs.gov* no later than close of business on Thursday, November 4, 2021. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact: *COVID19HETF@hhs.gov* and reference this meeting. Requests for special accommodations should be made at least 10 business days prior to the meeting.

Dated: October 7, 2021.

**Samuel Wu,**

*Designated Federal Officer, COVID–19 Health Equity Task Force.*

[FR Doc. 2021–22330 Filed 10–13–21; 8:45 am]

BILLING CODE 4150–29–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Secretary's Advisory Committee on Human Research Protections

**AGENCY:** Office of the Secretary, Office of the Assistant Secretary for Health, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 10(a) of the Federal Advisory Committee Act, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public.

**DATES:** The meeting will be held on Tuesday, October 26, from 11:00 a.m. until 4:30 p.m., and Wednesday, October 27, 2021, from 11:00 a.m. until 4:30 p.m. (times are tentative and subject to change). The confirmed times and agenda will be posted at on the SACHRP website when this information becomes available.

**ADDRESSES:** This meeting will be held via webcast. Members of the public may also attend the meeting via webcast. Instructions for attending via webcast will be posted one week prior to the meeting at *https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html.*

Information about SACHRP, the full meeting agenda, and instructions for linking to public access will be posted on the SACHRP website at *https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html.*

**FOR FURTHER INFORMATION CONTACT:** Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; telephone: 240–453–8141; fax: 240–453–6909; email address: *SACHRP@hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects.

The Subpart A Subcommittee (SAS) was established by SACHRP in October 2006 and is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment.

The Subcommittee on Harmonization (SOH) was established by SACHRP at its July 2009 meeting and charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination.

The SACHRP meeting will open to the public at 11:00 a.m., on Tuesday, October 26, followed by opening remarks from Dr. Jerry Menikoff, Director of the Office for Human Research Protections (OHRP), and Dr. Douglas Diekema, SACHRP Chair. The meeting will begin with discussion of draft recommendations on ethical and regulatory considerations for the use of artificial intelligence in human subjects research, followed by a presentation of draft recommendations on the status of third parties in research. The second day, October 27, will include consideration of the current HHS policy of engagement and the interpretation of HHS support in 45 CFR part 46, and continue discussion of topics from the first day's agenda. Other topics may be added; for the full and updated meeting agenda, see *https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html.* The meeting will adjourn by 4:30 p.m. October 27.

The public will have an opportunity to send comment to the SACHRP during the meeting's public comment session or to submit written public comment in advance. Individuals submitting written statements as public comment should submit their comments to SACHRP at *SACHRP@hhs.gov* by midnight October 22, 2021, ET. Comments are limited to three minutes each.

Time will be allotted for public comment on both days. Note that public comment must be relevant to topics currently being addressed by the SACHRP.

Dated: September 28, 2021.

**Julia G. Gorey,**

*Executive Director, SACHRP, Office for Human Research Protections.*

[FR Doc. 2021–22351 Filed 10–13–21; 8:45 am]

**BILLING CODE 4150–236–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy and Biology SBIR/STTR.

*Date:* November 9–10, 2021.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis/Chronic Fatigue Syndrome.

*Date:* November 10, 2021.

*Time:* 1:30 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, (301) 435–1766, *bennettc3@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Biotherapeutics Development (CBD).

*Date:* November 15–16, 2021.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Shahana Majid, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *shahana.majid@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Medical Imaging.

*Date:* November 18–19, 2021.

*Time:* 9:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Krystyna H. Szymczyk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–4198, *szymczykk@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 7, 2021.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–22327 Filed 10–13–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Advancing Vaccine Adjuvant Research for Tuberculosis (TB).

*Date:* November 9, 2021.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20892 (Virtual Meeting).

*Contact Person:* Konrad Krzewski, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20852, 240–747–7526, *konrad.krzewski@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 7, 2021.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–22324 Filed 10–13–21; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4498–DR; Docket ID FEMA–2021–0001]**

### Colorado; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Colorado (FEMA–4498–DR), dated March 28, 2020, and related determinations.

**DATES:** This change occurred on July 6, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Tammy L. Littrell, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Nancy J. Dragani as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22379 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4488–DR; Docket ID FEMA–2021–0001]**

### New Jersey; Amendment No. 7 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–4488–DR), dated March 25, 2020, and related determinations.

**DATES:** This change occurred on August 23, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Chad Gorman, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. Fargione as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22364 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4596–DR; Docket ID FEMA–2021–0001]**

### Alabama; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Alabama (FEMA–4596–DR), dated April 26, 2021, and related determinations.

**DATES:** This change occurred on August 17, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James R. Stephenson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Allan Jarvis as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22363 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4609–DR; Docket ID FEMA–2021–0001]**

### Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4609–DR), dated August 23, 2021, and related determinations.

**DATES:** This amendment was issued September 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Tennessee is hereby amended to include Public Assistance for the following areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 23, 2021.

Dickson and Houston Counties for all categories of Public Assistance (already designated for Individual Assistance).

Hickman and Humphreys Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal [Category A] and emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22392 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4535–DR; Docket ID FEMA–2021–0001]**

### Wyoming; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Wyoming (FEMA–4535–DR), dated April 11, 2020, and related determinations.

**DATES:** This change occurred on July 6, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Tammy L. Littrell, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Nancy J. Dragani as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22402 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4615–DR; Docket ID FEMA–2021–0001]**

### New York; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4615–DR), dated September 5, 2021, and related determinations.

**DATES:** This amendment was issued September 22, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 5, 2021.

Rockland County for Individual Assistance.

Dutchess, Orange, Putnam, and Rockland Counties for Public Assistance.

Ulster County for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22427 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4617–DR; Docket ID FEMA–2021–0001]**

### North Carolina; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4617–DR), dated September 8, 2021, and related determinations.

**DATES:** The declaration was issued September 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 8, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from the remnants of Tropical Storm Fred during the period of August 16 to August 18, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John F. Boyle, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Carolina have been designated as adversely affected by this major disaster:

Buncombe, Haywood, and Transylvania Counties for Individual Assistance.

Avery, Buncombe, Haywood, Madison, Transylvania, Watauga, and Yancey Counties for Public Assistance.

All areas within the State of North Carolina are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22429 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4493–DR; Docket ID FEMA–2021–0001]**

### Puerto Rico; Amendment No. 8 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4493–DR), dated March 27, 2020, and related determinations.

**DATES:** This change occurred on August 23, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Chad Gorman, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. Fargione as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22368 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4446–DR; Docket ID FEMA–2021–0001]**

### Ponca Tribe of Nebraska; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Ponca Tribe of Nebraska (FEMA–4446–DR), dated June 17, 2019, and related determinations.

**DATES:** This amendment was issued July 21, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 21, 2021, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage to the lands associated with the Ponca Tribe of Nebraska resulting from severe storms and flooding during the period of March 13 to April 1, 2019, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend the declaration of June 17, 2019, to authorize Federal funds for all categories of Public Assistance at 90 percent of total eligible costs.

This adjustment to the cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22361 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4612–DR; Docket ID FEMA–2021–0001]**

### Missouri; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–4612–DR), dated September 1, 2021, and related determinations.

**DATES:** The declaration was issued September 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 1, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe storms, straight-line winds, tornadoes, and flooding during the period of June 24 to July 1, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, David Gervino, of FEMA is appointed to act as the Federal

Coordinating Officer for this major disaster.

The following areas of the State of Missouri have been designated as adversely affected by this major disaster:

Andrew, Audrain, Boone, Buchanan, Caldwell, Callaway, Carroll, Chariton, Clinton, Cooper, Daviess, Grundy, Holt, Howard, Lincoln, Livingston, Moniteau, Montgomery, Ralls, Ray, and Saline Counties for Public Assistance.

All areas within the State of Missouri are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22407 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4614–DR; Docket ID FEMA–2021–0001]**

### New Jersey; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–4614–DR), dated September 5, 2021, and related determinations.

**DATES:** This amendment was issued September 11, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of New Jersey is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 5, 2021.

Morris County for Individual Assistance.

Morris County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22417 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4480–DR; Docket ID FEMA–2021–0001]**

### New York; Amendment No. 7 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4480–DR), dated March 20, 2020, and related determinations.

**DATES:** This change occurred on August 23, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Chad Gorman, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. Fargione as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22362 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3569–EM; Docket ID FEMA–2021–0001]**

### Mississippi; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Mississippi (FEMA–3569–EM), dated August 28, 2021, and related determinations.

**DATES:** The declaration was issued August 28, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 28, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Mississippi resulting from Hurricane Ida beginning on August 28, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford

Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Mississippi.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Mississippi have been designated as adversely affected by this declared emergency:

Adams, Amite, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Jackson, Jefferson, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Pearl River, Perry, Pike, Stone, Walthall, Wayne, and Wilkinson Counties and the Mississippi Band of Choctaw Indians for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22342 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3564–EM; Docket ID FEMA–2021–0001]**

## Connecticut; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Connecticut (FEMA–3564–EM), dated August 22, 2021, and related determinations.

**DATES:** This amendment was issued August 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective August 24, 2021.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22349 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4610–DR; Docket ID FEMA–2021–0001]**

## California; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of California (FEMA–4610–DR), dated August 24, 2021, and related determinations.

**DATES:** This amendment was issued September 18, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of California is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 24, 2021.

Tehama and Trinity Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22396 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4527–DR; Docket ID FEMA–2021–0001]**

### South Dakota; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–4527–DR), dated April 5, 2020, and related determinations.

**DATES:** This change occurred on July 6, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Tammy L. Littrell, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Nancy J. Dragani as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22397 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3556–EM; Docket ID FEMA–2021–0001]**

### Louisiana; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Louisiana (FEMA–3556–EM), dated February 18, 2021, and related determinations.

**DATES:** This amendment was issued September 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective February 19, 2021.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22333 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4608–DR; Docket ID FEMA–2021–0001]**

### Montana; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–4608–DR), dated August 13, 2021, and related determinations.

**DATES:** The declaration was issued August 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 13, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Montana resulting from straight-line winds on June 10, 2021 is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jon K. Huss, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Montana have been designated as adversely affected by this major disaster:

Dawson, Garfield, McCone, Richland, and Roosevelt Counties for Public Assistance.

All areas within the State of Montana are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling;

97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22384 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3566–EM; Docket ID FEMA–2021–0001]**

### Mashpee Wampanoag Tribe; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the Mashpee Wampanoag Tribe (FEMA–3566–EM), dated August 22, 2021, and related determinations.

**DATES:** The declaration was issued August 22, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 22, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the lands associated with the Mashpee Wampanoag Tribe resulting from Tropical Storm Henri beginning on August 20, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists for the Mashpee Wampanoag Tribe.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, James R. McPherson, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Mashpee Wampanoag Tribe have been designated as adversely affected by this declared emergency:

Mashpee Wampanoag Tribe for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22358 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3562–EM; Docket ID FEMA–2021–0001]**

### Florida; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3562–EM), dated August 16, 2021, and related determinations.

**DATES:** This amendment was issued August 27, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective August 19, 2021.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22341 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3563–EM; Docket ID FEMA–2021–0001]**

### Rhode Island; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Rhode Island (FEMA–3563–EM), dated August 21, 2021, and related determinations.

**DATE:** The declaration was issued August 21, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 21, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Rhode Island resulting from Hurricane Henri beginning on August 20, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Rhode Island.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Benjamin Abbott, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Rhode Island have been designated as adversely affected by this declared emergency:

Bristol, Kent, Newport, Providence, and Washington Counties and the Narragansett Indian Tribe located within Washington County for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22343 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4513–DR; Docket ID FEMA–2021–0001]**

### Virgin Islands; Amendment No. 8 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the territory of the U.S. Virgin Islands (FEMA–4513–DR), dated April 2, 2020, and related determinations.

**DATES:** This change occurred on August 23, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Chad Gorman, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. Fargione as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22387 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4618–DR; Docket ID FEMA–2021–0001]**

### Pennsylvania; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4618–DR), dated September 10, 2021, and related determinations.

**DATES:** This amendment was issued September 24, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 10, 2021.

Bedford and Northampton Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22431 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4489–DR; Docket ID FEMA–2021–0001]**

### Illinois; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Illinois (FEMA–4489–DR), dated March 26, 2020, and related determinations.

**DATES:** This change occurred on September 7, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Moises Dugan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Kevin M. Sligh as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22366 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4607–DR; Docket ID FEMA–2021–0001]**

### Michigan; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Michigan (FEMA–4607–DR), dated July 15, 2021, and related determinations.

**DATES:** The declaration was issued July 15, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 15, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Michigan resulting from severe storms, flooding, and tornadoes during the period of June 25 to June 26, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Michigan.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Scott A. Burgess, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Michigan have been designated as adversely affected by this major disaster:

Washtenaw and Wayne Counties for Individual Assistance.

All areas within the State of Michigan are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22380 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4610–DR; Docket ID FEMA–2021–0001]**

### California; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of California (FEMA–4610–DR), dated August 24, 2021, and related determinations.

**DATES:** This amendment was issued September 24, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of California is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 24, 2021.

Lassen, Nevada, Placer, and Plumas Counties for all categories of Public Assistance (already designated for Individual Assistance and assistance for emergency protective measures [Category B], limited to direct federal assistance, under the Public Assistance program).

Tehama County for debris removal and emergency protective measures [Categories A and B] (already designated for Individual Assistance).

Trinity County for all categories of Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22399 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4599–DR; Docket ID FEMA–2021–0001]**

### Oregon; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Oregon (FEMA–4599–DR), dated May 4, 2021, and related determinations.

**DATES:** This change occurred on September 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy B. Manner, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Toney L. Raines as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22365 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4602–DR; Docket ID FEMA–2021–0001]**

### Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4602–DR), dated May 10, 2021, and related determinations.

**DATES:** This change occurred on August 20, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy S. Pheil, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Kevin I. Snyder as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22367 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3568–EM; Docket ID FEMA–2021–0001]**

### Louisiana; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Louisiana (FEMA–3568–EM), dated August 27, 2021, and related determinations.

**DATES:** This amendment was issued September 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective September 3, 2021.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22340 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4584–DR; Docket ID FEMA–2021–0001]**

### Washington; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Washington (FEMA–4584–DR), dated February 4, 2021, and related determinations.

**DATES:** This change occurred on September 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney L. Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Timothy B. Manner as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22412 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4586–DR; Docket ID FEMA–2021–0001]**

### Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4586–DR), dated February 19, 2021, and related determinations.

**DATES:** This amendment was issued September 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Texas is hereby amended to include additional categories of Public Assistance for the following areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 19, 2021.

Borden, Coke, Crosby, Dawson, Delta, Dickens, Edwards, Garza, Irion, Kimble, Lee, Lynn, Mason, Menard, Motley, Nolan, Real, Red River, San Augustine, Schleicher, and Sterling Counties for debris removal [Category A] and permanent work [Categories C–G] under the Public Assistance program (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Austin, Bastrop, Blanco, Cherokee, DeWitt, Erath, Falls, Gillespie, Gonzales, Houston, Kerr, Lavaca, Leon, Llano, Milam, Nacogdoches, Palo Pinto, Sabine, Shelby, Taylor, Tom Green, Walker, and Washington Counties for debris removal [Category A] and permanent work [Categories C–G] under the Public Assistance program (already designated for Individual Assistance and emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Irion County for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Taylor County for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period (already

designated for Individual Assistance and emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22416 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4509–DR; Docket ID FEMA–2021–0001]**

### North Dakota; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of North Dakota (FEMA–4509–DR), dated April 1, 2020, and related determinations.

**DATES:** This change occurred on July 6, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Tammy L. Littrell, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Nancy J. Dragani as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22385 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3572–EM; Docket ID FEMA–2021–0001]**

### New York; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3572–EM), dated September 2, 2021, and related determinations.

**DATES:** The declaration was issued September 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 2, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New York resulting from the remnants of Hurricane Ida beginning on September 1, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of New York.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct federal assistance and reimbursement for mass care including evacuation and shelter support.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of New York have been designated as adversely affected by this declared emergency:

Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22353 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4494–DR; Docket ID FEMA–2021–0001]**

### Michigan; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Michigan (FEMA–4494–DR), dated March 27, 2020, and related determinations.

**DATES:** This change occurred on September 7, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Moises Dugan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Kevin M. Sligh as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22370 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4519–DR; Docket ID FEMA–2021–0001]**

### Oregon; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Oregon (FEMA–4519–DR), dated April 3, 2020, and related determinations.

**DATES:** This change occurred on September 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy B. Manner, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Toney L. Raines as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22391 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4611–DR; Docket ID FEMA–2021–0001]**

### Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4611–DR), dated August 29, 2021, and related determinations.

**DATES:** This amendment was issued September 7, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Louisiana is hereby amended to include permanent work under the Public Assistance program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 29, 2021.

Jefferson, Lafourche, Orleans, St. Charles, St. James, St. John the Baptist, and Terrebonne Parishes for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22403 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3563–EM; Docket ID FEMA–2021–0001]**

### Rhode Island; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Rhode Island (FEMA–3563–EM), dated August 21, 2021, and related determinations.

**DATES:** This amendment was issued August 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective August 24, 2021.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22345 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4620–DR; Docket ID FEMA–2021–0001]**

### Arizona; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA–4620–DR), dated September 13, 2021, and related determinations.

**DATES:** The declaration was issued September 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 13, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Arizona resulting from severe storms and flooding during the period of July 22 to July 24, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Arizona.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Benigno Bern Ruiz, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Arizona have been designated as adversely affected by this major disaster:

Apache, Coconino, and Navajo Counties for Public Assistance.

All areas within the State of Arizona are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22433 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3565–EM; Docket ID FEMA–2021–0001]**

### New York; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of New York (FEMA–3565–EM), dated August 22, 2021, and related determinations.

**DATES:** This amendment was issued August 22, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of August 22, 2021.

Ulster County for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22354 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3573–EM; Docket ID FEMA–2021–0001]**

### New Jersey; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of New Jersey (FEMA–3573–EM), dated September 2, 2021, and related determinations.

**DATES:** This amendment was issued September 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective September 3, 2021.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22359 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4613–DR; Docket ID FEMA–2021–0001]**

### North Dakota; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–4613–DR), dated September 1, 2021, and related determinations.

**DATES:** The declaration was issued September 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 1, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from a severe storm, straight-line winds, and flooding during the period of June 7 to June 11, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lance Davis, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Dakota have been designated as adversely affected by this major disaster:

Burke, Divide, Emmons, Grant, Kidder, LaMoure, Sioux, and Williams Counties for Public Assistance.

All areas within the State of North Dakota are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22409 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4610–DR; Docket ID FEMA–2021–0001]**

### California; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–4610–DR), dated August 24, 2021, and related determinations.

**DATES:** The declaration was issued August 24, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 24, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of California resulting from wildfires beginning on July 14, 2021, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew Grant, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of California have been designated as adversely affected by this major disaster:

Lassen, Nevada, Placer, and Plumas Counties for Individual Assistance.

Lassen, Nevada, Placer, and Plumas Counties for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

All areas within the State of California are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22394 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4613–DR; Docket ID FEMA–2021–0001]**

### North Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of North Dakota (FEMA–4613–DR), dated September 1, 2021, and related determinations.

**DATES:** This amendment was issued September 27, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of North Dakota is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 1, 2021.

McKenzie County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22411 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4609–DR; Docket ID FEMA–2021–0001]**

### Tennessee; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4609–DR), dated August 23, 2021, and related determinations.

**DATES:** The declaration was issued August 23, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 23, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Tennessee

resulting from a severe storm and flooding on August 21, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Myra M. Shird, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Humphreys County for Individual Assistance.

Humphreys County for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

All areas within the State of Tennessee are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22386 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3571–EM; Docket ID FEMA–2021–0001]**

### California; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of California (FEMA–3571–EM), dated September 1, 2021, and related determinations.

**DATES:** The declaration was issued September 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 1, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of California resulting from the Caldor Fire beginning on August 14, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of California.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of California have been designated as adversely affected by this declared emergency:

Alpine, Amador, El Dorado, and Placer Counties for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22350 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3573–EM; Docket ID FEMA–2021–0001]**

### New Jersey; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of New Jersey (FEMA–3573–EM), dated September 2, 2021, and related determinations.

**DATES:** The declaration was issued September 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 2, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New Jersey resulting from the remnants of Hurricane Ida beginning on September 1, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of New Jersey.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Patrick Cornbill, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of New Jersey have been designated as adversely affected by this declared emergency:

Atlantic, Bergen, Burlington, Camden, Cape May, Cumberland, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Sussex, Union, and Warren Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22357 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4589–DR; Docket ID FEMA–2021–0001]**

### Idaho; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Idaho (FEMA–4589–DR), dated March 4, 2021, and related determinations.

**DATES:** This change occurred on September 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney L. Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. Dargan as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22422 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4618–DR; Docket ID FEMA–2021–0001]**

### Pennsylvania; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–4618–DR), dated September 10, 2021, and related determinations.

**DATES:** The declaration was issued September 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 10, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of

Pennsylvania resulting from the remnants of Hurricane Ida during the period of August 31 to September 5, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, E. Craig Levy, Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Pennsylvania have been designated as adversely affected by this major disaster:

Bucks, Chester, Delaware, Montgomery, Philadelphia, and York Counties for Individual Assistance.

All areas within the Commonwealth of Pennsylvania are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22430 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3561–EM; Docket ID FEMA–2021–0001]**

## Florida; Amendment No. 3 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3561–EM), dated July 4, 2021, and related determinations.

**DATES:** This amendment was issued August 27, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective July 8, 2021.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22337 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4615–DR; Docket ID FEMA–2021–0001]**

## New York; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4615–DR), dated September 5, 2021, and related determinations.

**DATES:** This amendment was issued September 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 5, 2021.

Nassau County for Individual Assistance.

Nassau County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22425 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3574–EM; Docket ID FEMA–2021–0001]**

### Louisiana; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Homeland Security (DHS).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Louisiana (FEMA–3574–EM), dated September 13, 2021, and related determinations.

**DATES:** The declaration was issued September 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 13, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Louisiana resulting from Tropical Storm Nicholas beginning on September 12, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Louisiana.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, John E. Long, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Louisiana have been designated as adversely affected by this declared emergency:

All 64 Parishes for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22360 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4525–DR; Docket ID FEMA–2021–0001]**

### Utah; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Utah (FEMA–4525–DR), dated April 4, 2020, and related determinations.

**DATES:** This change occurred on July 6, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Tammy L. Littrell, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Nancy J. Dragani as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22395 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4507–DR; Docket ID FEMA–2021–0001]**

### Ohio; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Ohio (FEMA–4507–DR), dated March 31, 2020, and related determinations.

**DATES:** This change occurred on September 7, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency

(FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Moises Dugan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Kevin M. Sligh as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22381 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4508–DR; Docket ID FEMA–2021–0001]**

### Montana; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Montana (FEMA–4508–DR), dated March 31, 2020, and related determinations.

**DATES:** This change occurred on July 6, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Tammy L. Littrell, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Nancy J. Dragani as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22383 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4531–DR; Docket ID FEMA–2021–0001]**

### Minnesota; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Minnesota (FEMA–4531–DR), dated April 7, 2020, and related determinations.

**DATES:** This change occurred on September 7, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Moises Dugan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Kevin M. Sligh as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22400 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4614–DR; Docket ID FEMA–2021–0001]**

### New Jersey; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–4614–DR), dated September 5, 2021, and related determinations.

**DATES:** This amendment was issued September 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of New Jersey is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 5, 2021.

Essex, Hudson, Mercer, and Union Counties for Individual Assistance.

Essex, Hudson, Mercer, and Union Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22415 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3567–EM; Docket ID FEMA–2021–0001]**

### Vermont; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Vermont (FEMA–3567–EM), dated August 22, 2021, and related determinations.

**DATES:** The declaration was issued August 22, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 22, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Vermont resulting from Tropical Storm Henri beginning on August 22, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Vermont.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, John F. Boyle, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Vermont have been designated as adversely affected by this declared emergency:

Addison, Bennington, Caledonia, Chittenden, Essex, Franklin, Grand Isle, Lamoille, Orange, Orleans, Rutland, Washington, Windham, and Windsor Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22336 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4609–DR; Docket ID FEMA–2021–0001]**

### Tennessee; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4609–DR), dated August 23, 2021, and related determinations.

**DATES:** This amendment was issued August 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Tennessee is hereby amended to include debris removal for the following areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 23, 2021.

Hickman County for debris removal [Category A] and emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program (already designated for Individual Assistance).

Humphreys County for debris removal [Category A] (already designated for Individual Assistance and emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22390 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4562–DR; Docket ID FEMA–2021–0001]**

### Oregon; Amendment No. 7 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Oregon (FEMA–4562–DR), dated September 15, 2020, and related determinations.

**DATES:** This change occurred on September 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy B. Manner, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Toney L. Raines as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22406 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4614–DR; Docket ID FEMA–2021–0001]**

### New Jersey; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–4614–DR), dated September 5, 2021, and related determinations.

**DATES:** This amendment was issued September 18, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of New Jersey is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 5, 2021.

Warren County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22421 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4615–DR; Docket ID FEMA–2021–0001]**

### New York; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4615–DR), dated September 5, 2021, and related determinations.

**DATES:** This amendment was issued September 12, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 5, 2021.

Suffolk County for Individual Assistance.

Suffolk and Sullivan Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22426 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4619–DR; Docket ID FEMA–2021–0001]**

### California; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–4619–DR), dated September 12, 2021, and related determinations.

**DATES:** The declaration was issued September 12, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 12, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of California resulting from the Caldor Fire beginning on August 14, 2021, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew Grant, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of California have been designated as adversely affected by this major disaster:

El Dorado County for Public Assistance.

All areas within the State of California are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22432 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3565–EM; Docket ID FEMA–2021–0001]**

### New York; Amendment No. 2 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of New York (FEMA–3565–EM), dated August 22, 2021, and related determinations.

**DATES:** This amendment was issued August 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective August 24, 2021.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22356 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4606–DR; Docket ID FEMA–2021–0001]**

### Louisiana; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4606–DR), dated June 2, 2021, and related determinations.

**DATES:** The declaration was issued June 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated June 2, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Louisiana resulting from severe storms, tornadoes, and flooding during the period of May 17 to May 21, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John E. Long, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Louisiana have been designated as adversely affected by this major disaster:

Ascension, Calcasieu, East Baton Rouge, Iberville, and Lafayette Parishes for Individual Assistance.

All areas within the State of Louisiana are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22369 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4611–DR; Docket ID FEMA–2021–0001]**

### Louisiana; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4611–DR), dated August 29, 2021, and related determinations.

**DATES:** This amendment was issued September 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective September 3, 2021.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22405 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4614–DR; Docket ID FEMA–2021–0001]**

### New Jersey; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4614–DR), dated September 5, 2021, and related determinations.

**DATES:** The declaration was issued September 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 5, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from the remnants of Hurricane Ida during the period of September 1 to September 3, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Patrick Cornbill, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

Bergen, Gloucester, Hunterdon, Middlesex, Passaic, and Somerset Counties for Individual Assistance.

Bergen, Gloucester, Hunterdon, Middlesex, Passaic, and Somerset Counties for Public Assistance.

All areas within the State of New Jersey are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22413 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4573–DR; Docket ID FEMA–2021–0001]**

### Alabama; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Alabama (FEMA–4573–DR), dated December 10, 2020, and related determinations.

**DATES:** This change occurred on August 17, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James R. Stephenson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Allan Jarvis as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22410 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3569–EM; Docket ID FEMA–2021–0001]**

### Mississippi; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Mississippi (FEMA–3569–EM), dated August 28, 2021, and related determinations.

**DATES:** This amendment was issued August 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of August 28, 2021.

Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Desoto, Grenada, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Kemper, Lafayette, Lauderdale, Leake, Lee, Leflore, Lowndes, Madison, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Warren, Washington, Webster, Winston, Yalobusha, and Yazoo Counties for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22344 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3564–EM; Docket ID FEMA–2021–0001]**

### Connecticut; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Connecticut (FEMA–3564–EM), dated August 22, 2021, and related determinations.

**DATES:** The declaration was issued August 22, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 22, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Connecticut resulting from Hurricane Henri beginning on August 21, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Connecticut.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Robert V. Fogel, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Connecticut have been designated as adversely affected by this declared emergency:

Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham Counties and the Mashantucket Pequot Tribe and the Mohegan Tribe of Indians of Connecticut located within New London County for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22347 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3569–EM; Docket ID FEMA–2021–0001]**

### Mississippi; Amendment No. 2 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA), Homeland Security (DHS).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Mississippi (FEMA–3569–EM), dated August 28, 2021, and related determinations.

**DATES:** This amendment was issued September 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective September 1, 2021.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22346 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3572–EM; Docket ID FEMA–2021–0001]**

### New York; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA), Homeland Security (DHS).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of New York (FEMA–3572–EM), dated September 2, 2021, and related determinations.

**DATES:** This amendment was issued September 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective September 3, 2021.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22355 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4539–DR; Docket ID FEMA–2021–0001]**

### Washington; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Washington (FEMA–4539–DR), dated April 23, 2020, and related determinations.

**DATES:** This change occurred on September 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney L. Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Timothy B. Manner as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22404 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3565–EM; Docket ID FEMA–2021–0001]**

### New York; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3565–EM), dated August 22, 2021, and related determinations.

**DATES:** The declaration was issued August 22, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 22, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New York resulting from Hurricane Henri beginning on August 21, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of New York.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of New York have been designated as adversely affected by this declared emergency:

Albany, Bronx, Broome, Chenango, Columbia, Delaware, Dutchess, Greene, Kings, Montgomery, Nassau, New York, Orange, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schoharie, Suffolk, Sullivan, and Westchester Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22352 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4609–DR; Docket ID FEMA–2021–0001]**

### Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4609–DR), dated August 23, 2021, and related determinations.

**DATES:** This amendment was issued August 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among the area determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 23, 2021.

Dickson, Hickman, and Houston Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22388 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3569–EM; Docket ID FEMA–2021–0001]**

### Mississippi; Amendment No. 3 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Mississippi (FEMA–3569–EM), dated August 28, 2021, and related determinations.

**DATES:** This change occurred on September 3, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Brett H. Howard, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. McCool as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22348 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3560–EM; Docket ID FEMA–2021–0001]**

### Florida; Amendment No. 2 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA), Homeland Security (DHS).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3560–EM), dated June 25, 2021, and related determinations.

**DATES:** This amendment was issued August 6, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective July 4, 2021.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22335 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3563–EM; Docket ID FEMA–2021–0001]**

### Rhode Island; Amendment No. 2 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Rhode Island (FEMA–3563–EM), dated August 21, 2021, and related determinations.

**DATES:** This change occurred on September 14, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert V. Fogel, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Benjamin Abbott as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling;

97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22334 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3562–EM; Docket ID FEMA–2021–0001]**

### Florida; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3562–EM), dated August 16, 2021, and related determinations.

**DATES:** The declaration was issued August 16, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 16, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Florida resulting from Tropical Storm Fred beginning on August 13, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Kevin A. Wallace, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Florida have been designated as adversely affected by this declared emergency:

Bay, Calhoun, Citrus, Dixie, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Manatee, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22339 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4607–DR; Docket ID FEMA–2021–0001]**

### Michigan; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Michigan (FEMA–4607–DR), dated July 15, 2021, and related determinations.

**DATES:** This amendment was issued September 24, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Michigan is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 15, 2021.

Macomb and Oakland Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22382 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4606–DR; Docket ID FEMA–2021–0001]**

### Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4606–DR), dated June 2, 2021, and related determinations.

**DATES:** This amendment was issued August 20, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Louisiana is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 2, 2021.

Ascension, Calcasieu, East Baton Rouge, and Iberville Parishes for Public Assistance (already designated for Individual Assistance).

Assumption and Lafourche Parishes for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22371 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4515–DR; Docket ID FEMA–2021–0001]**

### Indiana; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Indiana (FEMA–4515–DR), dated April 3, 2020, and related determinations.

**DATES:** This change occurred on September 7, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Moises Dugan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Kevin M. Sligh as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22389 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4520–DR; Docket ID FEMA–2021–0001]**

### Wisconsin; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Wisconsin (FEMA–4520–DR), dated April 4, 2020, and related determinations.

**DATES:** This change occurred on September 7, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Moises Dugan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Kevin M. Sligh as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22393 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4611–DR; Docket ID FEMA–2021–0001]**

### Louisiana; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4611–DR), dated August 29, 2021, and related determinations.

**DATES:** The declaration was issued August 29, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 29, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Louisiana resulting from Hurricane Ida beginning on August 26, 2021, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs. For a period of 30 days from the start of the incident period, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John E. Long, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Louisiana have been designated as adversely affected by this major disaster:

Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge, and West Feliciana Parishes for Individual Assistance.

Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge, and West Feliciana Parishes for debris removal (Category A) under the Public Assistance program.

All 64 parishes for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

All areas within the State of Louisiana are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22401 Filed 10–13–21; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4585–DR; Docket ID FEMA–2021–0001]**

### Alaska; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Alaska (FEMA–4585–DR), dated February 17, 2021, and related determinations.

**DATES:** This change occurred on September 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney L. Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. Dargan as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22414 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4563–DR; Docket ID FEMA–2021–0001]**

### Alabama; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Alabama (FEMA–4563–DR), dated September 20, 2020, and related determinations.

**DATES:** This change occurred on August 17, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James R. Stephenson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Allan Jarvis as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22408 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3568–EM; Docket ID FEMA–2021–0001]**

### Louisiana; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Louisiana (FEMA–3568–EM), dated August 27, 2021, and related determinations.

**DATES:** The declaration was issued August 27, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 27, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Louisiana resulting from Tropical Storm Ida beginning on August 26, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Louisiana.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, John E. Long, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Louisiana have been designated as adversely affected by this declared emergency:

All 64 parishes in the State of Louisiana for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22338 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4615–DR; Docket ID FEMA–2021–0001]**

### New York; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New York

(FEMA–4615–DR), dated September 5, 2021, and related determinations.

**DATES:** The declaration was issued September 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 5, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New York resulting from the remnants of Hurricane Ida during the period of September 1 to September 3, 2021, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended,

Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Bronx, Kings, Queens, Richmond, and Westchester Counties for Individual Assistance.

Bronx, Kings, New York, Queens, Richmond, and Westchester Counties for Public Assistance.

All areas within the State of New York are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22423 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4593–DR; Docket ID FEMA–2021–0001]**

### Washington; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Washington (FEMA–4593–DR), dated April 8, 2021, and related determinations.

**DATES:** This change occurred on September 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Toney L. Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Timothy B. Manner as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22424 Filed 10–13–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### Revision of Agency Information Collection Activity Under OMB Review: Critical Facility Information of the Top 100 Most Critical Pipelines

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 30-day Notice.

**SUMMARY:** This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0050, abstracted below, to OMB for a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA developed and implemented a plan to review the security plans and inspect critical pipeline systems to comply with a requirement in the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act).

**DATES:** Send your comments by November 15, 2021. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov*.

**SUPPLEMENTARY INFORMATION:** TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on June 30, 2021, 86 FR 34776.

**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be made available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Information Collection Requirement**

*Title:* Critical Facility Information of the Top 100 Most Critical Pipelines.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 1652–0050.

*Forms(s):* Critical Facility Security Review; TSA Pipeline Cybersecurity Self-Assessment form.

*Affected Public:* Pipeline companies.

*Abstract:* The 9/11 Act specifically tasked TSA to develop and implement a plan for reviewing the pipeline security plans and inspecting critical facilities of the 100 most critical pipeline operators. *See* sec. 1557 of the 9/11 Act (Pub. L. 110–53; 121 Stat. 266, 475, Aug. 3, 2007; codified at 6 U.S.C. 1207(b)). TSA visits critical pipeline facilities and collects site-specific information from pipeline operators on facility security policies, procedures, and physical security measures. TSA uses the information to determine strengths and weaknesses at the nation's critical pipeline facilities, areas to target for risk reduction strategies, pipeline industry implementation of the TSA Pipeline Security Guidelines, and operator implementation of recommendations made during TSA critical facility visits.

The collection of information is being revised to align the Critical Facility Security Review question set with the revised Pipeline Security Guidelines (with Change 1 (April 2021)), and to capture additional criticality criteria. In addition, on May 26, 2021, OMB approved the emergency request, requiring owner/operators of a critical hazardous liquid and natural gas pipeline or liquefied natural gas facility to review Section 7 of TSA's Pipeline Security Guidelines (with Change 1 (April 2021)), and assess current activities, using the TSA Pipeline Cybersecurity Self-Assessment form, to address cyber risk, and identify remediation measures that will be taken to fill those gaps and a timeframe for achieving those measures.

*Number of Respondents:* 260.

*Estimated Annual Burden Hours:* An estimated 1400 hours annually.[1]

Dated: October 8, 2021.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer, Information Technology.*

[FR Doc. 2021–22329 Filed 10–13–21; 8:45 am]

**BILLING CODE 9110–05–P**

[1] The number of respondents and annual burden hours have been updated since the publication of the 60-day notice, which reported 160 respondents and 720 annual burden hours. The update was necessary due to the emergency revision of the collection to include the mandatory requirements.

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### Extension of Agency Information Collection Activity Under OMB Review: Pipeline Operator Security Information

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 30-Day notice.

**SUMMARY:** This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0055, abstracted below, to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. Specifically, the collection involves the submission of data concerning pipeline security incidents.

**DATES:** Send your comments by November 15, 2021. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** TSA published a **Federal Register** notice, with a 60-day comment solicitation period, of the following collection of information on June 30, 2021, 86 FR 34777.

**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Information Collection Requirement**

*Title:* Pipeline Operator Security Information.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 1652–0055.

*Forms(s):* CISA Reporting System form.

*Affected Public:* Pipeline system operators.

*Abstract:* In addition to TSA's broad responsibility and authority for ''security in all modes of transportation'' under 49 U.S.C. 114(d), TSA is statutorily required to develop and transmit to pipeline operators security recommendations for natural gas and hazardous liquid pipelines and pipeline facilities. *See* sec. 1557 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53 (121 Stat. 266; August 3, 2007), codified at 6 U.S.C. 1207. Consistent with these requirements, TSA produced Pipeline Security Guidelines in December 2010, and April 2011, with updates published in March 2018 and April 2021. Among the recommendations, TSA encourages pipeline operators to notify TSA of all (1) incidents that may indicate a deliberate attempt to disrupt pipeline operations; and (2) activities that could be precursors to such an attempt.

In addition, on May 26, 2021, OMB approved TSA's request for an emergency revision of this information collection based on TSA's issuance of a Security Directive (SD) with requirements for TSA-specified critical pipeline owner/operators of hazardous liquid and natural gas pipelines and liquefied natural gas facilities to report cybersecurity incidents or potential cybersecurity incidents on their information and operational technology systems to the Cybersecurity and Infrastructure Security Agency (CISA) within 12 hours of identification of a cybersecurity incident using the CISA Reporting System. The SD also requires critical pipeline owner/operators to appoint cybersecurity coordinators, who must be available to TSA and CISA 24/7 to coordinate cybersecurity practices and address any incidents that arise, and to provide contact information for the coordinators to TSA.[1]

*Number of Respondents:* 100.

*Estimated Annual Burden Hours:* An estimated 4,033 hours annually.[2]

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer, Information Technology.*

[FR Doc. 2021–22332 Filed 10–13–21; 8:45 am]

**BILLING CODE 9110–05–P**

[1] The additional requirement in the SD to conduct a cybersecurity assessment is covered under a separate OMB control number 1652–0050 Critical Facility Information of the Top 100 Most Critical Pipelines.

[2] TSA has updated the burden to the collection since the publication of the 60-day notice, which reported the annual burden hours as 4,066 hours.

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1221]**

## Certain Electronic Stud Finders, Metal Detectors and Electrical Scanners; Notice of Request for Submissions on the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that on October 7, 2021, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

**FOR FURTHER INFORMATION CONTACT:** Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: A limited exclusion order directed to certain electronic stud finders, metal detectors and electrical scanners imported, sold for importation, and/or sold after importation by respondents Stanley Black & Decker, Inc. and Black & Decker (U.S.) Inc. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on October 7, 2021. Comments should address whether issuance of the recommended remedial order in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended remedial order are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended order;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended order within a commercially reasonable time; and

(v) explain how the recommended order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on November 8, 2021.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1221'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 7, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021–22288 Filed 10–13–21; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Discontinuation; Correction

**AGENCY:** Office of Justice Programs, Department of Justice.

**ACTION:** Notice; Correction.

**SUMMARY:** The Department of Justice, Office of Justice Programs, submitted a 60-day notice for publishing in the **Federal Register** on September 27, 2021 soliciting comments to an 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 notice was incorrectly submitted. This information collection request will be discontinued as no immediate data collection is planned.

**FOR FURTHER INFORMATION CONTACT:** Samantha Opong, Program Specialist, SMART Office, 810 7th Street NW, Washington, DC 20531, *Samantha.Opong@usdoj.gov,* (202) 514–9320.

*Correction:* In the **Federal Register** of September 27, 2021 in FR Doc. 2021–20834, on pages 53348–53349, the information collection request is reflected as an extension. This information collection request will be discontinued as no immediate data collection is planned.

**Melody Braswell,**

*Department Clearance Officer.*

[FR Doc. 2021–22442 Filed 10–13–21; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### 209th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Teleconference Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 209th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held via a teleconference on Friday, November 19, 2021.

The meeting will begin at 9:00 a.m. and end at approximately 5:30 p.m., with a one-hour break for lunch. The purpose of the morning session of the open meeting is for the members of the ERISA Advisory Council to finalize observations and recommendations on the issues they studied in 2021. During the afternoon session, the members of the ERISA Advisory Council will present their observations and recommendations to the Department of Labor and receive an update from leadership of the Employee Benefits Security Administration (EBSA).

The issues studied by the ERISA Advisory Council in 2021 are: (1) Gaps in Retirement Savings Based on Race, Ethnicity and Gender, and (2) Understanding Brokerage Windows in Self-Directed Retirement Plans. Descriptions of these issues are available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council.*

Instructions for public access to the teleconference meeting will be available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council* prior to the meeting.

Organizations or members of the public wishing to submit a written statement may do so on or before Friday, November 12, 2021, to Christine Donahue, Executive Secretary, ERISA Advisory Council. Statements should be transmitted electronically as an email attachment in text or pdf format to *donahue.christine@dol.gov.* Statements transmitted electronically that are included in the body of the email will not be accepted. Relevant statements received on or before Friday, November 12, 2021, will be included in the record of the meeting and made available through the EBSA Public Disclosure Room. No deletions, modifications, or redactions will be made to the statements received as they are public records.

Individuals or representatives of organizations wishing to address the ERISA Advisory Council should forward their requests to the Executive Secretary no later than Friday, November 12, 2021, via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record.

Individuals who need special accommodations should contact the

Executive Secretary no later than Friday, November 12, 2021, via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641.

For more information about the meeting, contact the Executive Secretary at the address or telephone number above.

Signed at Washington, DC, this 7th day of October, 2021.

**Ali Khawar,**

*Acting Assistant Secretary, Employee Benefits Security Administration.*

[FR Doc. 2021–22297 Filed 10–13–21; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Data Users Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Data Users Advisory Committee will meet on Tuesday, November 9, 2021. This meeting will be held virtually.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities. The Committee advises on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The agenda for the meeting is as follows:

12:00 p.m. Commissioner's welcome and review of agency developments

12:30 p.m. Gaining input on automation and its impact on the workforce

1:30 p.m. Break

1:45 p.m. Measuring changes in retail trade

3:00 p.m. Using administrative data in the Import and Export Price Indexes

3:40 p.m. Discussion of future topics and concluding remarks

4:00 p.m. Conclusion

The meeting is open to the public. Anyone planning to attend the meeting should contact Lisa Fieldhouse, Data Users Advisory Committee, at *fieldhouse.lisa@bls.gov.* Any questions about the meeting should be addressed to Ms. Fieldhouse. Individuals who require special accommodations should contact Ms. Fieldhouse at least two days prior to the meeting date.

Signed at Washington, DC, this 7th day of October 2021.

**Leslie Bennett,**

*Acting Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 2021–22296 Filed 10–13–21; 8:45 am]

**BILLING CODE 4510–24–P**

## MILLENNIUM CHALLENGE CORPORATION

**[MCC FR 21–10]**

### Notice of First Amendment to Compact With the Kingdom of Morocco

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Millennium Challenge Act of 2003, as amended, the Millennium Challenge Corporation is publishing a summary, justification, and full text of the proposed First Amendment to Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Kingdom of Morocco. Representatives of the United States Government and the Kingdom of Morocco plan to conclude the Amendment before the end of 2021.

*Authority:* 22 U.S.C. 7708 (i) (2).

Dated: October 7, 2021.

**Thomas G. Hohenthaner,**

*Acting VP/General Counsel and Corporate Secretary.*

### Summary of First Amendment to Millennium Challenge Compact With the Kingdom of Morocco

The Board of Directors of the Millennium Challenge Corporation (''*MCC*'') has approved an amendment (the ''*Amendment*'') to the existing US $450,000,000, five-year Millennium Challenge Compact between the United States of America, acting through MCC, and the Kingdom of Morocco (the ''*Compact*'').

### Background

The Compact was signed on November 30, 2015 and entered into force on June 30, 2017. The Compact aims to contribute to economic growth and investment in Morocco through two projects supporting Moroccan government priorities: The Education and Training for Employability Project and the Land Productivity Project.

### Scope of the Amendment

MCC proposes to extend the term of the Compact for an additional nine months until March 31, 2023, and to provide additional funding of up to $10,500,000. The term extension is necessary to mitigate implementation delays due to the COVID–19 pandemic and to complete Compact projects as originally contemplated. The proposed additional funding will be used to cover additional program administration and related oversight costs associated with extending the Compact's term.

### Justification for the Amendment

In March 2020, the Government of Morocco imposed an almost complete lockdown and border closure for three months after the first COVID–19 cases were identified in Morocco. The offices of the Government of Morocco's accountable entity were closed from March to June 2020, limiting staff to telework. Construction works were halted for at least three months, as were all in-person activities such as public consultations, trainings, and other technical assistance activities. Travel restrictions and border closures disrupted global supply chains and access to necessary supplies and equipment. Although some restrictions were eased during the summer of 2020, renewed COVID–19 outbreaks during the fall and winter led to targeted lockdowns in several Moroccan cities. Lockdowns and restrictions have now been imposed intermittently for over a year, including a lengthy national curfew and a suspension of air travel with over 50 countries, including most of Europe. These restrictions have only recently eased.

Extending the Compact term will maximize long-term results and the return on investment by assuring the completion of most key activities and increasing the likelihood that the Government of Morocco will successfully adopt and implement the reform elements of the Compact and establish a more solid foundation for sustaining these reforms post-Compact. The additional MCC funding is necessary for and will be used to support oversight and other administrative functions during the additional nine months of the Compact term.

### First Amendment to Millennium Challenge Compact Between the United States of America, Acting Through the Millennium Challenge Corporation and the Kingdom of Morocco

*First Amendment to Millennium Challenge Compact*

This FIRST AMENDMENT TO MILLENNIUM CHALLENGE COMPACT (this ''*Amendment*''), is made by and between the United States of America,

acting through the Millennium Challenge Corporation, a United States government corporation (''*MCC*''), and the Kingdom of Morocco (''*Morocco*''), acting through its government (the ''*Government*'') (each referred to herein individually as a ''*Party*'' and collectively as the ''*Parties*''). All capitalized terms used in this Amendment that are not otherwise defined herein have the meanings given to such terms in the Compact (as defined below).

*Recitals*

*Whereas,* the Parties signed that certain Millennium Challenge Compact by and between the United States of America, acting through MCC, and the Kingdom of Morocco, acting through its government, on November 30, 2015 (the ''*Compact*'');

*Whereas,* Section 7.4 of the Compact provides for a Compact Term of five (5) years from its entry into force on June 30, 2017;

*Whereas,* implementation of the Compact Program has been adversely affected and delayed by the coronavirus pandemic;

*Whereas,* the Parties now desire to extend the Compact Term by an additional nine (9) months until March 31, 2023 (the ''*Extension*''), and to increase MCC's assistance under the Compact for related administrative and oversight costs, to allow the Government more time to implement and complete the Projects in order to fully achieve the Compact Goal and the Project Objectives; and

*Whereas,* pursuant to Section 6.2(a) of the Compact, the Parties desire to amend the Compact as more fully described herein to memorialize the Extension.

*Now, therefore,* the Parties hereby agree as follows:

*Amendments*

1. Amendment to Section 2.1

Section 2.1 (*Program Funding*) of the Compact is amended and restated to read as follows:

''Section 2.1 *Program Funding.* Upon entry into force of this Compact in accordance with Section 7.3, MCC will grant to the Government, under the terms of this Compact, an amount not to exceed Four Hundred Forty-Eight Million Four Hundred Sixty-Two Thousand One Hundred Fifty-Two United States Dollars and Eight Cents (US$448,462,152.08) (''*Program Funding*'') for use by the Government to implement the Program. The allocation of Program Funding is generally described in Annex II.''

2. Amendment to Section 7.4

Section 7.4 (*Compact Term*) of the Compact is amended and restated to read as follows:

''Section 7.4 *Compact Term.* This Compact will remain in force for five (5) years and nine (9) months after its entry into force, until March 31, 2023, unless terminated earlier under Section 5.1 (the ''*Compact Term*'').''

3. Amendments to Annex II (Multi-Year Financial Plan Summary)

(a) Paragraph B of Annex II (Multi-Year Financial Plan Summary) to the Compact is amended and restated to read as follows:

''B. *Government LMIC Contribution.* During the Compact Term, the Government will make contributions, relative to its national budget and taking into account prevailing economic conditions, as are necessary to carry out the Government's responsibilities under Section 2.6(a) of this Compact. These contributions may include in-kind and financial contributions (including obligations of Morocco on any debt incurred toward meeting these contribution obligations). In connection with this obligation, the Government will develop a contribution plan set forth in the Program Implementation Agreement to complement MCC Funding through allocations including but not limited to: 1. A progressive increase in its funding for the Private Sector-Driven TVET grant facility such that the Government will fund a minority portion of the Private Sector-Driven TVET grant facility; 2. demonstration projects for the Industrial Land Activity; and 3. support for operations and maintenance and discretionary funding for the Secondary Education Activity. The Government commits to a minimum contribution of $69,075,000 over the Compact Term. Such contribution will be in addition to the Government's spending allocated toward such Project Objectives in its budget for the year immediately preceding the establishment of this Compact. The Government's contribution will be subject to any legal requirements in Morocco for the budgeting and appropriation of such contribution, including approval of the Government's annual budget by its legislature. The Parties may set forth in the Program Implementation Agreement or other appropriate Supplemental Agreements certain requirements regarding this Government contribution, which requirements may be conditions precedent to the Disbursement of MCC Funding. During implementation of the Program, the Government's contributions may be modified or new contributions added with MCC approval, provided that the modified or new contributions continue to advance the Project Objectives.

(b) Exhibit A to Annex II (Multi-Year Financial Plan Summary) to the Compact is deleted in its entirety and replaced by revised Exhibit A set forth in Annex I to this Amendment, which revised Exhibit A includes the Compact Implementation Funding amount granted by implementation of Section 2.2(d) of the Compact.

*General Provisions*

1. Further Assurances

Each Party hereby covenants and agrees, without necessity of any further consideration, to execute and deliver any and all such further documents and take any and all such other action as may be reasonably necessary or appropriate to carry out the intent and purpose of this Amendment.

2. Effect of This Amendment

From and after the date this Amendment enters into force, the Compact and this Amendment will be read together and construed as one document, and each reference in the Compact to the ''Compact,'' ''hereunder,'' ''hereof'' or words of like import referring to the Compact, and each reference to the ''Compact,'' ''thereunder,'' ''thereof'' or words of like import in any Supplemental Agreement or in any other document or instrument delivered pursuant to the Compact or any Supplemental Agreement, will mean and be construed as a reference to the Compact, as amended by this Amendment.

3. Limitations

Except as expressly amended by this Amendment, all of the provisions of the Compact remain unchanged and in full force and effect.

4. Governing Law

The Parties acknowledge and agree that this Amendment is an international agreement entered into for the purpose of amending the Compact and as such will be interpreted in a manner consistent with the Compact and is governed by international law.

**Annex I**

REVISED EXHIBIT A TO ANNEX II TO THE COMPACT MULTI-YEAR FINANCIAL PLAN SUMMARY

| Component | Current approved MYFP | Proposed additional MCC grant funds | Revised MYFP |
|---|---|---|---|
| **1. Education and Training for Employability Project** | | | |
| 1.1 Secondary Education Activity | 109,910,388.53 | 805,000.00 | 110,715,388.53 |
| 1.2 Workforce Development Activity | 110,301,489.76 | 595,000.00 | 110,896,489.76 |
| Subtotal | 220,211,878.29 | 1,400,000.00 | 221,611,878.29 |
| **2. Land Productivity Project** | | | |
| 2.1 Governance Activity | 10,386,614.70 | 0.00 | 10,386,614.70 |
| 2.2 Rural Land Activity | 32,666,977.50 | 50,000.00 | 32,716,977.50 |
| 2.3 Industrial Land Activity | 122,499,213.09 | 2,850,000.00 | 125,349,213.09 |
| Subtotal | 165,552,805.29 | 2,900,000.00 | 168,452,805.29 |
| **3. Monitoring & Evaluation** | | | |
| 3.1 Monitoring & Evaluation | 7,675,895.63 | 0.00 | 7,675,895.63 |
| Subtotal | 7,675,895.63 | 0.00 | 7,675,895.63 |
| **4. Program Administration and Oversight** | | | |
| 4.1 MCA-Morocco II Program Administration | 32,446,241.03 | 4,660,000.00 | 37,106,241.03 |
| 4.2 Fiscal and Procurement Agents | 11,400,331.84 | 1,470,000.00 | 12,870,331.84 |
| 4.3 Audits and Compliance | 675,000.00 | 70,000.00 | 745,000.00 |
| Subtotal | 44,521,572.87 | 6,200,000.00 | 50,721,572.87 |
| Total Program Funding | 437,962.152.08 | 10,500,000.00 | 448,462,152.08 |
| Total Compact Implementation Funding | 12,037,847.92 | 0.00 | 12,037,847.92 |
| Total MCC Funding | 450,000,000.00 | 10,500,000.00 | 460,500,000.00 |
| Minimum Government Contribution | 67,500,000.00 | ..... | 69,075,000.00 |

[FR Doc. 2021–22278 Filed 10–13–21; 8:45 am]
BILLING CODE 9211–03–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: (21–065)]**

## The NASA Guest Operations VIP Bus Escort and Site Lead Team (Go Team) Application Form

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

**DATES:** Comments are due by December 13, 2021.

**ADDRESSES:** Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review-Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 202–358–2375 or email *claire.a.little@nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The National Aeronautics and Space Administration (NASA) is committed to effectively performing the Agency's communication function in accordance with the Space Act Section 203 (a) (3) to ''provide for the widest practicable and appropriate dissemination of information concerning its activities and the results there of,'' and to enhance public understanding of, and participation in, the nation's space program in accordance with the NASA Strategic Plan.

At NASA Kennedy Space Center (KSC) VIP guests come to see launches and leave inspired. To enable and facilitate official outreach, the Outreach & Guest Operations Office (PX–O) relies heavily on NASA employees (civil servants and contractors) who elect to support launches in many capacities, and run tours. PX–O plans to recruit staff to support the Guest Operations VIP Bus Escort and Site Lead Team program known as the GO TEAM program. Bus escorts play a critical role engaging VIP guests, disseminating information about facilities and missions, as well as ensuring guests get to tour locations and launch viewing sites, and are returned to their correct point of departure seamlessly. Of the various launch staffing roles, bus escorts require special skills—the ability to speak well with high level guests about NASA missions and KSC facilities, solve problems with quick thinking, and act as an exemplary spokesperson for NASA.

This role is particularly critical with Artemis-1 launch expected in November

2021, which alone will bring 10,000 VIP Guests to KSC. Numbers like these necessitate a skilled set of over 200 bus escorts for a single launch. The need for VIP bus escorts is essential and urgent. Artemis-1 will reach ½ of the expected total number guests for 2021which is 22,000. The number of guests requires 300 bus escorts, which is 300% greater than the total bus escorts needed in all of the combined launches in 2019.

Bus escorts and additional site leads need to be recruited internally from NASA Kennedy Space Center's internal civil servants and contractors. Guest Operations is looking for GO TEAM bus escorts who ''have the right stuff'' to address and speak to NASA's highest level guests. As such those NSPIREHub (NASA Serves the Public to Inspire, Reach out, and Engage) staff applicants need to be screened to help assess if they can serve as high-caliber NASA Spokespeople.

**II. Methods of Collection**

Electronic/Online Web Form

**III. Data**

*Title:* The NASA Guest Operations VIP Bus Escort and Site Lead Team (Go Team) Application Form.

*OMB Number:* 2700–xxxx.

*Type of review:* New.

*Affected Public:* NASA Contractors, Civil Servants, Docents and Interns.

*Estimated Annual Number of activities:* 1.

*Estimated number of Respondents per Activity:* 255.

*Annual Responses:* 255.

*Estimated Time per Response:* 10 minutes.

*Estimated Total Annual Burden Hours:* 43.

*Estimated Total Annual Cost:* 1,083.75.

**IV. Request for Comments**

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Lori Parker,**

*NASA PRA Clearance Officer.*

[FR Doc. 2021–22307 Filed 10–13–21; 8:45 am]

BILLING CODE 7510–13–P

## PUBLIC BUILDINGS REFORM BOARD

### Notice of Public Meeting

**AGENCY:** Public Buildings Reform Board.

**ACTION:** Notice of public meeting.

**SUMMARY:** As provided by the Federal Assets Sale and Transfer Act of 2016 (FASTA), the Public Buildings Reform Board (PBRB) is holding its seventh public meeting. At this meeting, the Board will discuss the High Value Asset Round and the First Round recommendations of sales, consolidations, property disposals, and redevelopment due in December 2021.

**DATES:** The meeting is scheduled for Thursday, October 28, 2021, from 2:00 p.m. to 3:30 p.m. (Eastern Daylight Time).

**ADDRESSES:** Due to public health concerns driven by the COVID–19 pandemic, this meeting will be open to the public virtually via WebEx. Thirty-five in person attendees will also be permitted to attend the meeting at: 2020 K St. NW, 11th Floor, Washington, DC 2006

**FOR FURTHER INFORMATION CONTACT:** Gail Fisher, Contractor, Public Buildings Reform Board, 202–714–9060, or questions and comments can be forwarded to the PBRB Team by email at *fastainfo@pbrb.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

FASTA created the PBRB as an independent Board to identify opportunities for the Federal government to significantly reduce its inventory of civilian real property and thereby reduce costs. The Board is directed, within 6 months of its formation, to recommend to the Office of Management and Budget (OMB) the sale of not fewer than five properties not on the list of surplus or excess with a fair market value of not less than $500 million and not more than $750 million. In two subsequent rounds over a five-year period, the Board is responsible for making recommendations for other sales, consolidations, property disposals or redevelopment of up to $7.25 billion.

*Format and Registration:* The format for the meeting will be panel discussions with appropriate time allowed for a Q&A segment. Interested participants must register for the public meeting via this link: *https://www.eventbrite.com/x/public-buildings-reform-board-public-meeting-tickets-186932298537.*

Individuals wishing to attend who require special assistance or accommodations must contact the PBRB Team at *fastainfo@pbrb.gov* at least 12 days prior to the event. Portions of the meeting may be held in executive session if the Board is considering issues involving classified or proprietary information.

A transcript of the public meeting will be uploaded to *pbrb.gov* shortly after the session. If you have any additional questions, please email *fastainfo@pbrb.gov.*

*Authority:* Pub. L. 114–287, 130 Stat 1463.

**Adam Bodner,**

*Executive Director, Federal Register Liaison, Public Buildings Reform Board.*

[FR Doc. 2021–22328 Filed 10–13–21; 8:45 am]

BILLING CODE P

## POSTAL REGULATORY COMMISSION

**[Docket Nos. CP2022–4; MC2022–4 and CP2022–5; MC2022–5 and CP2022–6; MC2022–6 and CP2022–7]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* October 15, 2021.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. Docketed Proceeding(s)

## I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

## II. Docketed Proceeding(s)

1. *Docket No(s):* CP2022–4; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* October 7, 2021; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* October 15, 2021.

2. *Docket No(s).:* MC2022–4 and CP2022–5; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 204 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 7, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 15, 2021.

3. *Docket No(s).:* MC2022–5 and CP2022–6; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 77 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 7, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 15, 2021.

4. *Docket No(s).:* MC2022–6 and CP2022–7; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 205 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 7, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 15, 2021.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2021–22291 Filed 10–13–21; 8:45 am]

**BILLING CODE 7710–FW–P**

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–93270; File No. SR–CboeBZX–2021–065]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 21.1 in Connection With Time-In-Force Instructions Available for Bulk Messages and To Make a Clarifying Change

October 7, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 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, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 the Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Options'') proposes to amend Rule 21.1 in connection with Time-in-Force instructions available for bulk messages and to make a clarifying change. 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/*), 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rules 21.1(f) and (l) to allow Users to instruct bulk messages with a Time-in-Force of Immediate or Cancel (''IOC''). Currently, Users may not designate bulk messages as IOC, which, pursuant to Rule 21.1(f)(2), instructs a limit order to be executed in whole or in part as soon

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

as such order is received. The portion not so executed immediately on the Exchange or another options exchange is cancelled and is not posted to the BZX Options Book. A bulk message is a bid or offer included in a single electronic message a User submits with an M Capacity (*i.e.,* for the account of a Market Maker) to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. More, specifically, bulk message functionality is available to Market Makers and permits them to update their electronic quotes in block quantities across series in a class. Rule 21.1(l)(3)(A)(i) currently provides that a bulk message submitted through a dedicated logical port (*i.e.,* a ''bulk port'') has a Time-in-Force of Day. Pursuant to Rule 21.1(f)(3), the term ''Day'' means, for an order so designated, a limit order to buy or sell which, if not executed expires at the RTH market close. All bulk messages have a Time in Force of DAY, as set forth in Rule 21.1(l).

The Exchange proposes to allow Market Makers to designate bulk messages as IOC by amending the following: Rule 21.1(l)(3)(A)(i) to provide that a bulk message submitted through a bulk port has a Time-in-Force of Day or IOC; the definition of IOC in Rule 21.1(f)(2) to provide that Users may designate bulk messages as IOC; and the definition of ''Day'' in Rule 21.1(f)(3) to remove the language that all bulk messages have a Time-in-Force of DAY, as set forth in Rule 21.1(l), and instead provide that Users may designate bulk messages as Day.

A Market Maker's primary purpose is to provide liquidity to the market, which it may do in various ways, including resting quotes on the Book as well as submitting quotes to trade against other resting interest on the Book. In addition to providing liquidity via continuous quotes in a Market Maker's appointed classes,[5] as part of its quoting obligations, a Market Maker is also required to maintain active markets in its appointed classes, update quotations in response to changed market conditions in its appointed classes and compete with other Market Makers in its appointed classes.[6] As part of a Market Maker's efforts to satisfy these obligations, a Market Maker may update quotes with the specific purpose of removing interest resting in the Book. This may provide additional execution opportunities for customers, thereby encouraging an increase in overall participation in an appointed class.

Currently, if a Market Maker wishes to execute against interest in the Book, a Market Maker will enter a Book Only bulk message or modify an existing bulk message to attempt to execute against such interest, followed immediately by a bulk message to cancel the preceding bulk message (or unexecuted portion) so that no portion of that bulk message will remain displayed on the Book. Essentially, in order to execute against interest on the Book, Market Makers may currently send a sequence of bulk messages that mimic the result of an IOC instruction—ultimately the bulk message is cancelled and does not post to the Book if it is not executed immediately against resting interest. Sending a bulk message to cancel immediately following the submission of a bulk message or a bulk message modification to execute against resting interest creates an extra step for Market-Makers (compared to Options Members that may use IOC orders to accomplish this) using bulk message functionality and requires the System to process additional messages. As such, the proposed rule change to permit Market Makers to designate their bulk messages as IOC would allow them to attempt more effectively and efficiently to execute against interest in the Book and would reduce message traffic by eliminating the need for Market Makers to send multiple messages to attempt this. The Exchange notes that Market Makers may already use bulk messages to remove liquidity from the Book (if they so elect) using the ''Book Only'' instruction and, as described above, Market Makers may already use bulk messages to remove liquidity without letting nonexecuted size rest on the Book. The proposed rule change merely streamlines the manner in which Market Makers may already utilize bulk messages to execute against interest on the Book without sending an unexecuted bulk message (or unexecuted portion) to the Book thereafter. Also, Market Makers may already designate their quotes submitted in an order as IOC.[7]

The Exchange notes that bulk message functionality is designed to facilitate Market Makers quoting on the Exchange in connection with their responsibility as liquidity providers. For example, the current requirement that bulk messages have a Time-in-Force of Day is consistent with general practice of Market Makers to enter new quotes at the beginning of each trading day, as well as a Market Maker's obligation to update its quotes in response to changed market conditions in its appointed classes. The provision that allows Market Makers to designate their bulk messages as Post Only or Book Only is intended to provide Market Makers with flexibility to use these instructions to permit them to execute against resting interest upon entry or add liquidity to the Book in connection with their various obligations in a manner they deem appropriate.[8] The Exchange believes that the proposed rule change likewise permits Market Makers to use an instruction with respect to their bulk messages as an additional tool to provide liquidity to the market and meet their various obligations (such as maintaining active markets in an appointed class, updating quotations in response to changed market conditions in an appointed class and competing with other Market Makers in an appointed class) in a manner they deem appropriate, which may include removing interest in the Book to subsequently post updated quotes at potentially tighter spreads and to provide additional execution opportunities at potentially improved prices. The Exchange also believes that the proposed rule change enhances a current means by which Market Makers use bulk messages to facilitate the provision of liquidity on the Exchange. That is, Market Makers using bulk messages with an IOC instruction, as proposed, may more efficiently execute against resting interest, thereby increasing execution opportunities for orders resting on the Book. An increase in transactions on the Exchange may facilitate tighter spreads and price discovery, and, as a result, encourage increased participation and additional order flow from other market participants. The Exchange notes that

[5] *See* Rule 22.5(a)(1).

[6] *See* Rule 22.5(a)(3),(5) and (6).

[7] The Exchange notes that a Market-Maker may submit their quotes electronically in an order or bulk message. The Exchange also notes that, while Market-Makers may currently instruct their orders, including quotes submitted as orders, as IOC, the Exchange understands that Market-Makers predominantly conduct their trading activity through and design their business models around the use bulk messages.

[8] *See* Securities Exchange Release Nos. 84928 (December 21, 2018) 83 FR 67794 (December 31, 2018) (SR–CboeBZX–2018–092); *and* 88817 (May 6, 2020), 85 FR 28112 (May 12, 2020) (SR–CboeBZX–2020–037). The Exchange notes that SR–CboeBZX–2018–092 implemented bulk message functionality to be consistent with the bulk message functionality, also adopted at that time, by its affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options''). The Exchange notes that Cboe Option's bulk message functionality replaced its prior block quoting functionality, which likewise allowed a Market Maker to submit a single message containing bids and offers in multiple series; however, Cboe Options Rules did not prohibit an IOC designation for quotes submitted in block quantities.

the submission of bulk messages to the Exchange is voluntary and that Market Makers may continue to elect to use bulk messages designated as Day in the same manner as they do today, including sending a bulk message immediately followed by a cancel to attempt to execute against resting interest.

The proposed rule change also updates Rule 21.1(d), which defines the term ''Order Type'', and Rule 21.1(f), which defines the term ''Time-in-Force'', to clarify the manner in which an Order Type or Time-in-Force, respectively, applies to a bulk message. Currently, an Order Type or Time-in-Force applied to a bulk message applies to each bid and offer within that bulk message. The proposed rule change updates Rules 21.1(d) and (f) to make this explicit for Order Type and Time-in-Force designations, respectively. The proposed rule change does not alter any current functionality, but instead adds clarity to the definition of Order Type and Time-in Force by more accurately reflecting the current application of such designations to bulk messages.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change allowing Market Makers to designate their bulk messages as IOC will remove impediments to and perfect the mechanism of a free and open market and national market system and benefit investors by permitting Market Makers to more effectively and efficiently execute bulk messages against specific interest on the Book without posting an unexecuted bulk message (or unexecuted portion) to the Book thereafter. As described above, Market Makers already submit bulk messages in a manner that mimics an IOC instruction; the proposed rule change merely streamlines this process for Market Makers by allowing them to use a Time-in-Force instruction currently available for their orders (which may also contain a Market Maker's quotes) on the Exchange today. In addition to this, Market Makers may already include Book Only instructions that permit their bulk messages to remove liquidity from the Book. The proposed rule change is designed to benefit market participants by increasing efficiency and reducing additional message traffic by eliminating the need for Market Makers to send an additional bulk message to cancel along with their bulk messages in instances in which they wish to execute against interest that appears on the Book. The proposed rule change allows Market Makers to elect to use their bulk messages as additional tools to meet their various obligations in a manner they deem appropriate, consistent with the purpose of bulk message functionality to facilitate Market Makers' provision of liquidity, which may include removing interest in the Book to subsequently post updated quotes at potentially tighter spreads and to provide additional execution opportunities at potentially improved prices. Also, the use of IOC bulk messages for Market Makers may ultimately facilitate the provision of additional liquidity on the by increasing execution opportunities on the Exchange, as an increase in transactions on the Exchange may facilitate tighter spreads and price discovery, thereby encouraging increased participation and additional order flow from other market participants, to the benefit of all investors. Market Makers may continue to elect to use bulk messages designated as Day in the same manner as they do today, including sending a bulk message immediately followed by a cancel to attempt to execute against resting interest.

Additionally, the Exchange does not believe that the proposed rule change would permit unfair discrimination as bulk message functionality is principally designed to facilitate the provision of liquidity by Market Makers to the Exchange and help Market Makers satisfy their obligations. The Exchange believes that Market Makers play a unique and critical role in the options market by providing liquid and active markets and are subject to various quoting obligations (which other market participants are not), including an obligation to maintain active markets, to update quotations in response to changed market conditions and to compete with other Market Makers in its appointed classes. Bulk message functionality, including an IOC bulk message, provides Market Makers with a means to help them satisfy these obligations. As noted above, Market Makers are already able to use Book Only bulk messages to execute against resting liquidity in multiple series across a class and to cancel quotes in multiple series across a class. The proposed rule change simply allows Market Makers to utilize their bulk messages in the same manner, just with a single message.

Additionally, the Exchange believes that the proposed rule change regarding the manner in which an Order Type and Time-in-Force instruction is applied to bulk messages removes impediments to and perfects the mechanism of a free and open market and national market system by amending Rules 21.1(d) and (f) to reflect current functionality. The proposed rule change is merely a clarification in the Rule intended to more accurately reflect how bulk message functionality currently works, thereby increasing transparency in the Rule and ultimately benefitting investors. The proposed clarification does not alter any current functionality and is simply intended to provide clarity to the Rule.

*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 that the proposed rule change in connection with IOC bulk messages will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the IOC instruction for bulk messages will be available for all Market Makers that choose to submit bulk messages. Use of the IOC instruction for bulk messages is voluntary, and Market Makers may choose to continue to only apply the Day Time-in-Force to bulk messages and continue to attempt to execute bulk messages against resting interest using multiple messages as they

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

do today. The proposed rule change permits Market Makers to use a Time-in-Force that is already available to all Options Members, including Market Makers, to apply to their orders. While only Market Makers may submit IOC bulk messages (as only Market Makers may currently submit any bulk messages), the Exchange believes this is appropriate given the various obligations Market Makers must satisfy under the Rules and the unique and critical role Market Makers play in the options market by providing liquid and active markets. The Exchange believes providing Market Makers with flexibility to use the IOC instruction with respect to bulk messages will provide Market Makers with an enhanced tool to provide liquidity to the market and satisfy their obligations in a manner they deem appropriate, as they are similarly able to do today by electing the Book Only and Post Only instructions for their bulk messages.

The Exchange does not believe that the proposed rule change in connection with IOC bulk messages will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as it relates to quoting functionality available to Market Makers on the Exchange. The Exchange notes that market participants on other exchanges are welcome to become Market Makers on the Exchange if they determine that this proposed rule change has made participation as a Market Maker on the Exchange more attractive or favorable.

The proposed rule change in connection with the application of Order Type and Time-in-Force instructions to bulk messages is not competitive in nature but is merely a clarification in the Rule, consistent with existing bulk message functionality and intended to provide clarity to the Rule by more accurately reflecting the current bulk message functionality. All Order Type and Time-in-Force instructions will continue to apply to bulk messages in the same manner as they do today.

*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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–065 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–2021–065. 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 such 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–2021–065, and should be submitted on or before November 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–22276 Filed 10–13–21; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–93280; File No. SR–FICC–2021–004]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving the Proposed Rule Change Relating to Confidential Information, Market Disruption Events, and Other Changes

October 8, 2021.

## I. Introduction

On June 25, 2021, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2021–004 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2] to amend FICC's Government Securities Division (''GSD'') rules and Mortgage-Backed Securities Division (''MBSD'') rules relating to confidentiality requirements, Market Disruption Events, and procedures for disconnecting a participant from FICC's network, among other changes.[3] The Proposed Rule Change was published for comment in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Notice of Filing, *infra* note 4, at 86 FR 36799.

the **Federal Register** on July 13, 2021.[4] The Commission received comments that it has considered with respect to the Proposed Rule Change.[5] For the reasons discussed below, the Commission is approving the Proposed Rule Change.

## II. Description of the proposed rule change

Pursuant to the Proposed Rule Change, FICC is proposing three main changes to its GSD Rulebook (''GSD Rules'') and its MBSD Clearing Rules (''MBSD Rules'') and MBSD Electronic Pool Notification (''EPN Rules'') (hereinafter collectively, ''Rules''):[6] (1) Standardizing the confidentiality requirement applicable to FICC with respect to its participants' information and adding confidentiality requirement applicable to participants with respect to FICC's information, (2) updating its GSD and MBSD Market Disruption and Force Majeure Rules (''Force Majeure Rule'') to authorize two additional officers to determine that a Market Disruption Event has occurred, and (3) adding a new GSD rule and MBSD rule setting forth the procedures under which FICC would be able to disconnect a participant from its network in certain circumstances (''Systems Disconnect Rule''). The Commission provides relevant background and describes each of these proposed changes in greater detail below.

### *A. Background*

FICC plays a prominent role in the fixed income markets as the sole clearing agency in the United States acting as a central counterparty and provider of significant clearance and settlement services for cash settled U.S. treasury and agency securities and the non-private label mortgage-backed securities markets FICC.[7] In light of FICC's critical role in the marketplace, FICC was designated a Systemically Important Financial Market Utility (''SIFMU'') under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[8] Due to FICC's unique position in the marketplace, a failure or a disruption to FICC could, among other things, significantly disrupt settlement of securities transactions cleared by FICC and increase the risk of substantial liquidity problems spreading among financial institutions or markets, and thereby threaten the stability of the financial system in the United States.[9]

FICC participants connect to FICC's systems, either directly through the Securely Managed and Reliable Technology (''SMART'') network or through a third party service provider or service bureau.[10] FICC's parent company, The Depository Trust & Clearing Corporation (''DTCC'') manages the SMART network, which connects a nationwide complex of networks, processing centers, and control facilities.[11]

### *B. Proposed Changes*

1. Confidentiality Requirements

*Confidentiality Requirements Applicable to FICC:* FICC collects confidential information from its participants to assess whether each participant meets FICC's membership requirements either to gain or continue access to FICC's clearance and settlement services.[12] In turn, FICC is required to maintain the confidentiality of any information furnished by its participants, including the books and records FICC has a right to inspect. Currently, FICC's Rules obligate FICC to hold participants' information in the same degree of confidence as may be required by law or the rules and regulations (hereinafter collectively, ''regulations'') of the appropriate regulatory body having jurisdiction over the participant.[13]

FICC states that its current Rules create ambiguity because FICC's obligations depend on each participant's regulatory requirements, which could lead to unequal treatment of participants and conflicts of law with FICC's regulatory requirements or with respect to a participant who is subject to multiple jurisdictions' regulations.[14] FICC also states that applying different standards creates operational burdens because FICC must track the regulations applicable to each of its participants and must maintain the confidentiality of each participant's information to the same degree as required by the applicable regulations.[15]

In order to clarify its confidentiality requirements and to enhance its operational efficiency, FICC proposes to revise its Rules to establish a standard, which will require FICC to hold participant confidential information to the same degree as FICC's regulatory requirements that relate to the confidentiality of records, and to remove the references to each participant's particular regulatory obligations. FICC represents that the proposed change would provide participants with similar protections because FICC believes its regulatory requirements are comparable to the regulations applicable to its participants and, therefore, would not result in changes to FICC's current practices or the protection offered to its participants' confidential information.[16]

*Confidentiality Requirements Applicable to Participants:* FICC's Rules do not include obligations for its participants to protect confidential information furnished by FICC or its affiliates.[17] However, FICC states that, in

[4] Securities Exchange Act Release No. 92341 (June 25, 2021), 86 FR 36799 (July 13, 2021) (File No. SR–FICC–2021–004) (''Notice of Filing'').

[5] Specifically, the Commission received comments on a proposed rule change filed by FICC's affiliate, the Depository Trust Company, regarding parallel changes to DTC's Rules. *See* Securities Exchange Act Release No. 92342 (June 25, 2021), 86 FR 36833 (July 13, 2021) (File No. SR–DTC–2021–011). The comment letters are available on the Commission's website at *https://www.sec.gov/comments/sr-dtc-2021-011/srdtc2021011.htm.* Because the comments address issues that also appear in this Proposed Rule Change, the Commission has considered it in connection with FICC's proposal as well. Several comments generally supported the Proposed Rule Change, and the Commission considers the additional comments in its analysis at Section III *infra.*

[6] Capitalized terms not defined herein are defined in the GSD Rulebook, MBSD Clearing Rules, and MBSD EPN Rules, as applicable, *available at https://www.dtcc.com/legal/rules-and-procedures.*

[7] *See* Financial Stability Oversight Counsel 2012 Annual Report, Appendix A (''FSOC 2012 Report''), *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[8] 12 U.S.C. 5465(e)(1). *See* FSOC 2012 Report, *supra* note 7.

[9] *See* FSOC 2012 Report, *supra* note 7.

[10] *See* Securities Exchange Act Release No. 87697 (December 9, 2019), 84 FR 68266 (December 13, 2019) (File No. SR–FICC–2019–005) (describing the DTCC SMART network).

[11] DTCC provides a set of core business processes for FICC and DTCC's other subsidiaries, including the technology systems and networks, that provide connectivity between FICC and its participants and that provide FICC with the ability to provide its services as required under the Rules. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides services to FICC and DTCC's other subsidiaries.

[12] *See* GSD Rules 2A, 3, 3A, and 3B; MBSD Rules 2A and 3; and EPN Rule 1 of Article III, *supra* note 6 (establishing FICC's right to require applicants to furnish information to become participants of FICC, to require participants to furnish information relating to assurances of financial responsibility and operational capability, and to require certain participants to provide FICC access to their books and records).

[13] *See* Section 5 of GSD Rule 2A and Section 6 of MBSD Rule 2A, Sections 4 and 10 of GSD Rule 3 and Sections 3 and 9 of MBSD Rule 3, Section 2(j) of GSD Rule 3A, Sections 3(e) and 5(k) of GSD Rule 3B, Section 9 of EPN Rule 1 of Article III, *supra* note 6.

[14] *See* Notice of Filing, *supra* note 4, at 36800.

[15] *See id.* at 36800–01.

[16] *See id.* at 36801.

[17] FICC states that, historically, it has generally not provided, nor been requested to provide, information that contains confidential or proprietary information of FICC or its affiliates to its participants except for information necessary for participants to connect to DTCC Systems, which is

Continued

connection with the development of cyber and information security programs pursuant to applicable participant regulatory requirements, FICC and DTCC have received an increasing number of requests from participants for confidential information, such as information regarding DTCC's network operations, data security practices, and legal settlements.[18] Additionally, FICC states that participants may request FICC or DTCC to disclose confidential information regarding its cyber threat indicators, sources of cyber threat information, or other information and actions taken following a cyber incident relating to a participant, FICC, or DTCC.[19]

To facilitate information sharing by FICC while protecting the confidentiality of proprietary and confidential information FICC shares with its participants, FICC proposes to add participant confidentiality requirements to its Rules. The new provisions will require participants to maintain the confidentiality of information furnished by FICC through proper safeguards to prevent disclosure of such confidential information, except as necessary to perform its obligations under FICC's Rules or as otherwise required by applicable law. FICC proposes that participants be required to maintain the confidentiality of this information to the same extent and using the same means the participant uses to protect its own confidential information, but no less than a reasonable standard of care. FICC's proposal will also entitle FICC or DTCC to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages under the Rules if a participant breaches its confidentiality requirements. Additionally, FICC's proposal will entitle FICC to impose other disciplinary proceedings or restrictions on access to services for a participant's failure to comply with its confidentiality requirements, consistent with the existing tools available to FICC regarding a participant's failure to comply with its Rules.

2. Market Disruption Event

FICC's Rules contain provisions that identify the events or circumstances that FICC would consider to be a Market Disruption Event, including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which FICC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems.[20] Upon the declaration of a Market Disruption Event, FICC's Rules provide FICC with tools to address such an event, such as suspending any or all services and taking, or requiring participants to take, any actions FICC considers appropriate to facilitate the continuation of FICC's services.[21]

Currently, FICC's Board of Directors may declare a Market Disruption Event and may take any actions authorized by FICC's Rules to address the event.[22] However, FICC's Rules also authorize certain officers to make an interim declaration of a Market Disruption Event, to allow FICC to prevent delays in addressing a Market Disruption Event if the Board of Directors is unable to convene.[23] In the event of such an interim declaration, the Board of Directors must ratify, modify, or rescind the officer's determination as soon as practicable.[24] Currently, the officers authorized to make such determination are the Chief Executive Officer, Chief Financial Officer, Group Chief Risk Officer, and General Counsel.[25]

FICC proposes to add two additional officers of FICC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of authorized officers that could make such an interim determination if the Board of Directors is unable to convene. FICC states these two officers, like the other officers currently provided in the Rules, maintain senior executive level positions at FICC, oversee divisions of FICC, and hold positions at FICC that would provide them a necessary global view into FICC's operations and systems to enable them to determine the existence of a Market Disruption Event.[26] FICC states adding these two additional officers would facilitate FICC's ability to implement its emergency procedures in the event of a Market Disruption Event.[27]

3. Systems Disconnect Rule

As mentioned above in Section II.A (Background), FICC's participants connect to FICC's systems, either through the DTCC-managed SMART network or through other electronic means, such as through a third party service provider or service bureau. FICC's Rules do not address FICC's ability to disconnect participant whose network connection risks harming FICC's systems. FICC's proposal will establish procedures under which FICC would be able to disconnect a participant from its network due to the risk of an imminent threat to FICC, participants, or other market participants.[28]

FICC's proposal will address FICC's authority to take certain actions upon the occurrence, and during the pendency, of a Major Event. A ''Major Event'' will be defined as the happening of one or more ''Systems Disruptions'' reasonably likely to have a significant impact on FICC's operations, including ''DTCC Systems,''[29] that affect the business, operations, safeguarding of securities or funds, or physical functions of FICC, its participants, or other market participants. ''Systems Disruption'' will, in turn, be defined as the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of a DTCC Systems Participant's systems that disrupts or degrades the normal operation of such DTCC Systems Participant's systems; or anything that impacts or alters the normal communication or the files that are received, or information transmitted, to or from the DTCC Systems.

FICC's proposal would also provide governance procedures applicable to FICC's determination whether, and how, to implement the provisions of the Systems Disconnect rule. The same officers with delegated authority under the Force Majeure Rule may make a determination that a Major Event has occurred. As discussed in Section II.B.2 (Market Disruption Event) above, FICC states these officers maintain senior executive level positions at FICC, oversee divisions of FICC, and hold positions at FICC that would provide them a necessary global view into FICC's operations and systems to enable them to determine the existence of a Market Disruption Event, which would

typically protected under intellectual property laws. *See id.*

[18] *See* Notice of Filing, *supra* note 4, at 36801. *See also, supra* discussion in Section II.A (Background) relating to DTCC Systems.

[19] *See* Notice of Filing, *supra* note 4, at 36801.

[20] *See* GSD Rule 50 and MBSD Rule 40, *supra* note 6. MBSD Rule 40 is incorporated into the EPN Rules. *See* Section 5 of EPM Rule 1 of Article III, *supra* note 6. *See also* Securities Exchange Act Release Nos. 83954 (August 27, 2018), 83 FR 44361 (August 30, 2018) (File No. SR–FICC–2017–805); 83973 (August 28, 2018), 83 FR 44942 (September 4, 2018) (File No. SR–FICC–2017–021).

[21] *See* GSD Rule 50 and MBSD Rule 40, *supra* note 6.

[22] *See* Section 2 of GSD Rule 50 and Section 2 of MBSD Rule 40, *supra* note 6.

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See* Notice of Filing, *supra* note 4, at 36801.

[27] *See id.*

[28] *See* Notice of Filing, *supra* note 4, at 36802.

[29] ''DTCC Systems'' will be defined as the systems, equipment and technology networks of DTCC, FICC and/or their Affiliates, whether owned, leased, or licensed, software, devices, IP addresses or other addresses or accounts used in connection with providing the services set forth in the Rules, or used to transact business or to manage the connection with FICC.

also enable them to determine the existence of a Major Event.

However, the proposed process for declaring a Major Event, by contrast, would start with a designated officer, whereas, for a Market Disruption Event, the officer would make an interim determination only if the Board of Directors were unable to timely convene. FICC states it designed the process in this way to improve its ability to respond quickly, efficiently, and effectively to a Major Event that arises abruptly.[30] Following this determination, any management committee including all of the officers authorized to determine a Major Event would convene, and FICC would convene a Board of Directors meeting as soon as practicable thereafter, and in any event within five Business Days following such determination, to ratify, modify, or rescind the Officer Major Event Action.[31]

In addition, the proposed rule will require participants to notify FICC immediately upon becoming aware of a Major Event, and, likewise, will require FICC to notify its participants promptly of any action FICC takes or intends to take with respect to a Major Event.[32] Finally, the proposal will address certain miscellaneous related matters including: (i) A limitation of liability for any failure or delay in performance, in whole or in part of FICC's obligations under the Rules, arising out of or related to a Major Event, (ii) a statement that FICC's power to take any action pursuant to the Systems Disconnect Rule also includes the power to repeal, rescind, revoke, amend or vary such action, (iii) a statement that FICC's powers pursuant to the Systems Disconnect Rule shall be in addition to, and not in derogation of, authority granted elsewhere in the Rules to take action as specified therein, (iv) a requirement that participants shall keep any confidential information provided to them by FICC in connection with a Major Event confidential, and (v) a statement that in the event of any conflict between the provisions of the Systems Disconnect Rule and any other Rules or Procedures, the provisions of the Systems Disconnect Rule would prevail.

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[33] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After careful consideration, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations applicable to FICC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F)[34] of the Act and Rules 17Ad–22(e)(1),[35] (e)(2),[36] and (e)(17)(i)[37] thereunder.

### *A. Consistency With Section 17A(b)(3)(F) of the Act*

Section 17A(b)(3)(F)[38] of the Exchange Act requires, in part, that the rules of a clearing agency, such as FICC, be designed, in part, to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act[39] for the reasons discussed below.

As described above in Section II.B.1 (Confidentiality Requirements), FICC proposes to revise its Rules to establish a standard relating to FICC's obligation to maintain the confidentiality of information it collects from participants to assess each participant's compliance with FICC's membership requirements. The Commission believes such a uniform standard will help FICC meet its obligations and will help each participant better understand FICC's obligations for maintaining the confidential information it shares with FICC, which, in turn, may facilitate the sharing of such information and improve FICC's ability to evaluate its participants' eligibility to access FICC's clearance and settlement services.

Also, as described above in Section II.B.1 (Confidentiality Requirements), FICC proposes to add participant confidentiality requirements to its Rules to ensure participants maintain the confidentiality of information FICC shares, which participants may then use to determine whether to participate in FICC's clearance and settlement services by understanding FICC system requirements and FICC system safeguards. The Commission believes participant confidentiality requirements will help each participant better understand its rights and obligations for maintaining the confidential information FICC shares, which, in turn, may facilitate participant compliance. Therefore, the Commission believes the proposed changes to FICC and participant confidentiality requirements are consistent with promoting the prompt and accurate clearance and settlement of securities transactions by FICC.

As described above in Section II.B.2 (Market Disruption Event) and Section II.B.3 (Systems Disconnect Rule), risks, threats, and potential vulnerabilities due to a Market Disruption Event or a Major Event could impede FICC's ability to provide its clearance and settlement services. FICC proposes to add two officers authorized to make an interim determination that a Market Disruption Event has occurred if the Board of Directors is unable to timely convene. The Commission believes the proposed change will improve FICC's ability to respond quickly to a Market Disruption Event, which could help FICC mitigate the impact of such event on FICC, its participants, and the broader market.

Additionally, as described above in Section II.B.3 (Systems Disconnect Rule), FICC proposes to add the Systems Disconnect Rule, which will set forth the procedures under which FICC would be authorized, upon the occurrence of a Major Event (as defined in the proposed rules), to take certain actions, including disconnecting a participant from FICC's systems, suspending data transmissions between FICC and the participant, and requiring the participant to take other actions necessary to protect FICC and its participants. The Commission believes the proposed Systems Disconnect Rule will enable FICC to respond quickly to a potential cyber threat or other network disruption, which could help FICC prevent the spread of a participant's systems disruptions to FICC, its participants, and other market participants that could otherwise cause losses to FICC or its participants.

One commenter suggests certain revisions to the definition of Major Event so that certain terms in the Systems Disconnect Rule are consistent with the definition of Market Disruption Event in the Force Majeure Rule.[40] The Commission disagrees. Consistency between the Systems Disconnect Rule and the Force Majeure Rule is not necessary because FICC designed the

[30] *See* Notice of Filing, *supra* note 4, at 36802.

[31] *See id.*

[32] *See id.*

[33] 15 U.S.C. 78s(b)(2)(C).

[34] 15 U.S.C. 78q-1(b)(3)(F).

[35] 17 CFR 240.17Ad–22(e)(1).

[36] 17 CFR 240.17Ad–22(e)(2).

[37] 17 CFR 240.17Ad–22(e)(17)(i).

[38] 15 U.S.C. 78q-1(b)(3)(F).

[39] *Id.*

[40] *See* letter from Anonymous, dated July 28, 2021, *supra* note 5.

Systems Disconnect Rule for a different purpose. Although both rules relate to events that, if left unaddressed, could affect FICC's ability to provide clearance and settlement services, the Force Majeure Rule is designed to cover events caused by external forces that impact FICC and its participants, whereas the Systems Disconnect Rule is designed only to cover disruptions to a participant's computer systems or network that could flow through to FICC systems. Therefore, differences between the two rules do not raise consistency concerns, because of their different purposes.[41]

Therefore, for the reasons described above, the Commission believes the proposed changes relating to a Market Disruption Event or a Major Event will help promote the prompt and accurate clearance and settlement of securities transactions and with assuring FICC safeguards securities and funds that are in its custody or control or for which it is responsible. Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.[42]

*B. Consistency With Rule 17Ad–22(e)(1)*

Rule 17Ad–22(e)(1) under the Exchange Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[43] The Commission finds that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(1) of the Exchange Act[44] for the reasons discussed below.

As described above in Sections II.B.1 (Confidentiality Requirements) and II.B.2 (Market Disruption Event), FICC proposes to establish a consistent standard for its obligation to maintain the confidentiality of information it collects from its participants and to establish participant confidentiality requirements. The Commission believes a consistent standard for FICC's confidentiality requirements will provide for clear and transparent standard rules for participants, rather than maintaining potentially different confidentiality standards for participants based on the various, unrelated regulatory bodies governing those participants. Additionally, the Commission believes that imposing specific legal standards applicable to both FICC and its participants to follow will provide for a well-founded legal basis for the sharing and maintaining of confidential information between FICC and its participants.[45]

Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Rule 17Ad–22(e)(1) of the Exchange Act.[46]

*C. Consistency With Rule 17Ad–22(e)(2)*

Rule 17Ad–22(e)(2) under the Exchange Act requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.[47] The Commission finds that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(2) of the Exchange Act[48] for the reasons discussed below.

The Commission believes FICC's proposal, as described above in Section II.B.2 (Market Disruption Event), to add two officers authorized to make an interim determination of a Market Disruption Event if the Board of Directors is unable to convene in a timely manner provides for governance arrangements that are clear and transparent and that provide clear and direct lines of responsibility. Likewise, the Commission believes FICC's proposal to identify the officers authorized to make an interim determination of a Major Event, which will then be ratified, modified, or rescinded by the management committee and the Board of Directors will provide for clear and transparent governance procedures and will specify clear and direct lines of responsibility. Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Rule 17Ad–22(e)(2) of the Exchange Act.[49]

*D. Consistency With Rule 17Ad–22(e)(17)(i)*

Rule 17Ad–22(e)(17)(i) under the Exchange Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[50] The Commission finds that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(17)(i) of the Exchange Act[51] for the reasons discussed below.

The Commission believes FICC's proposal, as described above in Section II.B.2 (Market Disruption Event), to add two officers authorized to make an interim determination of a Market Disruption Event could help FICC mitigate the impact of a Market Disruption Event by ensuring FICC can respond quickly to such event if the Board of Directors were unable to convene in a timely manner. Likewise, the Commission believes the proposed Systems Disconnect Rule, as described in Section II.B.3 above, provides a rules-based process that will enable FICC to identify potential cyber threats or other network disruptions, which could help FICC prevent the spread of a participant's systems disruptions to FICC, its participants, and other market participants that could otherwise cause losses to FICC or its participants.

One commenter suggests revising the definition of Major Event to be consistent with the definition of Market Disruption Event in the Force Majeure Rule.[52] The commenter further argues the impact to FICC covered by the definition of Major Event should be limited to ''DTCC Systems'' (as defined in the proposed rule) to ensure the scope of the proposed rule is limited to technical systems.[53] The Commission

[41] The commenter also suggests adding language to the end of the Major Event definition to indicate that, to avoid doubt, a Major Event would not include disruptions due to normal market forces. The Commission does not believe that such additional language is necessary because, as discussed above in Section II.B.3 (Systems Disconnect Rule), a Major Event is limited to one or more ''Systems Disruption(s)'' (as defined in the proposed rule), which is properly limited to disruptions to participant systems or its network connection.

[42] 15 U.S.C. 78q–1(b)(3)(F).

[43] 17 CFR 240.17Ad–22(e)(1).

[44] *Id.*

[45] One commenter suggests adding an exception for negligence or fraud to the limitation of liability clause in the proposed Systems Disconnect Rule, which the commenter states is customary contractual language. *See* letter from Anonymous, dated July 28, 2021, *supra* note 5. The Commission notes FICC has already included similar language in its Rules, which would be applicable to this aspect of the proposal. *See* Sections 3 of GSD Rule 39 and MBSD Rule 30 and Section 1 of EPN Rule 6 of Article 5, *supra* note 6 (providing for FICC liability to its participants for ''gross negligence, willful misconduct, or violations of Federal securities laws for which there is a private right of action'' notwithstanding any other provision in the Rules).

[46] 17 CFR 240.17Ad–22(e)(1).

[47] 17 CFR 240.17Ad–22(e)(2).

[48] *Id.*

[49] *Id.*

[50] 17 CFR 240.17Ad–22(e)(17)(i).

[51] *Id.*

[52] Specifically, the commenter suggests deleting reference to ''reasonably'' and by replacing ''significant'' with ''material'' when describing the likelihood and level of impact to FICC. *See* letter from Anonymous, dated July 28, 2021, *supra* note 5.

[53] *See id.*

disagrees. As noted above, the purposes of both the Force Majeure Rule and the Systems Disconnect Rule are different. The Force Majeure Rule is designed to cover events external to FICC and its participants that materially impact, or are likely to materially impact, FICC's ability to provide its clearance and settlement services. The Systems Disconnect Rule, by contrast, is designed to cover a participant's systems or network disruption, which through its connection to FICC, is reasonably likely to have a significant impact on FICC's systems. The differences between the rules' purposes support the need for differing standards.[54] Furthermore, the Commission notes the reference to ''including DTCC Systems'' in the proposed definition of Major Event takes into account how FICC's operations, *i.e.,* its clearance and settlement services, work, in that they utilize DTCC Systems. Consequently, the commenter's proposed revisions are not necessary.[55]

Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Rule 17Ad–22(e)(17)(i) of the Exchange Act.[56]

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[57] and the rules and regulations promulgated thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act[58] that Proposed Rule Change SR–FICC–2021–004, be, and hereby is, *approved.*[59]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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[54] The Commission also disagrees with the commenter's suggestion to remove the references to ''reasonably'' with respect to the likelihood of an event impacting FICC's operations. The Commission believes that FICC's assessment of the likelihood of such an impact should be reasonable before taking actions like disconnecting a participant from its systems. In addition, the Commission notes that FICC's references to ''reasonably likely'' and ''significant impact'' in the proposed definition of Major Event are consistent with the Commission's definition of a ''Major SCI Event'' under Regulation SCI. 17 CFR 242.1000. Likewise, the Commission notes that references in the proposed rule text to ''reasonable basis'' and ''appropriate'' is consistent with the obligations related to a Major SCI Event under Regulation SCI. 17 CFR 242.1002.

[55] Another commenter expressed concern that the proposed Systems Disconnect Rule could be used to benefit the trading activity of certain participants at the detriment of disconnected participants. *See* letter from Jarrod Knudson, dated June 27, 2021, *supra* note 5. The Commission disagrees because the proposed rule, by its terms, would only apply when certain Systems Disruptions occur at a participant that could impact FICC's operations.

[56] 17 CFR 240.17Ad–22(e)(17)(i).

[57] 15 U.S.C. 78q–1.

[58] 15 U.S.C. 78s(b)(2).

[59] In approving the Proposed Rule Change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[60] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–93272; File No. SR–CboeEDGX–2021–041]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 21.1 in Connection With Time-in-Force Instructions Available for Bulk Messages and To Make a Clarifying Change

October 7, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 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, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 the Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') proposes to amend Rule 21.1 in connection with Time-in-Force instructions available for bulk messages and to make a clarifying change. 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/*), 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rules 21.1(f) and (j) to allow Users to instruct bulk messages with a Time-in-Force of Immediate or Cancel (''IOC''). Currently, Users may not designate bulk messages as IOC, which, pursuant to Rule 21.1(f)(2), instructs a limit order to be executed in whole or in part as soon as such order is received. The portion not so executed immediately on the Exchange or another options exchange is cancelled and is not posted to the EDGX Options Book. A bulk message is a bid or offer included in a single electronic message a User submits with an M Capacity (*i.e.,* for the account of a Market Maker) to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. More, specifically, bulk message functionality is available to Market Makers and permits them to update their electronic quotes in block quantities across series in a class. Rule 21.1(j)(3)(A)(i) currently provides that a bulk message submitted through a dedicated logical port (*i.e.,* a ''bulk port'') has a Time-in-Force of Day. Pursuant to Rule 21.1(f)(3), the term ''Day'' means, for an order so designated, a limit order to buy or sell which, if not executed expires at the RTH market close. All bulk messages have a Time in Force of DAY, as set forth in Rule 21.1(j).

The Exchange proposes to allow Market Makers to designate bulk messages as IOC by amending the following: Rule 21.1(j)(3)(A)(i) to provide that a bulk message submitted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

through a bulk port has a Time-in-Force of Day or IOC; the definition of IOC in Rule 21.1(f)(2) to provide that Users may designate bulk messages as IOC; and the definition of ''Day'' in Rule 21.1(f)(3) to remove the language that all bulk messages have a Time-in-Force of DAY, as set forth in Rule 21.1(j), and instead provide that Users may designate bulk messages as Day.

A Market Maker's primary purpose is to provide liquidity to the market, which it may do in various ways, including resting quotes on the Book as well as submitting quotes to trade against other resting interest on the Book. In addition to providing liquidity via continuous quotes in a Market Maker's appointed classes,[5] as part of its quoting obligations, a Market Maker is also required to maintain active markets in its appointed classes, update quotations in response to changed market conditions in its appointed classes and compete with other Market Makers in its appointed classes.[6] As part of a Market Maker's efforts to satisfy these obligations, a Market Maker may update quotes with the specific purpose of removing interest resting in the Book. This may provide additional execution opportunities for customers, thereby encouraging an increase in overall participation in an appointed class.

Currently, if a Market Maker wishes to execute against interest in the Book, a Market Maker will enter a Book Only bulk message or modify an existing bulk message to attempt to execute against such interest, followed immediately by a bulk message to cancel the preceding bulk message (or unexecuted portion) so that no portion of that bulk message will remain displayed on the Book. Essentially, in order to execute against interest on the Book, Market Makers may currently send a sequence of bulk messages that mimic the result of an IOC instruction—ultimately the bulk message is cancelled and does not post to the Book if it is not executed immediately against resting interest. Sending a bulk message to cancel immediately following the submission of a bulk message or a bulk message modification to execute against resting interest creates an extra step for Market-Makers (compared to Options Members that may use IOC orders to accomplish this) using bulk message functionality and requires the System to process additional messages. As such, the proposed rule change to permit Market Makers to designate their bulk messages as IOC would allow them to attempt more effectively and efficiently to execute against interest in the Book and would reduce message traffic by eliminating the need for Market Makers to send multiple messages to attempt this. The Exchange notes that Market Makers may already use bulk messages to remove liquidity from the Book (if they so elect) using the ''Book Only'' instruction and, as described above, Market Makers may already use bulk messages to remove liquidity without letting nonexecuted size rest on the Book. The proposed rule change merely streamlines the manner in which Market Makers may already utilize bulk messages to execute against interest on the Book without sending an unexecuted bulk message (or unexecuted portion) to the Book thereafter. Also, Market Makers may already designate their quotes submitted in an order as IOC.[7]

The Exchange notes that bulk message functionality is designed to facilitate Market Makers quoting on the Exchange in connection with their responsibility as liquidity providers. For example, the current requirement that bulk messages have a Time-in-Force of Day is consistent with general practice of Market Makers to enter new quotes at the beginning of each trading day, as well as a Market Maker's obligation to update its quotes in response to changed market conditions in its appointed classes. The provision that allows Market Makers to designate their bulk messages as Post Only or Book Only is intended to provide Market Makers with flexibility to use these instructions to permit them to execute against resting interest upon entry or add liquidity to the Book in connection with their various obligations in a manner they deem appropriate.[8] The Exchange believes that the proposed rule change likewise permits Market Makers to use an instruction with respect to their bulk messages as an additional tool to provide liquidity to the market and meet their various obligations (such as maintaining active markets in an appointed class, updating quotations in response to changed market conditions in an appointed class and competing with other Market Makers in an appointed class) in a manner they deem appropriate, which may include removing interest in the Book to subsequently post updated quotes at potentially tighter spreads and to provide additional execution opportunities at potentially improved prices. The Exchange also believes that the proposed rule change enhances a current means by which Market Makers use bulk messages to facilitate the provision of liquidity on the Exchange. That is, Market Makers using bulk messages with an IOC instruction, as proposed, may more efficiently execute against resting interest, thereby increasing execution opportunities for orders resting on the Book. An increase in transactions on the Exchange may facilitate tighter spreads and price discovery, and, as a result, encourage increased participation and additional order flow from other market participants. The Exchange notes that the submission of bulk messages to the Exchange is voluntary and that Market Makers may continue to elect to use bulk messages designated as Day in the same manner as they do today, including sending a bulk message immediately followed by a cancel to attempt to execute against resting interest.

The proposed rule change also updates Rule 21.1(d), which defines the term ''Order Type'', and Rule 21.1(f), which defines the term ''Time-in-Force'', to clarify the manner in which an Order Type or Time-in-Force, respectively, applies to a bulk message. Currently, an Order Type or Time-in-Force applied to a bulk message applies to each bid and offer within that bulk message. The proposed rule change updates Rules 21.1(d) and (f) to make this explicit for Order Type and Time-in-Force designations, respectively. The proposed rule change does not alter any current functionality, but instead adds clarity to the definition of Order Type and Time-in Force by more accurately reflecting the current application of such designations to bulk messages.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange

[5] *See* Rule 22.5(a)(1).

[6] *See* Rule 22.5(a)(3), (5) and (6).

[7] The Exchange notes that a Market-Maker may submit their quotes electronically in an order or bulk message. The Exchange also notes that, while Market-Makers may currently instruct their orders, including quotes submitted as orders, as IOC, the Exchange understands that Market-Makers predominantly conduct their trading activity through and design their business models around the use bulk messages.

[8] *See* Securities Exchange Release Nos. 84929 (December 21, 2018) 83 FR 67785 (December 31, 2018) (SR–CboeEDGX–2018–060); *and* 88818 (May 6, 2020), 85 FR 28109 (May 12, 2020) (SR–CboeEDGX–2020–018). The Exchange notes that SR–CboeEDGX–2018–060 implemented bulk message functionality to be consistent with the bulk message functionality, also adopted at that time, by its affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options''). The Exchange notes that Cboe Option's bulk message functionality replaced its prior block quoting functionality, which likewise allowed a Market Maker to submit a single message containing bids and offers in multiple series; however, Cboe Options Rules did not prohibit an IOC designation for quotes submitted in block quantities.

and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change allowing Market Makers to designate their bulk messages as IOC will remove impediments to and perfect the mechanism of a free and open market and national market system and benefit investors by permitting Market Makers to more effectively and efficiently execute bulk messages against specific interest on the Book without posting an unexecuted bulk message (or unexecuted portion) to the Book thereafter. As described above, Market Makers already submit bulk messages in a manner that mimics an IOC instruction; the proposed rule change merely streamlines this process for Market Makers by allowing them to use a Time-in-Force instruction currently available for their orders (which may also contain a Market Maker's quotes) on the Exchange today. In addition to this, Market Makers may already include Book Only instructions that permit their bulk messages to remove liquidity from the Book. The proposed rule change is designed to benefit market participants by increasing efficiency and reducing additional message traffic by eliminating the need for Market Makers to send an additional bulk message to cancel along with their bulk messages in instances in which they wish to execute against interest that appears on the Book. The proposed rule change allows Market Makers to elect to use their bulk messages as additional tools to meet their various obligations in a manner they deem appropriate, consistent with the purpose of bulk message functionality to facilitate Market Makers' provision of liquidity, which may include removing interest in the Book to subsequently post updated quotes at potentially tighter spreads and to provide additional execution opportunities at potentially improved prices. Also, the use of IOC bulk messages for Market Makers may ultimately facilitate the provision of additional liquidity on the by increasing execution opportunities on the Exchange, as an increase in transactions on the Exchange may facilitate tighter spreads and price discovery, thereby encouraging increased participation and additional order flow from other market participants, to the benefit of all investors. Market Makers may continue to elect to use bulk messages designated as Day in the same manner as they do today, including sending a bulk message immediately followed by a cancel to attempt to execute against resting interest.

Additionally, the Exchange does not believe that the proposed rule change would permit unfair discrimination as bulk message functionality is principally designed to facilitate the provision of liquidity by Market Makers to the Exchange and help Market Makers satisfy their obligations. The Exchange believes that Market Makers play a unique and critical role in the options market by providing liquid and active markets and are subject to various quoting obligations (which other market participants are not), including an obligation to maintain active markets, to update quotations in response to changed market conditions and to compete with other Market Makers in its appointed classes. Bulk message functionality, including an IOC bulk message, provides Market Makers with a means to help them satisfy these obligations. As noted above, Market Makers are already able to use Book Only bulk messages to execute against resting liquidity in multiple series across a class and to cancel quotes in multiple series across a class. The proposed rule change simply allows Market Makers to utilize their bulk messages in the same manner, just with a single message.

Additionally, the Exchange believes that the proposed rule change regarding the manner in which an Order Type and Time-in-Force instruction is applied to bulk messages removes impediments to and perfects the mechanism of a free and open market and national market system by amending Rules 21.1(d) and (f) to reflect current functionality. The proposed rule change is merely a clarification in the Rule intended to more accurately reflect how bulk message functionality currently works, thereby increasing transparency in the Rule and ultimately benefitting investors. The proposed clarification does not alter any current functionality and is simply intended to provide clarity to the Rule.

*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 that the proposed rule change in connection with IOC bulk messages will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the IOC instruction for bulk messages will be available for all Market Makers that choose to submit bulk messages. Use of the IOC instruction for bulk messages is voluntary, and Market Makers may choose to continue to only apply the Day Time-in-Force to bulk messages and continue to attempt to execute bulk messages against resting interest using multiple messages as they do today. The proposed rule change permits Market Makers to use a Time-in-Force that is already available to all Options Members, including Market Makers, to apply to their orders. While only Market Makers may submit IOC bulk messages (as only Market Makers may currently submit any bulk messages), the Exchange believes this is appropriate given the various obligations Market Makers must satisfy under the Rules and the unique and critical role Market Makers play in the options market by providing liquid and active markets. The Exchange believes providing Market Makers with flexibility to use the IOC instruction with respect to bulk messages will provide Market Makers with an enhanced tool to provide liquidity to the market and satisfy their obligations in a manner they deem appropriate, as they are similarly able to do today by electing the Book Only and Post Only instructions for their bulk messages.

The Exchange does not believe that the proposed rule change in connection with IOC bulk messages will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as it relates to quoting functionality available to Market Makers on the Exchange. The Exchange notes that market participants on other exchanges are welcome to become Market Makers on the Exchange if they determine that

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

this proposed rule change has made participation as a Market Maker on the Exchange more attractive or favorable.

The proposed rule change in connection with the application of Order Type and Time-in-Force instructions to bulk messages is not competitive in nature but is merely a clarification in the Rule, consistent with existing bulk message functionality and intended to provide clarity to the Rule by more accurately reflecting the current bulk message functionality. All Order Type and Time-in-Force instructions will continue to apply to bulk messages in the same manner as they do today.

*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**

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2021–041 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–2021–041. 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 such 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–2021–041, and should be submitted on or before November 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–22269 Filed 10–13–21; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting; Cancellation

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 86 FR 56746, October 12, 2021.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** Wednesday, October 13, 2021 at 10:00 a.m.

**CHANGES IN THE MEETING:** The Open Meeting scheduled for Wednesday, October 13, 2021 at 10:00 a.m., has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

*Authority:* 5 U.S.C. 552b.

Dated: October 12, 2021.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2021–22536 Filed 10–12–21; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–93281; File No. SR–Phlx–2021–60]**

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker Until March 18, 2022

October 8, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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**

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Equity 4, Rule 3101 to the close of business on March 18, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Equity 4, Rule 3101 to the close of business on March 18, 2022.

Background

The market-wide circuit breaker (''MWCB'') rules, including the Exchange's Rule 3101 under Equity 4, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Equity 4, Rule 3101).[3] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[4] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[5] including any extensions to the pilot period for the LULD Plan.[6] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[7] In light of the proposal to make the LULD Plan permanent, the Exchange amended Equity 4, Rule 3101 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[8] The Exchange subsequently filed to extend the Pilot Rules' effectiveness for an additional year to the close of business on October 18, 2020,[9] and later, on October 18, 2021.[10]

The Exchange now proposes to amend Equity 4, Rule 3101 to extend the pilot to the close of business on March 18, 2022. This filing does not propose any substantive or additional changes to Rule 3101.

The MWCB Task Force and the March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC''), and the securities industry and conducted several organizational meetings in December 2019 and January 2020.

In Spring 2020, the MWCB mechanism proved itself to be an effective tool for protecting markets through turbulent times. In March 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[11]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020.

In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans

[3] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[4] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equities exchanges invoke a MWCB Halt. *See, e.g.,* Options 3, Section 9(e).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[6] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–Phlx–2011–129) (Approval Order); and 68816 (February 1, 2013), 78 FR 9760 (February 11, 2013) (SR–Phlx–2013–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date).

[7] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[8] *See* Securities Exchange Act Release No. 85579 (April 9, 2019), 84 FR 15258 (April 15, 2019) (SR–Phlx–2019–12).

[9] *See* Securities Exchange Act Release No. 87206 (October 3, 2019), 84 FR 54234 (October 9, 2019) (SR–Phlx–2019–40).

[10] *See* Securities Exchange Act Release No. 90153 (October 9, 2020), 85 FR 65451 (October 15, 2020) (SR–Phlx–2020–46).

[11] *See https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_1.pdf; https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_2.pdf.*

governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and built on the work of the MWCB Task Force.

The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[12] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[13]

Proposal To Extend the Operation of the Pilot Rules Pending the Commission's Consideration of the Exchange's Filing To Make the Pilot Rules Permanent

On July 16, 2021, the New York Stock Exchange (''NYSE'') proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[14] On August 27, 2021, the Commission extended its time to consider the proposed rule change to October 20, 2021.[15] The Exchange now proposes to extend the expiration date of the Pilot Rules to the end of business on March 18, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 3101 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional five months would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's [sic] proposed rule change to make the Pilot Rules permanent.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from Pilot Rules should continue on a pilot basis because they will promote fair and orderly markets and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on March 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the

[12] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[13] *See id.* at 46.

[14] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[15] *See* Securities Exchange Act Release No. 92785A (August 27, 2021), 86 FR 50202 (September 7, 2021) (SR–NYSE–2021–40).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

proposed rule change as operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2021–60 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–Phlx–2021–60. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2021–60 and should be submitted on or before November 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–22441 Filed 10–13–21; 8:45 am]

**BILLING CODE 8011–01–P**

[22] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–93276; File No. SR–CboeEDGX–2021–043]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 8, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2021, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'' or ''EDGX Equities'') proposes to amend its Fee Schedule. 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/*), 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''EDGX Equities'') to modify the standard rate for liquidity removing orders in securities priced at or above $1.00, effective October 1, 2021.

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,[3] no single registered equities exchange has more than 17% 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 in particular operates a ''Maker-Taker'' model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity.

The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (September 27, 2021), available at *https://markets.cboe.com/us/equities/market_statistics/.*

at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity and assesses a fee of $0.00285 per share for orders that remove liquidity. For orders in securities priced below $1.00, the Exchange provides a standard rebate of $0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of total dollar value for orders that remove liquidity. Now, the Exchange proposes to increase the standard fee for liquidity removing orders in securities priced at or above $1.00 from a fee of $0.00285 to $0.0030 per share. The Exchange proposes to reflect this change in the Fee Codes and Associated Fee where applicable (*i.e.,* corresponding to standard fee codes N, W, 6, BB and ZR). The Exchange notes that the proposed standard rate is in line with, yet also competitive with, rates assessed by other equities exchanges on orders in securities priced at $1.00 or more.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] 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)[7] 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.

As described above, the Exchange 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 changes reflect 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.

The Exchange believes that amending the standard rate for orders that remove liquidity in securities priced at or above $1.00 is reasonable because, as stated above, in order to operate in the highly competitive equities markets, the Exchange and its competing exchanges seek to offer similar pricing structures, including assessing comparable standard fees for orders in securities priced at or above $1.00.[8] Thus, the Exchange believes the proposed standard rate change is reasonable as it is generally aligned with and competitive with the amounts assessed for the orders in securities at or above $1.00 on other equities exchanges.[9] The Exchange also believes that amending this standard rate amount represents an equitable allocation of fees and is not unfairly discriminatory because they will continue to automatically apply to all Members' orders that remove liquidity in securities at or above $1.00 uniformly.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed rule change to update the standard fee applicable to liquidity removing orders in securities priced at or above a $1.00 does not impose any burden on intramarket competition because the standard rate will continue to apply automatically and uniformly to all liquidity removing orders priced at or above $1.00.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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 other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.[10] Therefore, no exchange possesses significant pricing power in the execution of 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 Securities and Exchange Commission (the ''SEC'' or 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.'' [11] 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

[4] *See* Nasdaq Pricing 7, Section 118(a)(1), which, for example, assesses a charge of $0.0030 for member orders that execute against resting midpoint liquidity, and that that execute in the Nasdaq Market Center generally, in securities priced at $1.00 or more; and NYSE American Equities Price List, NYSE American Trading Fees and Credits, Section I.A.1.a, Standard Rates, which assesses a standard rate of $0.0030 per share (unless member adds ADV of at least 10,000 shares) for orders in securities priced at or above $1 that remove liquidity.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f.(b)(5).

[8] *Supra* note 3.

[9] *Supra* note 4.

[10] *Supra* note 3.

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .''.[12] 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 has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2021–043 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–2021–043. 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–2021–043, and should be submitted on or before November 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–22436 Filed 10–13–21; 8:45 am]

**BILLING CODE 8011–01–P**

[12] *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)).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–93279; File No. SR–DTC–2021–011]**

## Self-Regulatory Organizations; Depository Trust Company; Order Approving the Proposed Rule Change Relating to Confidential Information, Market Disruption Events, and Other Changes

October 8, 2021.

**I. Introduction**

On June 25, 2021, Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2021–011 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to amend DTC's rules relating to confidentiality requirements, Market Disruption Events, and procedures for disconnecting a participant from DTC's network, among other changes.[3] The Proposed Rule Change was published for comment in the **Federal Register** on July 13, 2021.[4] The Commission received comments that it has considered with respect to the Proposed Rule Change.[5] For the reasons discussed below, the Commission is approving the Proposed Rule Change.

**II. Description of the Proposed Rule Change**

Pursuant to the Proposed Rule Change, DTC is proposing three main changes to its Rules, Bylaws, and Organization Certificate(''Rules'):[6] (1) Standardizing the confidentiality requirement applicable to DTC with respect to its participants' information and adding confidentiality requirement applicable to participants with respect to DTC's information, (2) updating its Market Disruption and Force Majeure Rule (''Force Majeure Rule'') to authorize two additional officers to determine that a Market Disruption Event has occurred, and (3) adding a new rule setting forth the procedures under which DTC would be able to disconnect a participant from its network in certain circumstances (''Systems Disconnect Rule''). The Commission provides relevant background and describes each of these proposed changes in greater detail below.

*A. Background*

DTC serves as the central securities depository for substantially all corporate and municipal debt and equity securities available for trading in the United States.[7] DTC provides depository services and asset servicing for a wide

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing, *infra* note 4, at 86 FR 36833.

[4] *See* Securities Exchange Act Release No. 92342 (June 25, 2021), 86 FR 36833 (July 13, 2021) (File No. SR–DTC–2021–011) (''Notice of Filing'').

[5] *See id.* The comment letters are available on the Commission's website at *https://www.sec.gov/comments/sr-dtc-2021-011/srdtc2021011.htm.* Several comments generally supported the Proposed Rule Change, and the Commission considers the additional comments in its analysis at Section III *infra.*

[6] Capitalized terms not defined herein are defined in the Rules, *available at https://www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf.*

[7] *See* Financial Stability Oversight Counsel 2012 Annual Report, Appendix A (''FSOC 2012 Report''), *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

range of security types such as money market instruments, equities, warrants, rights, corporate debt and notes, municipal bonds, government securities, asset-backed securities, and collateralized mortgage obligations.[8] DTC's custodial services include the safekeeping, record keeping, book entry transfer, and pledge of securities among its Participants and Pledgees.[9] DTC also provides services to securities issuers, such as maintaining current ownership records and distributing payments to shareholders.[10] In light of DTC's critical role in the marketplace, DTC was designated a Systemically Important Financial Market Utility (''SIFMU'') under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[11] Due to DTC's unique position in the marketplace, a failure or a disruption to DTC could, among other things, increase the risk of significant liquidity problems spreading among financial institutions or markets, and thereby threaten the stability of the financial system in the United States.[12]

DTC participants connect to DTC's systems, either directly through the Securely Managed and Reliable Technology (''SMART'') network or through a third party service provider or service bureau.[13] DTC's parent company, The Depository Trust & Clearing Corporation (''DTCC'') manages the SMART network, which connects a nationwide complex of networks, processing centers, and control facilities.[14]

*B. Proposed Changes*

1. Confidentiality Requirements

*Confidentiality Requirements Applicable to DTC:* DTC collects confidential information from its participants to assess whether each participant meets DTC's membership requirements either to gain or continue access to DTC's depository, custodial and settlement services (hereinafter collectively, settlement services).[15] In turn, DTC is required to maintain the confidentiality of any information furnished by its participants. Currently, DTC's Rules obligate DTC to hold participants' information in the same degree of confidence as may be required by law or the rules and regulations (hereinafter collectively, ''regulations'') of the appropriate regulatory body having jurisdiction over the participant.[16]

DTC states that its current Rules create ambiguity because DTC's obligations depend on each participant's regulatory requirements, which could lead to unequal treatment of participants and conflicts of law with DTC's regulatory requirements or with respect to a participant who is subject to multiple jurisdictions' regulations.[17] DTC also states that applying different standards creates operational burdens because DTC must track the regulations applicable to each of its participants and must maintain the confidentiality of each participant's information to the same degree as required by the applicable regulations.[18]

In order to clarify its confidentiality requirements and to enhance its operational efficiency, DTC proposes to revise its Rules to establish a standard, which will require DTC to hold participant confidential information to the same degree as DTC's regulatory requirements that relate to the confidentiality of records, and to remove the references to each participant's particular regulatory obligations. DTC represents that the proposed change would provide participants with similar protections because DTC believes its regulatory requirements are comparable to the regulations applicable to its participants and, therefore, would not result in changes to DTC's current practices or the protection offered to its participants' confidential information.[19]

*Confidentiality Requirements Applicable to Participants:* DTC's Rules do not include obligations for its participants to protect confidential information furnished by DTC or its affiliates.[20] However, DTC states that, in connection with the development of cyber and information security programs pursuant to applicable participant regulatory requirements, DTC and DTCC have received an increasing number of requests from participants for confidential information, such as information regarding DTCC's network operations, data security practices, and legal settlements.[21] Additionally, DTC states that participants may request DTC or DTCC to disclose confidential information regarding its cyber threat indicators, sources of cyber threat information, or other information and actions taken following a cyber incident relating to a participant, DTC, or DTCC.[22]

To facilitate information sharing by DTC while protecting the confidentiality of proprietary and confidential information DTC shares with its participants, DTC proposes to add participant confidentiality requirements to its Rules. The new provisions will require participants to maintain the confidentiality of information furnished by DTC through proper safeguards to prevent disclosure of such confidential information, except as necessary to perform its obligations under DTC's Rules or as otherwise required by applicable law. DTC proposes that participants be required to maintain the confidentiality of this information to the same extent and using the same means the participant uses to protect its own confidential information, but no less than a reasonable standard of care. DTC's proposal will also entitle DTC or DTCC to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages under the Rules if a participant breaches its confidentiality requirements. Additionally, DTC's proposal will entitle DTC to impose other disciplinary proceedings or restrictions on access to services for a participant's failure to comply with its confidentiality requirements, consistent with the existing tools available to DTC regarding a participant's failure to comply with its Rules.

2. Market Disruption Event

DTC's Rules contain provisions that identify the events or circumstances that DTC would consider to be a Market Disruption Event, including, for

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] 12 U.S.C. 5465(e)(1). *See* FSOC 2012 Report, *supra* note 5.

[12] *See* FSOC 2012 Report, *supra* note 5.

[13] *See* Securities Exchange Act Release No. 87698 (December 9, 2019), 84 FR 68269 (December 13, 2019) (File No. SR–DTC–2019–008) (describing the DTCC SMART network).

[14] DTCC provides a set of core business processes for DTC and DTCC's other subsidiaries, including the technology systems and networks, that provide connectivity between DTC and its participants and that provide DTC with the ability to provide its services as required under the Rules. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides services to DTC and DTCC's other subsidiaries.

[15] *See* Rule 2, *supra* note 4 (establishing DTC's right to require applicants to furnish information to become Participants or Pledgees of DTC and to require participants to furnish information relating to assurances of financial responsibility and operational capability).

[16] *See* Section 1 of Rule 2, *supra* note 4.

[17] *See* Notice of Filing, *supra* note 4, at 36833–34.

[18] *See id.*

[19] *See id.* at 36834.

[20] DTC states that, historically, it has generally not provided, nor been requested to provide, information that contains confidential or proprietary information of DTC or its affiliates to its participants except for information necessary for participants to connect to DTCC Systems, which is typically protected under intellectual property laws. *See id.*

[21] *See id. See also, supra* discussion in Section II.A (Background) relating to DTCC Systems.

[22] *See id.*

example, events that lead to the suspension or limitation of trading or banking in the markets in which DTC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems.[23] Upon the declaration of a Market Disruption Event, DTC's Rules provide DTC with tools to address such an event, such as suspending any or all services and taking, or requiring participants to take, any actions DTC considers appropriate to facilitate the continuation of DTC's services.[24]

Currently, DTC's Board of Directors may declare a Market Disruption Event and may take any actions authorized by DTC's Rules to address the event.[25] However, DTC's Rules also authorize certain officers to make an interim declaration of a Market Disruption Event, to allow DTC to prevent delays in addressing a Market Disruption Event if the Board of Directors is unable to convene.[26] In the event of such an interim declaration, the Board of Directors must ratify, modify, or rescind the officer's determination as soon as practicable.[27] Currently, the officers authorized to make such determination are the Chief Executive Officer, Chief Financial Officer, Group Chief Risk Officer, and General Counsel.[28]

DTC proposes to add two additional officers of DTC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of authorized officers that could make such an interim determination if the Board of Directors is unable to convene. DTC states these two officers, like the other officers currently provided in the Rules, maintain senior executive level positions at DTC, oversee divisions of DTC, and hold positions at DTC that would provide them a necessary global view into DTC's operations and systems to enable them to determine the existence of a Market Disruption Event.[29] DTC states adding these two additional officers would facilitate DTC's ability to implement its emergency procedures in the event of a Market Disruption Event.[30]

3. Systems Disconnect Rule

As mentioned above in Section II.A (Background), DTC's participants connect to DTC's systems, either through the DTCC-managed SMART network or through other electronic means, such as through a third party service provider or service bureau. DTC's Rules do not address DTC's ability to disconnect a participant whose network connection risks harming DTC's systems. DTC's proposal will establish procedures under which DTC would be able to disconnect a participant from its network due to the risk of an imminent threat to DTC, participants, or other market participants.[31]

DTC's proposal will address DTC's authority to take certain actions upon the occurrence, and during the pendency, of a Major Event. A ''Major Event'' will be defined as the happening of one or more ''Systems Disruptions'' reasonably likely to have a significant impact on DTC's operations, including ''DTCC Systems,''[32] that affect the business, operations, safeguarding of securities or funds, or physical functions of DTC, its participants, or other market participants. ''Systems Disruption'' will, in turn, be defined as the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of a DTCC Systems Participant's systems that disrupts or degrades the normal operation of such DTCC Systems Participant's systems; or anything that impacts or alters the normal communication or the files that are received, or information transmitted, to or from the DTCC Systems.

DTC's proposal would also provide governance procedures applicable to DTC's determination whether, and how, to implement the provisions of the Systems Disconnect Rule. The same officers with delegated authority under the Force Majeure Rule may make a determination that a Major Event has occurred. As discussed in Section II.B.2 (Market Disruption Event) above, DTC states these officers maintain senior executive level positions at DTC, oversee divisions of DTC, and hold positions at DTC that would provide them a necessary global view into DTC's operations and systems to enable them to determine the existence of a Market Disruption Event, which would also enable them to determine the existence of a Major Event.

However, the proposed process for declaring a Major Event, by contrast, would start with a designated officer, whereas, for a Market Disruption Event, the officer would make an interim determination only if the Board of Directors were unable to timely convene. DTC states it designed the process in this way to improve its ability to respond quickly, efficiently, and effectively to a Major Event that arises abruptly.[33] Following this determination, any management committee including all of the officers authorized to determine a Major Event would convene, and DTC would convene a Board of Directors meeting as soon as practicable thereafter, and in any event within five Business Days following such determination, to ratify, modify, or rescind the Officer Major Event Action.[34]

In addition, the proposed rule will require participants to notify DTC immediately upon becoming aware of a Major Event, and, likewise, will require DTC to notify its participants promptly of any action DTC takes or intends to take with respect to a Major Event.[35] Finally, the proposal will address certain miscellaneous related matters including: (i) A limitation of liability for any failure or delay in performance, in whole or in part of DTC's obligations under the Rules, arising out of or related to a Major Event, (ii) a statement that DTC's power to take any action pursuant to the Systems Disconnect Rule also includes the power to repeal, rescind, revoke, amend or vary such action, (iii) a statement that DTC's powers pursuant to the Systems Disconnect Rule shall be in addition to, and not in derogation of, authority granted elsewhere in the Rules to take action as specified therein, (iv) a requirement that participants shall keep any confidential information provided to them by DTC in connection with a Major Event confidential, and (v) a statement that in the event of any conflict between the provisions of the Systems Disconnect Rule and any other Rules or Procedures, the provisions of the Systems Disconnect Rule would prevail.

[23] *See* Rule 38, *supra* note 6. *See also* Securities Exchange Act Release Nos. 83953 (August 27, 2018), 83 FR 44381 (August 30, 2018) (File No. SR–DTC–2017–803); 83972 (August 28, 2018), 83 FR 44964 (September 4, 2018) (File No. SR–DTC–2017–021).

[24] *See* Rule 38, *supra* note 6.

[25] *See* Section 2 of Rule 38, *id.*

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] *See* Notice of Filing, *supra* note 4, at 36834.

[30] *See id.*

[31] *See* Notice of Filing, *supra* note 4, at 36834–35.

[32] ''DTCC Systems'' will be defined as the systems, equipment and technology networks of DTCC, DTC and/or their Affiliates, whether owned, leased, or licensed, software, devices, IP addresses or other addresses or accounts used in connection with providing the services set forth in the Rules, or used to transact business or to manage the connection with DTC.

[33] *See* Notice of Filing, *supra* note 4, at 36835.

[34] *See id.*

[35] *See id.*

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [36] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After careful consideration, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations applicable to DTC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) [37] of the Act and Rules 17Ad–22(e)(1),[38] (e)(2),[39] and (e)(17)(i) [40] thereunder.

### *A. Consistency With Section 17A(b)(3)(F) of the Act*

Section 17A(b)(3)(F) [41] of the Exchange Act requires, in part, that the rules of a clearing agency, such as DTC, be designed, in part, to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act [42] for the reasons discussed below.

As described above in Section II.B.1 (Confidentiality Requirements), DTC proposes to revise its Rules to establish a standard relating to DTC's obligation to maintain the confidentiality of information it collects from participants to assess each participant's compliance with DTC's membership requirements. The Commission believes such a uniform standard will help DTC meet its obligations and will help each participant better understand DTC's obligations for maintaining the confidential information it shares with DTC, which, in turn, may facilitate the sharing of such information and improve DTC's ability to evaluate its participants' eligibility to access DTC's settlement services.

Also, as described above in Section II.B.1 (Confidentiality Requirements), DTC proposes to add participant confidentiality requirements to its Rules to ensure participants maintain the confidentiality of information DTC shares, which participants may then use to determine whether to participate in DTC's settlement services by understanding DTC system requirements and DTC system safeguards. The Commission believes participant confidentiality requirements will help each participant better understand its rights and obligations for maintaining the confidential information DTC shares, which, in turn, may facilitate participant compliance. Therefore, the Commission believes the proposed changes to DTC and participant confidentiality requirements are consistent with promoting the prompt and accurate settlement of securities transactions by DTC.

As described above in Section II.B.2 (Market Disruption Event) and Section II.B.3 (Systems Disconnect Rule), risks, threats, and potential vulnerabilities due to a Market Disruption Event or a Major Event could impede DTC's ability to provide its settlement services. DTC proposes to add two officers authorized to make an interim determination that a Market Disruption Event has occurred if the Board of Directors is unable to timely convene. The Commission believes the proposed change will improve DTC's ability to respond quickly to a Market Disruption Event, which could help DTC mitigate the impact of such event on DTC, its participants, and the broader market.

Additionally, as described above in Section II.B.3 (Systems Disconnect Rule), DTC proposes to add the Systems Disconnect Rule, which will set forth the procedures under which DTC would be authorized, upon the occurrence of a Major Event (as defined in the proposed rules), to take certain actions, including disconnecting a participant from DTC's systems, suspending data transmissions between DTC and the participant, and requiring the participant to take other actions necessary to protect DTC and its participants. The Commission believes the proposed Systems Disconnect Rule will enable DTC to respond quickly to a potential cyber threat or other network disruption, which could help DTC prevent the spread of a participant's systems disruptions to DTC, its participants, and other market participants that could otherwise cause losses to DTC or its participants.

One commenter suggests certain revisions to the definition of Major Event so that certain terms in the Systems Disconnect Rule are consistent with the definition of Market Disruption Event in the Force Majeure Rule.[43] The Commission disagrees. Consistency between the Systems Disconnect Rule and Force Majeure Rule is not necessary because DTC designed the Systems Disconnect Rule for a different purpose. Although both rules relate to events that, if left unaddressed, could affect DTC's ability to provide settlement services, the Force Majeure Rule is designed to cover events caused by external forces that impact DTC and its participants, whereas the Systems Disconnect Rule is designed only to cover disruptions to participant's computer systems or network that could flow through to DTC systems. Therefore, differences between the two rules do not raise consistency concerns, because of their different purposes.[44]

Therefore, for the reasons described above, the Commission believes the proposed changes relating to a Market Disruption Event or a Major Event will help promote the prompt and accurate clearance and settlement of securities transactions and with assuring DTC safeguards securities and funds that are in its custody or control or for which it is responsible. Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.[45]

### *B. Consistency With Rule 17Ad–22(e)(1)*

Rule 17Ad–22(e)(1) under the Exchange Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[46] The Commission finds that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(1) of the Exchange Act [47] for the reasons discussed below.

As described above in Sections II.B.1 (Confidentiality Requirements) and II.B.2 (Market Disruption Event), DTC proposes to establish a consistent standard for its obligation to maintain the confidentiality of information it collects from its participants and to

[36] 15 U.S.C. 78s(b)(2)(C).

[37] 15 U.S.C. 78q–1(b)(3)(F).

[38] 17 CFR 240.17Ad–22(e)(1).

[39] 17 CFR 240.17Ad–22(e)(2).

[40] 17 CFR 240.17Ad–22(e)(17)(i).

[41] 15 U.S.C. 78q–1(b)(3)(F).

[42] *Id.*

[43] *See* letter from Anonymous, dated July 28, 2021, *supra* note 5.

[44] The commenter also suggests adding language to the end of the Major Event definition to indicate that, to avoid doubt, a Major Event would not include disruptions due to normal market forces. The Commission does not believe that such additional language is necessary because, as discussed above in Section II.B.3 (Systems Disconnect Rule), a Major Event is limited to one or more ''Systems Disruption(s)'' (as defined in the proposed rule), which is properly limited to disruptions to participant systems or its network connection.

[45] 15 U.S.C. 78q–1(b)(3)(F).

[46] 17 CFR 240.17Ad–22(e)(1).

[47] *Id.*

establish participant confidentiality requirements. The Commission believes a consistent standard for DTC's confidentiality requirements will provide for clear and transparent standard rules for participants, rather than maintaining potentially different confidentiality standards for participants based on the various, unrelated regulatory bodies governing those participants. Additionally, the Commission believes that imposing specific legal standards applicable to both DTC and its participants to follow will provide for a well-founded legal basis for the sharing and maintaining of confidential information between DTC and its participants.[48]

Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Rule 17Ad–22(e)(1) of the Exchange Act.[49]

*C. Consistency With Rule 17Ad–22(e)(2)*

Rule 17Ad–22(e)(2) under the Exchange Act requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.[50] The Commission finds that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(2) of the Exchange Act [51] for the reasons discussed below.

The Commission believes DTC's proposal, as described above in Section II.B.2 (Market Disruption Event), to add two officers authorized to make an interim determination of a Market Disruption Event if the Board of Directors is unable to convene in a timely manner provides for governance arrangements that are clear and transparent and that provide clear and direct lines of responsibility. Likewise, the Commission believes DTC's proposal to identify the officers authorized to make an interim determination of a Major Event, which will then be ratified, modified, or rescinded by the management committee and the Board of Directors will provide for clear and transparent governance procedures and will specify clear and direct lines of responsibility. Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Rule 17Ad–22(e)(2) of the Exchange Act.[52]

*D. Consistency With Rule 17Ad–22(e)(17)(i)*

Rule 17Ad–22(e)(17)(i) under the Exchange Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[53] The Commission finds that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(17)(i) of the Exchange Act [54] for the reasons discussed below.

The Commission believes DTC's proposal, as described above in Section II.B.2 (Market Disruption Event), to add two officers authorized to make an interim determination of a Market Disruption Event could help DTC mitigate the impact of a Market Disruption Event by ensuring DTC can respond quickly to such event if the Board of Directors were unable to convene in a timely manner. Likewise, the Commission believes the proposed Systems Disconnect Rule, as described in Section II.B.3 above, provides a rules-based process that will enable DTC to identify potential cyber threats or other network disruptions, which could help DTC prevent the spread of a participant's systems disruptions to DTC, its participants, and other market participants that could otherwise cause losses to DTC or its participants.

One commenter suggests revising the definition of Major Event to be consistent with the definition of Market Disruption Event in the Force Majeure Rule.[55] The commenter further argues the impact to DTC covered by the definition of Major Event should be limited to ''DTCC Systems'' (as defined in the proposed rule) to ensure the scope of the proposed rule is limited to technical systems.[56] The Commission disagrees. As noted above, the purposes of both the Force Majeure Rule and the Systems Disconnect Rule are different. The Force Majeure Rule is designed to cover events external to DTC and its participants that materially impact, or are likely to materially impact, DTC's ability to provide its settlement services. The Systems Disconnect Rule, by contrast, is designed to cover a participant's systems or network disruption, which through its connection to DTC, is reasonably likely to have a significant impact on DTC's systems. The differences between the rules' purposes support the need for differing standards.[57] Furthermore, the Commission notes the reference to ''including DTCC Systems'' in the proposed definition of Major Event takes into account how DTC's operations, *i.e.,* its settlement services, work, in that they utilize DTCC Systems. Consequently, the commenter's proposed revisions are not necessary.[58]

Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Rule 17Ad–22(e)(17)(i) of the Exchange Act.[59]

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [60] and the rules and regulations promulgated thereunder.

[48] One commenter suggests adding an exception for negligence or fraud to the limitation of liability clause in the proposed Systems Disconnect Rule, which the commenter states is customary contractual language. *See* letter from Anonymous, dated July 28, 2021, *supra* note 5. The Commission notes DTC has already included similar language in its Rules, which would be applicable to this aspect of the proposal. *See* Rule 6, *supra* note 6 (providing for DTC liability to its participants for ''gross negligence, willful misconduct, or violations of Federal securities laws for which there is a private right of action'', which is not limited by the proposed Rule 38A pursuant to section 5).

[49] 17 CFR 240.17Ad–22(e)(1).

[50] 17 CFR 240.17Ad–22(e)(2).

[51] *Id.*

[52] *Id.*

[53] 17 CFR 240.17Ad–22(e)(17)(i).

[54] *Id.*

[55] Specifically, the commenter suggests deleting reference to ''reasonably'' and by replacing ''significant'' with ''material'' when describing the likelihood and level of impact to DTC. *See* letter from Anonymous, dated July 28, 2021, *supra* note 5.

[56] *See id.*

[57] The Commission also disagrees with the commenter's suggestion to remove the references to ''reasonably'' with respect to the likelihood of an event impacting DTC's operations. The Commission believes that DTC's assessment of the likelihood of such an impact should be reasonable before taking actions like disconnecting a participant from its systems. In addition, the Commission notes that DTC's references to ''reasonably likely'' and ''significant impact'' in the proposed definition of Major Event are consistent with the Commission's definition of a ''Major SCI Event'' under Regulation SCI. 17 CFR 242.1000. Likewise, the Commission notes that references in the proposed rule text to ''reasonable basis'' and ''appropriate'' is consistent with the obligations related to a Major SCI Event under Regulation SCI. 17 CFR 242.1002.

[58] Another commenter expressed concern that the proposed Systems Disconnect Rule could be used to benefit the trading activity of certain participants at the detriment of disconnected participants. *See* letter from Jarrod Knudson, dated June 27, 2021, *supra* note 5. The Commission disagrees because the proposed rule, by its terms, would only apply when certain Systems Disruptions occur at a participant that could impact DTC's operations.

[59] 17 CFR 240.17Ad–22(e)(17)(i).

[60] 15 U.S.C. 78q–1.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act[61] that Proposed Rule Change SR–DTC–2021–011, be, and hereby is, *approved*.[62]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[63]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–22439 Filed 10–13–21; 8:45 am]

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[61] 15 U.S.C. 78s(b)(2).

[62] In approving the Proposed Rule Change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[63] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–93271; File No. SR–CboeEDGA–2021–021]**

## Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Rule Regarding the Allowance of Off-Exchange Transactions by a Member Acting as Agent Otherwise Than on EDGA in Accordance With Rule 19c–1 Under the Securities Exchange Act of 1934

October 7, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 29, 2021, Cboe EDGA Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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'') proposes to adopt a rule regarding the allowance of off-exchange transactions by a Member acting as agent otherwise than on EDGA in accordance with Rule 19c–1 under the Securities Exchange Act of 1934 (the ''Act'').[5] 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/*), 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to adopt a rule regarding off-exchange transactions by a Member acting as agent. Rule 19c–1 and Rule 19c–3 under the Act[6] describe rule provisions that each national securities exchange must include in its Rules regarding the ability of members to engage in transactions off an exchange. While the Exchange already incorporates the required provision in Rule 19c–3 under the Act into Rule 13.6, and its stated policies and practices are consistent with these provisions of the Act, the Exchange Rules do not currently include the provisions in Rule 19c–1 under the Act. Therefore, the proposed rule change adopts this provision in new Rule 13.6(a)[7] in accordance with Rule 19c–1 under the Act. Specifically, proposed Rule 13.6(a) (in accordance with Rule 19c–1 under the Act) provides that no rule, stated policy, or practice of this Exchange shall prohibit or condition, or be construed to prohibit or condition, or otherwise limit, directly or indirectly, the ability of any Member acting as agent to effect any transaction otherwise than on this Exchange with another person (except when such Member also is acting as agent for such other person in such transaction) in any equity security listed on this Exchange or to which unlisted trading privileges on this Exchange have been extended.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] 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.

In particular, the Exchange believes proposed Rule 13.16(a) is consistent with the Act, because it adopts an Exchange Rule specifically required by Rule 19c–1 regarding off-exchange transactions for members' agency transactions. The Exchange's current Rule 13.6 and stated policies and procedures currently comply with provisions governing off-exchange trading in Rule 19c–3 under the Act. The proposed rule change is designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system as it will add transparency to the Exchange Rules by making it explicit in its Rules the provisions of Rule 19c–1 under the Act, as is required by all national exchanges.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended as a competitive trading tool, rather it makes explicit the provisions governing off-exchange trading by a Member acting as agent in Rule 19c–1 of the Act within the Exchange Rules, which were

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* 17 CFR 240.19c–1.

[6] *See* 17 CFR 240.19c–1 and 240.19c–3.

[7] The proposed rule change also updates the provision in current Rule 13.6 (which incorporate Rule 19c–3 under the Act) to be Rule 13.6(b).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

previously inadvertently excluded. The provisions regarding off-exchange trading by a Member acting as agent apply equally to all Members, and each national securities exchange is required to include the provision of Rule 19c–1 under the Act in its rules.

*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**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder).[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay for this filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to immediately update its rules to reflect the requirements of Rule 19c–1 of the Act.[14] Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGA–2021–021 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–2021–021. 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–2021–021, and should be submitted on or before November 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–22277 Filed 10–13–21; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 240.19c–1.

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–93277; File No. SR–NASDAQ–2021–065]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval of a Proposed Rule Change To Amend Nasdaq Rule 5750 (Proxy Portfolio Shares) To Provide for the Use of Custom Baskets Consistent With the Exemptive Relief Issued Pursuant to the Investment Company Act of 1940 Applicable to a Series of Proxy Portfolio Shares

October 8, 2021.

**I. Introduction**

On August 25, 2021, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Nasdaq Rule 5750 (Proxy Portfolio Shares) to provide for the use of custom baskets consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 (''1940 Act'') [3] applicable to a series of Proxy Portfolio Shares. The proposed rule change was published for comment in the **Federal Register** on September 2, 2021.[4] The Commission has received no comments on the proposed rule change. The Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 80a.

[4] *See* Securities Exchange Act Release No. 92790 (August 27, 2021), 86 FR 49357.

## II. Description

The Exchange proposes to amend Nasdaq Rule 5750, which permits the listing and trading of series of Proxy Portfolio Shares. Nasdaq Rule 5750 currently requires that Proxy Portfolio Shares be issued and redeemed in a specified aggregate minimum number in return for the Proxy Basket [5] and/or cash.[6] The Exchange proposes to amend the definition of ''Proxy Portfolio Share'' in Nasdaq Rule 5750(c)(1) to permit creations and redemptions of shares in return for a Custom Basket in addition to the Proxy Basket, to the extent permitted by a fund's exemptive relief.[7] Further, the Exchange proposes to define the term ''Custom Basket'' as a portfolio of securities that is different from the Proxy Basket and is otherwise consistent with the exemptive relief issued pursuant to the 1940 Act applicable to a series of Proxy Portfolio Shares.[8] The Exchange also proposes to amend the definition of ''Reporting Authority'' in Nasdaq Rule 5750(c)(3) to include Custom Baskets among the types of information for which the Reporting Authority designated for a particular series of Proxy Portfolio Shares will be the official source for calculating and reporting such information.[9]

The Exchange proposes to amend Nasdaq Rule 5750(d) to incorporate specific initial and continued listing criteria relating to Custom Baskets. Specifically, the Exchange proposes to add a new initial listing requirement to stipulate that the Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that the issuer and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Exchange Act (''Regulation FD''),[10] including with respect to any Custom Basket.[11] The Exchange also proposes to add a new continued listing requirement that, with respect to each Custom Basket utilized by a series of Proxy Portfolio Shares, each business day, before the opening of trading in the regular market session,[12] the Investment Company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash.[13]

Finally, the Exchange proposes to amend Nasdaq Rules 5750(b)(5) and (6), which contain requirements that specified parties must erect and maintain ''fire walls'' with respect to access to information concerning the Fund Portfolio and Proxy Basket and enact procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and Proxy Basket, so that these requirements would also cover information concerning Custom Baskets. As proposed to be amended, Nasdaq Rule 5750(b)(5) would require that, if the investment adviser to the Investment Company issuing Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio, the Proxy Basket, and/or the Custom Basket, as applicable. In addition, any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Fund Portfolio, the Proxy Basket, and/or the Custom Basket or has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket, and/or the Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio, and/or the Proxy Basket, and/or the Custom Basket, as applicable, or changes thereto. Proposed Nasdaq Rule 5750(b)(6) would require that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Proxy Basket, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio, Proxy Basket, or Custom Basket, as applicable.

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Exchange Act and rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the

[5] The term ''Proxy Basket'' means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Proxy Portfolio Shares. *See* Nasdaq Rule 5750(c)(5). The term ''Fund Portfolio'' means the identities and quantities of the securities and other assets held by the investment company registered under the 1940 Act (''Investment Company'') that will form the basis for the Investment Company's calculation of net asset value (''NAV'') at the end of the business day. *See* Nasdaq Rule 5750(c)(2).

[6] *See* Nasdaq Rule 5750(c)(1) (defining the term ''Proxy Portfolio Share'').

[7] *See* proposed Nasdaq Rule 5750(c)(1) (defining ''Proxy Portfolio Share'' as a security that: (A) Represents an interest in an Investment Company organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (B) is issued in a specified aggregate minimum number in return for a deposit of a specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined NAV; (C) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined NAV; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter).

[8] *See* proposed Nasdaq Rule 5750(c)(6).

[9] *See* proposed Nasdaq Rule 5750(c)(3) (defining ''Reporting Authority'' in respect of a particular series of Proxy Portfolio Shares as the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; the Custom Basket; the amount of any cash distribution to holders of Proxy Portfolio Shares, NAV, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares).

[10] 17 CFR 243.100.

[11] *See* proposed Nasdaq Rule 5750(d)(1)(B)(iii). Nasdaq Rule 5750(d)(1)(B) currently provides that the Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV, the Proxy Basket, and the Fund Portfolio will be made available to all market participants at the same time when disclosed. The current requirements would be designated as Nasdaq Rule 5750(d)(1)(B)(i) and (ii).

[12] ''Regular market session'' means the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m. *See* Nasdaq Rule 4120(b)(4)(D).

[13] *See* proposed Nasdaq Rule 5750(d)(2)(A)(ii). Nasdaq Rule 5750(d)(2)(A) currently provides that the Proxy Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time. This current requirement would be designated as Nasdaq Rule 5750(d)(2)(A)(i). The Exchange also proposes to amend the title of Nasdaq Rule 5750(d)(2)(A) to ''Proxy Basket and Custom Basket.'' *See* proposed Nasdaq Rule 5750(d)(2)(A).

[14] In approving this proposed rule change, the Commission notes that it has considered the

Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[15] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange previously filed a proposed rule change to adopt Nasdaq Rule 5750 to permit the listing and trading of Proxy Portfolio Shares.[16] As discussed above, under the current rule, a series of Proxy Portfolio Shares must create or redeem shares in return for the Proxy Basket and/or cash. The Exchange is now proposing to amend Nasdaq Rule 5750 to allow a series of Proxy Portfolio Shares to create or redeem shares in return for a Custom Basket, which is a portfolio of securities that is different from the Proxy Basket, to the extent consistent with an issuer's exemptive relief under the 1940 Act.[17] For the reasons discussed below, the Commission finds that the proposed amendments to Nasdaq Rule 5750 to provide for the use of Custom Baskets for Proxy Portfolio Shares, to the extent permitted by an issuer's exemptive relief under the 1940 Act, are consistent with Section 6(b)(5) of the Exchange Act.

The Commission believes that the proposed changes to Nasdaq Rules 5750(b)(5) and (6) are consistent with the Exchange Act and are reasonably designed to help prevent fraudulent and manipulative acts and practices. The Commission notes that, because Proxy Portfolio Shares do not publicly disclose on a daily basis information about the holdings of the Fund Portfolio, it is vital that key information relating to Proxy Portfolio Shares, including information relating to Custom Baskets, be kept confidential prior to its public disclosure and not be subject to misuse.[18] Accordingly, the Commission believes that the Exchange's proposal to amend Nasdaq Rules 5750(b)(5) and (6)[19] to apply the current ''fire wall'' and other requirements contained therein to those that have access to information concerning, or make decisions pertaining to, the composition of and/or changes to the Custom Baskets, in addition to the existing requirements relating to the Fund Portfolio and the Proxy Basket, is designed to prevent fraud and manipulation with respect to Proxy Portfolio Shares.

The Commission also believes that the proposed amendments to the initial and continued listing requirements for Proxy Portfolio Shares are adequate to ensure transparency of information relating to Custom Baskets utilized by a fund and to ensure that such information is available to the rest of the market participants at the same time. Specifically, prior to the opening of trading on each business day, the Investment Company will make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash.[20] In addition, prior to the initial listing of the Proxy Portfolio Shares, the Exchange will be required to obtain a representation from the issuer of each series of Proxy Portfolio Shares that the issuer and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation FD, including with respect to any Custom Basket.[21] These measures help to mitigate concerns that certain information regarding the funds will be available only to select market participants and thereby helps to prevent fraud and manipulation.

The Commission notes that, as set forth in the definition of ''Custom Basket,'' a series of Proxy Portfolio Shares may only utilize Custom Baskets to the extent consistent with the exemptive relief issued pursuant to the 1940 Act applicable to such series.[22] The Commission further notes that all series of Proxy Portfolio Shares will continue to be subject to the existing rules and procedures that govern the listing and trading of Proxy Portfolio Shares and the trading of equity securities on the Exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Exchange Act [23] that the proposed rule change (SR–NASDAQ–2021–065), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011–01–P**

proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Securities Exchange Act Release No. 89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (SR–NASDAQ–2020–032) (Notice of Filing and Immediate Effectiveness to Adopt Nasdaq Rule 5750 to List and Trade Proxy Portfolio Shares) (''2020 Notice''). At the time, the Exchange stated that the proposed rule change to adopt new Nasdaq Rule 5750 was substantially similar to a proposed rule change by Cboe BZX Exchange, Inc. (''BZX'') to adopt BZX Rule 14.11(m) that the Commission had recently approved. *See id.* at 38461 (citing Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR–CboeBZX–2019–107) (''2020 Order'')). The Exchange must file a separate proposed rule change pursuant to Section 19(b) of the Exchange Act for each series of Proxy Portfolio Shares. *See* Nasdaq Rule 5750(b)(1).

[17] In the 2020 Notice, the Exchange identified several applications for exemptive relief and subsequent orders granting certain exemptive relief under the 1940 Act and stated that it believed that each associated series of shares would qualify as Proxy Portfolio Shares under proposed Nasdaq Rule 5750. *See* 2020 Notice, *supra* note 16, 85 FR at 38461 n.3. The Commission has since granted exemptive relief under the 1940 Act to certain series of shares that the Exchange had identified as qualifying as Proxy Portfolio Shares to permit the creation or redemption of shares using a Custom Basket that includes instruments that are not included, or included with different weightings, in the fund's equivalent to a Proxy Basket. *See, e.g.,* Fidelity Beach Street Trust, *et al.,* Investment Company Act Release No. 34350 (August 5, 2021).

[18] *See* 2020 Order, *supra* note 16, 85 FR at 31002–03.

[19] *See supra* Section II, describing proposed Nasdaq Rules 5750(b)(5) and (6).

[20] *See* proposed Nasdaq Rule 5750(d)(2)(A)(ii).

[21] *See* proposed Nasdaq Rule 5750(d)(1)(B)(iii). The Commission notes that a fund's use of, or conversations with authorized participants about, Creation Baskets that would result in selective disclosure of nonpublic information would effectively be limited by the fund's obligation to comply with Regulation FD. *See, e.g.,* Fidelity Beach Street Trust, et al., Investment Company Act Release No. 34326 (July 9, 2021).

[22] *See* proposed Nasdaq Rule 5750(c)(6).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–93278; File No. SR–NSCC–2021–007]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving the Proposed Rule Change Relating to Confidential Information, Market Disruption Events, and Other Changes

October 8, 2021.

## I. Introduction

On June 25, 2021, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2021–007 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to amend NSCC's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rules relating to confidentiality requirements, Market Disruption Events, and procedures for disconnecting a participant from NSCC's network, among other changes.[3] The Proposed Rule Change was published for comment in the **Federal Register** on July 13, 2021.[4] The Commission received comments that it has considered with respect to the Proposed Rule Change.[5] For the reasons discussed below, the Commission is approving the Proposed Rule Change.

## II. Description of the Proposed Rule Change

Pursuant to the Proposed Rule Change, NSCC is proposing three main changes to its Rules & Procedures (''Rules''):[6] (1) Standardizing the confidentiality requirement applicable to NSCC with respect to its participants' information and adding confidentiality requirement applicable to participants with respect to NSCC's information, (2) updating its Market Disruption and Force Majeure Rule (''Force Majeure Rule'') to authorize two additional officers to determine that a Market Disruption Event has occurred, and (3) adding a new rule setting forth the procedures under which NSCC would be able to disconnect a participant from its network in certain circumstances (''Systems Disconnect Rule''). The Commission provides relevant background and describes each of these proposed changes in greater detail below.

### *A. Background*

NSCC provides clearance, settlement, risk management, central counterparty services, and a guarantee of completion for virtually all broker-to-broker trades involving equity securities, corporate and municipal debt securities, American depository receipts, exchange traded funds, and unit investment trusts. In light of NSCC's critical role in the marketplace, NSCC was designated a Systemically Important Financial Market Utility (''SIFMU'') under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[7] Due to NSCC's unique position in the marketplace, a failure or a disruption to NSCC could, among other things, significantly disrupt settlement of securities transactions cleared by NSCC and increase the risk of substantial liquidity problems spreading among financial institutions or markets, and thereby threaten the stability of the financial system in the United States.[8]

NSCC participants connect to NSCC's systems, either directly through the Securely Managed and Reliable Technology (''SMART'') network or through a third party service provider or service bureau.[9] NSCC's parent company, The Depository Trust & Clearing Corporation (''DTCC'') manages the SMART network, which connects a nationwide complex of networks, processing centers, and control facilities.[10]

### *B. Proposed Changes*

1. Confidentiality Requirements

*Confidentiality Requirements Applicable to NSCC:* NSCC collects confidential information from its participants to assess whether each participant meets NSCC's membership requirements either to gain or continue access to NSCC's clearance and settlement services.[11] In turn, NSCC is required to maintain the confidentiality of any information furnished by its participants. Currently, NSCC's Rules obligate NSCC to hold participants' information in the same degree of confidence as may be required by law or the rules and regulations (hereinafter collectively, ''regulations'') of the appropriate regulatory body having jurisdiction over the participant.[12]

NSCC states that its current Rules create ambiguity because NSCC's obligations depend on each participant's regulatory requirements, which could lead to unequal treatment of participants and conflicts of law with NSCC's regulatory requirements or with respect to a participant who is subject to multiple jurisdictions' regulations.[13] NSCC also states that applying different standards creates operational burdens because NSCC must track the regulations applicable to each of its participants and must maintain the confidentiality of each participant's information to the same degree as required by the applicable regulations.[14]

In order to clarify its confidentiality requirements and to enhance its operational efficiency, NSCC proposes to revise its Rules to establish a standard, which will require NSCC to hold participant confidential information to the same degree as NSCC's regulatory requirements that relate to the confidentiality of records, and to remove the references to each participant's particular regulatory obligations. NSCC represents that the proposed change would provide participants with similar protections because NSCC believes its regulatory requirements are comparable to the regulations applicable to its participants and, therefore, would not result in changes to NSCC's current practices or the protection offered to its participants' confidential information.[15]

*Confidentiality Requirements Applicable to Participants:* NSCC's Rules do not include obligations for its participants to protect confidential information furnished by NSCC or its affiliates.[16] However, NSCC states that, in connection with the development of cyber and information security programs pursuant to applicable participant regulatory requirements, NSCC and DTCC have received an increasing number of requests from

[3] *See* Notice of Filing, *infra* note 4, at 86 FR 36815.

[4] *See* Securities Exchange Act Release No. 92334 (June 25, 2021), 86 FR 36815 (July 13, 2021) (File No. SR–NSCC–2021–007) (''Notice of Filing'').

[5] Specifically, the Commission received comments on a proposed rule change filed by NSCC's affiliate, the Depository Trust Company, regarding parallel changes to DTC's Rules. *See* Securities Exchange Act Release No. 92342 (June 25, 2021), 86 FR 36833 (July 13, 2021) (File No. SR–DTC–2021–011). The comment letters are available on the Commission's website at *https://www.sec.gov/comments/sr-dtc-2021-011/srdtc2021011.htm.* Because the comments address issues that also appear in this Proposed Rule Change, the Commission has considered it in connection with NSCC's proposal as well. Several comments generally supported the Proposed Rule Change, and the Commission considers the additional comments in its analysis at Section III *infra.*

[6] Capitalized terms not defined herein are defined in the Rules, *available at https://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[7] 12 U.S.C. 5465(e)(1); Financial Stability Oversight Counsel 2012 Annual Report, Appendix A (''FSOC 2012 Report''), *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[8] *See* FSOC 2012 Report, *supra* note 7.

[9] *See* Securities Exchange Act Release No. 87696 (December 9, 2019), 84 FR 68243 (December 13, 2019) (File No. SR–NSCC–2019–003) (describing the DTCC SMART network).

[10] DTCC provides a set of core business processes for NSCC and DTCC's other subsidiaries, including the technology systems and networks, that provide connectivity between NSCC and its participants and that provide NSCC with the ability to provide its services as required under the Rules. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides services to NSCC and DTCC's other subsidiaries.

[11] *See* Rule 2A, *supra* note 6 (establishing NSCC's right to require applicants to furnish information to become Members or Limited Members of NSCC); *and* Rule 15, *supra* note 4 (establishing NSCC's right to require participants to furnish information relating to assurances of financial responsibility and operational capability).

[12] *See* Section 1.C. of Rule 2A and Section 3 of Rule 15, *supra* note 6.

[13] *See* Notice of Filing, *supra* note 4, at 36816.

[14] *See id.*

[15] *See id.*

[16] NSCC states that, historically, it has generally not provided, nor been requested to provide, information that contains confidential or proprietary information of NSCC or its affiliates to its participants except for information necessary for participants to connect to DTCC Systems, which is typically protected under intellectual property laws. *See id.*

participants for confidential information, such as information regarding DTCC's network operations, data security practices, and legal settlements.[17] Additionally, NSCC states that participants may request NSCC or DTCC to disclose confidential information regarding its cyber threat indicators, sources of cyber threat information, or other information and actions taken following a cyber incident relating to a participant, NSCC, or DTCC.[18]

To facilitate information sharing by NSCC while protecting the confidentiality of proprietary and confidential information NSCC shares with its participants, NSCC proposes to add participant confidentiality requirements to its Rules. The new provisions will require participants to maintain the confidentiality of information furnished by NSCC through proper safeguards to prevent disclosure of such confidential information, except as necessary to perform its obligations under NSCC's Rules or as otherwise required by applicable law. NSCC proposes that participants be required to maintain the confidentiality of this information to the same extent and using the same means the participant uses to protect its own confidential information, but no less than a reasonable standard of care. NSCC's proposal will also entitle NSCC or DTCC to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages under the Rules if a participant breaches its confidentiality requirements. Additionally, NSCC's proposal will entitle NSCC to impose other disciplinary proceedings or restrictions on access to services for a participant's failure to comply with its confidentiality requirements, consistent with the existing tools available to NSCC regarding a participant's failure to comply with its Rules.

2. Market Disruption Event

NSCC's Rules contain provisions that identify the events or circumstances that NSCC would consider to be a Market Disruption Event, including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which NSCC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems.[19] Upon the declaration of a Market Disruption Event, NSCC's Rules provide NSCC with tools to address such an event, such as suspending any or all services and taking, or requiring participants to take, any actions NSCC considers appropriate to facilitate the continuation of NSCC's services.[20]

Currently, NSCC's Board of Directors may declare a Market Disruption Event and may take any actions authorized by NSCC's Rules to address the event.[21] However, NSCC's Rules also authorize certain officers to make an interim declaration of a Market Disruption Event, to allow NSCC to prevent delays in addressing a Market Disruption Event if the Board of Directors is unable to convene.[22] In the event of such an interim declaration, the Board of Directors must ratify, modify, or rescind the officer's determination as soon as practicable.[23] Currently, the officers authorized to make such determination are the Chief Executive Officer, Chief Financial Officer, Group Chief Risk Officer, and General Counsel.[24]

NSCC proposes to add two additional officers of NSCC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of authorized officers that could make such an interim determination if the Board of Directors is unable to convene. NSCC states these two officers, like the other officers currently provided in the Rules, maintain senior executive level positions at NSCC, oversee divisions of NSCC, and hold positions at NSCC that would provide them a necessary global view into NSCC's operations and systems to enable them to determine the existence of a Market Disruption Event.[25] NSCC states adding these two additional officers would facilitate NSCC's ability to implement its emergency procedures in the event of a Market Disruption Event.[26]

3. Systems Disconnect Rule

As mentioned above in Section II.A (Background), NSCC's participants connect to NSCC's systems, either through the DTCC-managed SMART network or through other electronic means, such as through a third party service provider or service bureau. NSCC's Rules do not address NSCC's ability to disconnect a participant whose network connection risks harming NSCC's systems. NSCC's proposal will establish procedures under which NSCC would be able to disconnect a participant from its network due to the risk of an imminent threat to NSCC, participants, or other market participants.[27]

NSCC's proposal will address NSCC's authority to take certain actions upon the occurrence, and during the pendency, of a Major Event. A ''Major Event'' will be defined as the happening of one or more ''Systems Disruptions'' reasonably likely to have a significant impact on NSCC's operations, including ''DTCC Systems,''[28] that affect the business, operations, safeguarding of securities or funds, or physical functions of NSCC, its participants, or other market participants. ''Systems Disruption'' will, in turn, be defined as the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of a DTCC Systems Participant's systems that disrupts or degrades the normal operation of such DTCC Systems Participant's systems; or anything that impacts or alters the normal communication or the files that are received, or information transmitted, to or from the DTCC Systems.

NSCC's proposal would also provide governance procedures applicable to NSCC's determination whether, and how, to implement the provisions of the Systems Disconnect Rule. The same officers with delegated authority under the Force Majeure Rule may make a determination that a Major Event has occurred. As discussed in Section II.B.2 (Market Disruption Event) above, NSCC states these officers maintain senior executive level positions at NSCC, oversee divisions of NSCC, and hold positions at NSCC that would provide them a necessary global view into NSCC's operations and systems to enable them to determine the existence of a Market Disruption Event, which would also enable them to determine the existence of a Major Event.

However, the proposed process for declaring a Major Event, by contrast, would start with a designated officer, whereas, for a Market Disruption Event, the officer would make an interim determination only if the Board of Directors were unable to timely convene. NSCC states it designed the

[17] *See* Notice of Filing, *supra* note 4, at 36817. *See also, supra* discussion in Section II.A (Background) relating to DTCC Systems.

[18] *See* Notice of Filing, *supra* note 4, at 36817.

[19] *See* Rule 60, *supra* note 6. *See also* Securities Exchange Act Release Nos. 83955 (August 27, 2018), 83 FR 44340 (August 30, 2018) (File No. SR–NSCC–2017–805); 83974 (August 28, 2018), 83 FR 44988 (September 4, 2018) (File No. SR–NSCC–2017–017).

[20] *See* Rule 60, *supra* note 6.

[21] *See* Section 2 of Rule 60, *id.*

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *See* Notice of Filing, *supra* note 4, at 36817.

[26] *See id.*

[27] *See* Notice of Filing, *supra* note 4, at 36817.

[28] ''DTCC Systems'' will be defined as the systems, equipment and technology networks of DTCC, NSCC and/or their Affiliates, whether owned, leased, or licensed, software, devices, IP addresses or other addresses or accounts used in connection with providing the services set forth in the Rules, or used to transact business or to manage the connection with NSCC.

process in this way to improve its ability to respond quickly, efficiently, and effectively to a Major Event that arises abruptly.[29] Following this determination, any management committee including all of the officers authorized to determine a Major Event would convene, and NSCC would convene a Board of Directors meeting as soon as practicable thereafter, and in any event within five Business Days following such determination, to ratify, modify, or rescind the Officer Major Event Action.[30]

In addition, the proposed rule will require participants to notify NSCC immediately upon becoming aware of a Major Event, and, likewise, will require NSCC to notify its participants promptly of any action NSCC takes or intends to take with respect to a Major Event.[31] Finally, the proposal will address certain miscellaneous related matters including: (i) A limitation of liability for any failure or delay in performance, in whole or in part of NSCC's obligations under the Rules, arising out of or related to a Major Event, (ii) a statement that NSCC's power to take any action pursuant to the Systems Disconnect Rule also includes the power to repeal, rescind, revoke, amend or vary such action, (iii) a statement that NSCC's powers pursuant to the Systems Disconnect Rule shall be in addition to, and not in derogation of, authority granted elsewhere in the Rules to take action as specified therein, (iv) a requirement that participants shall keep any confidential information provided to them by NSCC in connection with a Major Event confidential, and (v) a statement that in the event of any conflict between the provisions of the Systems Disconnect Rule and any other Rules or Procedures, the provisions of the Systems Disconnect Rule would prevail.

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[32] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After careful consideration, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations applicable to NSCC. In particular, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F)[33] of the Act and Rules 17Ad-22(e)(1),[34] (e)(2),[35] and (e)(17)(i)[36] thereunder.

### *A. Consistency With Section 17A(b)(3)(F) of the Act*

Section 17A(b)(3)(F)[37] of the Exchange Act requires, in part, that the rules of a clearing agency, such as NSCC, be designed, in part, to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act[38] for the reasons discussed below.

As described above in Section II.B.1 (Confidentiality Requirements), NSCC proposes to revise its Rules to establish a standard relating to NSCC's obligation to maintain the confidentiality of information it collects from participants to assess each participant's compliance with NSCC's membership requirements. The Commission believes such a uniform standard will help NSCC meet its obligations and will help each participant better understand NSCC's obligations for maintaining the confidential information it shares with NSCC, which, in turn, may facilitate the sharing of such information and improve NSCC's ability to evaluate its participants' eligibility to access NSCC's clearance and settlement services.

Also, as described above in Section II.B.1 (Confidentiality Requirements), NSCC proposes to add participant confidentiality requirements to its Rules to ensure participants maintain the confidentiality of information NSCC shares, which participants may then use to determine whether to participate in NSCC's clearance and settlement services by understanding NSCC system requirements and NSCC system safeguards. The Commission believes participant confidentiality requirements will help each participant better understand its rights and obligations for maintaining the confidential information NSCC shares, which, in turn, may facilitate participant compliance. Therefore, the Commission believes the proposed changes to NSCC and participant confidentiality requirements are consistent with promoting the prompt and accurate clearance and settlement of securities transactions by NSCC.

As described above in Section II.B.2 (Market Disruption Event) and Section II.B.3 (Systems Disconnect Rule), risks, threats, and potential vulnerabilities due to a Market Disruption Event or a Major Event could impede NSCC's ability to provide its clearance and settlement services. NSCC proposes to add two officers authorized to make an interim determination that a Market Disruption Event has occurred if the Board of Directors is unable to timely convene. The Commission believes the proposed change will improve NSCC's ability to respond quickly to a Market Disruption Event, which could help NSCC mitigate the impact of such event on NSCC, its participants, and the broader market.

Additionally, as described above in Section II.B.3 (Systems Disconnect Rule), NSCC proposes to add the Systems Disconnect Rule, which will set forth the procedures under which NSCC would be authorized, upon the occurrence of a Major Event (as defined in the proposed rules), to take certain actions, including disconnecting a participant from NSCC's systems, suspending data transmissions between NSCC and the participant, and requiring the participant to take other actions necessary to protect NSCC and its participants. The Commission believes the proposed Systems Disconnect Rule will enable NSCC to respond quickly to a potential cyber threat or other network disruption, which could help NSCC prevent the spread of a participant's systems disruptions to NSCC, its participants, and other market participants that could otherwise cause losses to NSCC or its participants.

One commenter suggests certain revisions to the definition of Major Event so that certain terms in the Systems Disconnect Rule are consistent with the definition of Market Disruption Event in the Force Majeure Rule.[39] The Commission disagrees. Consistency between the Systems Disconnect Rule and Force Majeure Rule is not necessary because NSCC designed the Systems Disconnect Rule for a different purpose. Although both rules relate to events that, if left unaddressed, could affect NSCC's ability to provide clearance and settlement services, the Force Majeure Rule is designed to cover events caused by external forces that impact NSCC and its participants, whereas the Systems Disconnect Rule is designed only to

[29] *See* Notice of Filing, *supra* note 4, at 36818.

[30] *See id.*

[31] *See id.*

[32] 15 U.S.C. 78s(b)(2)(C).

[33] 15 U.S.C. 78q–1(b)(3)(F).

[34] 17 CFR 240.17Ad–22(e)(1).

[35] 17 CFR 240.17Ad–22(e)(2).

[36] 17 CFR 240.17Ad–22(e)(17)(i).

[37] 15 U.S.C. 78q–1(b)(3)(F).

[38] *Id.*

[39] *See* letter from Anonymous, dated July 28, 2021, *supra* note 5.

cover disruptions to participant's computer systems or network that could flow through to NSCC systems. Therefore, differences between the two rules do not raise consistency concerns, because of their different purposes.[40]

Therefore, for the reasons described above, the Commission believes the proposed changes relating to a Market Disruption Event or a Major Event will help promote the prompt and accurate clearance and settlement of securities transactions and with assuring NSCC safeguards securities and funds that are in its custody or control or for which it is responsible. Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.[41]

*B. Consistency With Rule 17Ad–22(e)(1)*

Rule 17Ad–22(e)(1) under the Exchange Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[42] The Commission finds that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(1) of the Exchange Act[43] for the reasons discussed below.

As described above in Sections II.B.1 (Confidentiality Requirements) and II.B.2 (Market Disruption Event), NSCC proposes to establish a consistent standard for its obligation to maintain the confidentiality of information it collects from its participants and to establish participant confidentiality requirements. The Commission believes a consistent standard for NSCC's confidentiality requirements will provide for clear and transparent standard rules for participants, rather than maintaining potentially different confidentiality standards for participants based on the various, unrelated regulatory bodies governing those participants. Additionally, the Commission believes that imposing specific legal standards applicable to both NSCC and its participants to follow will provide for a well-founded legal basis for the sharing and maintaining of confidential information between NSCC and its participants.[44]

Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Rule 17Ad–22(e)(1) of the Exchange Act.[45]

*C. Consistency With Rule 17Ad–22(e)(2)*

Rule 17Ad–22(e)(2) under the Exchange Act requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.[46] The Commission finds that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(2) of the Exchange Act[47] for the reasons discussed below.

The Commission believes NSCC's proposal, as described above in Section II.B.2 (Market Disruption Event), to add two officers authorized to make an interim determination of a Market Disruption Event if the Board of Directors is unable to convene in a timely manner provides for governance arrangements that are clear and transparent and that provide clear and direct lines of responsibility. Likewise, the Commission believes NSCC's proposal to identify the officers authorized to make an interim determination of a Major Event, which will then be ratified, modified, or rescinded by the management committee and the Board of Directors will provide for clear and transparent governance procedures and will specify clear and direct lines of responsibility. Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Rule 17Ad–22(e)(2) of the Exchange Act.[48]

*D. Consistency With Rule 17Ad–22(e)(17)(i)*

Rule 17Ad–22(e)(17)(i) under the Exchange Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[49] The Commission finds that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(17)(i) of the Exchange Act[50] for the reasons discussed below.

The Commission believes NSCC's proposal, as described above in Section II.B.2 (Market Disruption Event), to add two officers authorized to make an interim determination of a Market Disruption Event could help NSCC mitigate the impact of a Market Disruption Event by ensuring NSCC can respond quickly to such event if the Board of Directors were unable to convene in a timely manner. Likewise, the Commission believes the proposed Systems Disconnect Rule, as described in Section II.B.3 above, provides a rules-based process that will enable NSCC to identify potential cyber threats or other network disruptions, which could help NSCC prevent the spread of a participant's systems disruptions to NSCC, its participants, and other market participants that could otherwise cause losses to NSCC or its participants.

One commenter suggests revising the definition of Major Event to be consistent with the definition of Market Disruption Event in the Force Majeure Rule.[51] The commenter further argues the impact to NSCC covered by the definition of Major Event should be limited to ''DTCC Systems'' (as defined in the proposed rule) to ensure the scope of the proposed rule is limited to technical systems.[52] The Commission disagrees. As noted above, the purposes of both the Force Majeure Rule and the Systems Disconnect Rule are different. The Force Majeure Rule is designed to cover events external to NSCC and its participants that materially impact, or are likely to materially impact, NSCC's ability to provide its clearance and settlement services. The Systems

[40] The commenter also suggests adding language to the end of the Major Event definition to indicate that, to avoid doubt, a Major Event would not include disruptions due to normal market forces. The Commission does not believe that such additional language is necessary because, as discussed above in Section II.B.3 (Systems Disconnect Rule), a Major Event is limited to one or more ''Systems Disruption(s)'' (as defined in the proposed rule), which is properly limited to disruptions to participant systems or its network connection.

[41] 15 U.S.C. 78q–1(b)(3)(F).

[42] 17 CFR 240.17Ad–22(e)(1).

[43] *Id.*

[44] One commenter suggests adding an exception for negligence or fraud to the limitation of liability clause in the proposed Systems Disconnect Rule, which the commenter states is customary contractual language. *See* letter from Anonymous, dated July 28, 2021, *supra* note 5. The Commission notes NSCC has already included similar language in its Rules, which would be applicable to this aspect of the proposal. *See* Section 2 of Rule 58, *supra* note 6 (providing for NSCC liability to its participants for ''gross negligence, willful misconduct, or violations of Federal securities laws for which there is a private right of action'' notwithstanding any other provision in the Rules).

[45] 17 CFR 240.17Ad–22(e)(1).

[46] 17 CFR 240.17Ad–22(e)(2).

[47] *Id.*

[48] *Id.*

[49] 17 CFR 240.17Ad–22(e)(17)(i).

[50] *Id.*

[51] Specifically, the commenter suggests deleting reference to ''reasonably'' and by replacing ''significant'' with ''material'' when describing the likelihood and level of impact to NSCC. *See* letter from Anonymous, dated July 28, 2021, *supra* note 5.

[52] *See id.*

Disconnect Rule, by contrast, is designed to cover a participant's systems or network disruption, which through its connection to NSCC, is reasonably likely to have a significant impact on NSCC's systems. The differences between the rules' purposes support the need for differing standards.[53] Furthermore, the Commission notes the reference to ''including DTCC Systems'' in the proposed definition of Major Event takes into account how NSCC's operations, *i.e.,* its clearance and settlement services, work, in that they utilize DTCC Systems. Consequently, the commenter's proposed revisions are not necessary.[54]

Accordingly, the Commission finds that the implementation of the Proposed Rule Change is consistent with Rule 17Ad–22(e)(17)(i) of the Exchange Act.[55]

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[56] and the rules and regulations promulgated thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act[57] that Proposed Rule Change SR–NSCC–2021–007, be, and hereby is, *approved*.[58]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[59]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–22438 Filed 10–13–21; 8:45 am]

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[53] The Commission also disagrees with the commenter's suggestion to remove the references to ''reasonably'' with respect to the likelihood of an event impacting NSCC's operations. The Commission believes that NSCC's assessment of the likelihood of such an impact should be reasonable before taking actions like disconnecting a participant from its systems. In addition, the Commission notes that NSCC's references to ''reasonably likely'' and ''significant impact'' in the proposed definition of Major Event are consistent with the Commission's definition of a ''Major SCI Event'' under Regulation SCI. 17 CFR 242.1000. Likewise, the Commission notes that references in the proposed rule text to ''reasonable basis'' and ''appropriate'' is consistent with the obligations related to a Major SCI Event under Regulation SCI. 17 CFR 242.1002.

[54] Another commenter expressed concern that the proposed Systems Disconnect Rule could be used to benefit the trading activity of certain participants at the detriment of disconnected participants. *See* letter from Jarrod Knudson, dated June 27, 2021, *supra* note 5. The Commission disagrees because the proposed rule, by its terms, would only apply when certain Systems Disruptions occur at a participant that could impact NSCC's operations.

[55] 17 CFR 240.17Ad–22(e)(17)(i).

[56] 15 U.S.C. 78q–1.

[57] 15 U.S.C. 78s(b)(2).

[58] In approving the Proposed Rule Change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[59] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–93269; File No. SR–C2–2021–014]**

## Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5.5(c) and Rule 5.6 in Connection With Time-In-Force Instructions Available for Bulk Messages and To Make a Clarifying Change

October 7, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2021, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 the Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to amend Rule 5.5(c) and Rule 5.6 in connection with Time-in-Force instructions available for bulk messages and to make a clarifying change. 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/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 5.5(c) and Rule 5.6(d) to allow Users to instruct bulk messages with a Time-in-Force of Immediate-or-Cancel (''IOC''). Currently, Users may not designate bulk messages as IOC, which, pursuant to Rule 5.6(d), instructs a limit order to execute in whole or in part as soon as the System receives it. The System cancels and does not post to the Book an IOC order (or unexecuted portion) not executed immediately on the Exchange or another options exchange. A bulk message is a single electronic message a User submits with an M Capacity (*i.e.,* for the account of a Market-Maker) to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. More, specifically, bulk message functionality is available to Market-Makers and permits them to update their electronic quotes in block quantities across series in a class. Rule 5.5(c)(3)(A)(i) currently provides that a bulk message submitted through a dedicated logical port (*i.e.,* a ''bulk port'') has a Time-in-Force of Day. Pursuant to Rule 5.6(d), the term ''Day'' means, for an order so designated, an order or quote that, if not executed, expires at the RTH market close. All bulk messages have a Time in Force of DAY, as set forth in Rule 5.5(c).

The Exchange proposes to allow Market-Makers to designate bulk messages as IOC by amending the following: Rule 5.3(c)(3)(A)(i) to provide that a bulk message submitted through a bulk port has a Time-in-Force of Day or IOC; the definition of IOC in Rule 5.6(d) to provide that Users may designate bulk messages as IOC; and the definition of ''Day'' in Rule 5.6(d) to remove the language that all bulk messages have a Time-in-Force of DAY,

as set forth in Rule 5.5(c), and instead provide that Users may designate bulk messages as Day.

A Market-Maker's primary purpose is to provide liquidity to the market, which it may do in various ways, including resting quotes on the Book as well as submitting quotes to trade against other resting interest on the Book. In addition to providing liquidity via continuous quotes in a Market-Maker's appointed classes,[5] as part of its quoting obligations, a Market-Maker is also required to maintain active markets in its appointed classes, update quotations in response to changed market conditions in its appointed classes and compete with other Market-Makers in its appointed classes.[6] As part of a Market-Maker's efforts to satisfy these obligations, a Market-Maker may update quotes with the specific purpose of removing interest resting in the Book. This may provide additional execution opportunities for customers, thereby encouraging an increase in overall participation in an appointed class.

Currently, if a Market-Maker wishes to execute against interest in the Book, a Market-Maker will enter a Book Only bulk message or modify an existing bulk message to attempt to execute against such interest, followed immediately by a bulk message to cancel the preceding bulk message (or unexecuted portion) so that no portion of that bulk message will remain displayed on the Book. Essentially, in order to execute against interest on the Book, Market-Makers may currently send a sequence of bulk messages that mimic the result of an IOC instruction—ultimately the bulk message is cancelled and does not post to the Book if it is not executed immediately against resting interest. Sending a bulk message to cancel immediately following the submission of a bulk message or a bulk message modification to execute against resting interest creates an extra step for Market-Makers (compared to Trading Permit Holders (''TPHs'') that may use IOC orders to accomplish this) using bulk message functionality and requires the System to process additional messages. As such, the proposed rule change to permit Market-Makers to designate their bulk messages as IOC would allow them to attempt more effectively and efficiently to execute against interest in the Book and would reduce message traffic by eliminating the need for Market-Makers to send multiple messages to attempt this. The Exchange notes that Market-Makers may already use bulk messages to remove liquidity from the Book (if they so elect) using the ''Book Only'' instruction and, as described above, Market-Makers may already use bulk messages to remove liquidity without letting nonexecuted size rest on the Book. The proposed rule change merely streamlines the manner in which Market-Makers may already utilize bulk messages to execute against interest on the Book without sending an unexecuted bulk message (or unexecuted portion) to the Book thereafter. Also, Market-Makers may already designate their quotes submitted in an order as IOC.[7]

The Exchange notes that bulk message functionality is designed to facilitate Market-Makers quoting on the Exchange in connection with their responsibility as liquidity providers. For example, the current requirement that bulk messages have a Time-in-Force of Day is consistent with general practice of Market-Makers to enter new quotes at the beginning of each trading day, as well as a Market-Maker's obligation to update its quotes in response to changed market conditions in its appointed classes. The provision that allows Market-Makers to designate their bulk messages as Post Only or Book Only is intended to provide Market-Makers with flexibility to use these instructions to permit them to execute against resting interest upon entry or add liquidity to the Book in connection with their various obligations in a manner they deem appropriate.[8] The Exchange believes that the proposed rule change likewise permits Market-Makers to use an instruction with respect to their bulk messages as an additional tool to provide liquidity to the market and meet their various obligations (such as maintaining active markets in an appointed class, updating quotations in response to changed market conditions in an appointed class and competing with other Market-Makers in an appointed class) in a manner they deem appropriate, which may include removing interest in the Book to subsequently post updated quotes at potentially tighter spreads and to provide additional execution opportunities at potentially improved prices. The Exchange also believes that the proposed rule change enhances a current means by which Market-Makers use bulk messages to facilitate the provision of liquidity on the Exchange. That is, Market-Makers using bulk messages with an IOC instruction, as proposed, may more efficiently execute against resting interest, thereby increasing execution opportunities for orders resting on the Book. An increase in transactions on the Exchange may facilitate tighter spreads and price discovery, and, as a result, encourage increased participation and additional order flow from other market participants. The Exchange notes that the submission of bulk messages to the Exchange is voluntary and that Market-Makers may continue to elect to use bulk messages designated as Day in the same manner as they do today, including sending a bulk message immediately followed by a cancel to attempt to execute against resting interest.

The proposed rule change also updates Rule 5.6(a), which currently provides that, unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis. The Exchange notes that, currently, an Order Instruction or Time-in-Force applied to a bulk message applies to each bid and offer within that bulk message. The proposed rule change updates Rules 5.6(a) to make this explicit. The proposed rule change does not alter any current functionality, but instead adds clarity to the Rule by more accurately reflecting the current application of such designations to bulk messages.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section

[5] *See* Rule 5.51(a)(1).

[6] *See* Rule 5.51(a)(3)–(5).

[7] The Exchange notes that a Market-Maker may submit their quotes electronically in an order or bulk message. The Exchange also notes that, while Market-Makers may currently instruct their orders, including quotes submitted as orders, as IOC, the Exchange understands that Market-Makers predominantly conduct their trading activity through and design their business models around the use bulk messages.

[8] *See* Securities Exchange Release Nos. 85038 (February 1, 2019), 84 FR 2598 (February 7, 2019) (SR–C2–2018–025); *and* 88814 (May 5, 2020), 85 FR 27779 (May 11, 2020) (SR–C2–2020–005). The Exchange notes that SR–C2–2018–025 implemented bulk message functionality to be consistent with the bulk message functionality, also adopted at that time, by its affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options''). The Exchange notes that Cboe Option's bulk message functionality replaced its prior block quoting functionality, which likewise allowed a Market Maker to submit a single message containing bids and offers in multiple series; however, Cboe Options Rules did not prohibit an IOC designation for quotes submitted in block quantities.

[9] 15 U.S.C. 78f(b).

6(b)(5) [10] 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change allowing Market-Makers to designate their bulk messages as IOC will remove impediments to and perfect the mechanism of a free and open market and national market system and benefit investors by permitting Market-Makers to more effectively and efficiently execute bulk messages against specific interest on the Book without posting an unexecuted bulk message (or unexecuted portion) to the Book thereafter. As described above, Market-Makers already submit bulk messages in a manner that mimics an IOC instruction; the proposed rule change merely streamlines this process for Market-Makers by allowing them to use a Time-in-Force instruction currently available for their orders (which may also contain a Market-Maker's quotes) on the Exchange today. In addition to this, Market-Makers may already include Book Only instructions that permit their bulk messages to remove liquidity from the Book. The proposed rule change is designed to benefit market participants by increasing efficiency and reducing additional message traffic by eliminating the need for Market-Makers to send an additional bulk message to cancel along with their bulk messages in instances in which they wish to execute against interest that appears on the Book. The proposed rule change allows Market-Makers to elect to use their bulk messages as additional tools to meet their various obligations in a manner they deem appropriate, consistent with the purpose of bulk message functionality to facilitate Market-Makers' provision of liquidity, which may include removing interest in the Book to subsequently post updated quotes at potentially tighter spreads and to provide additional execution opportunities at potentially improved prices. Also, the use of IOC bulk messages for Market-Makers may ultimately facilitate the provision of additional liquidity on the by increasing execution opportunities on the Exchange, as an increase in transactions on the Exchange may facilitate tighter spreads and price discovery, thereby encouraging increased participation and additional order flow from other market participants, to the benefit of all investors. Market-Makers may continue to elect to use bulk messages designated as Day in the same manner as they do today, including sending a bulk message immediately followed by a cancel to attempt to execute against resting interest.

Additionally, the Exchange does not believe that the proposed rule change would permit unfair discrimination as bulk message functionality is principally designed to facilitate the provision of liquidity by Market-Makers to the Exchange and help Market-Makers satisfy their obligations. The Exchange believes that Market-Makers play a unique and critical role in the options market by providing liquid and active markets and are subject to various quoting obligations (which other market participants are not), including an obligation to maintain active markets, to update quotations in response to changed market conditions and to compete with other Market-Makers in its appointed classes. Bulk message functionality, including an IOC bulk message, provides Market-Makers with a means to help them satisfy these obligations. As noted above, Market-Makers are already able to use Book Only bulk messages to execute against resting liquidity in multiple series across a class and to cancel quotes in multiple series across a class. The proposed rule change simply allows Market-Makers to utilize their bulk messages in the same manner, just with a single message.

Additionally, the Exchange believes that the proposed rule change regarding the manner in which an Order Instruction and Time-in-Force instruction is applied to bulk messages removes impediments to and perfects the mechanism of a free and open market and national market system by amending Rule 5.6(a) to reflect current functionality. The proposed rule change is merely a clarification in the Rule intended to more accurately reflect how bulk message functionality currently works, thereby increasing transparency in the Rule and ultimately benefitting investors. The proposed clarification does not alter any current functionality and is simply intended to provide clarity to the Rule.

*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 that the proposed rule change in connection with IOC bulk messages will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the IOC instruction for bulk messages will be available for all Market-Makers that choose to submit bulk messages. Use of the IOC instruction for bulk messages is voluntary, and Market-Makers may choose to continue to only apply the Day Time-in-Force to bulk messages and continue to attempt to execute bulk messages against resting interest using multiple messages as they do today. The proposed rule change permits Market-Makers to use a Time-in-Force that is already available to all TPHs, including Market-Makers, to apply to their orders. While only Market-Makers may submit IOC bulk messages (as only Market-Makers may currently submit any bulk messages), the Exchange believes this is appropriate given the various obligations Market-Makers must satisfy under the Rules and the unique and critical role Market-Makers play in the options market by providing liquid and active markets. The Exchange believes providing Market-Makers with flexibility to use the IOC instruction with respect to bulk messages will provide Market-Makers with an enhanced tool to provide liquidity to the market and satisfy their obligations in a manner they deem appropriate, as they are similarly able to do today by electing the Book Only and Post Only instructions for their bulk messages.

The Exchange does not believe that the proposed rule change in connection with IOC bulk messages will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as it relates to quoting functionality available to Market-Makers on the Exchange. The Exchange notes that market participants on other exchanges are welcome to become Market-Makers on the Exchange if they determine that this proposed rule change has made participation as a Market-Maker on the Exchange more attractive or favorable.

The proposed rule change in connection with the application of

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

Order Instructions and Times-in-Force instructions to bulk messages is not competitive in nature but is merely a clarification in the Rule, consistent with existing bulk message functionality and intended to provide clarity to the Rule by more accurately reflecting the current bulk message functionality. All Order Instructions and Times-in-Force instructions will continue to apply to bulk messages in the same manner as they do today.

*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**

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2021–014 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–C2–2021–014. 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 such 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–C2–2021–014, and should be submitted on or before November 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–93273; File No. SR–CboeBZX–2021–063]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of Hartford Large Cap Growth ETF, a Series of Hartford Funds Exchange-Traded Trust, Under Rule 14.11(m), Tracking Fund Shares

October 7, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 29, 2021, Cboe BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**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'' or ''SEC'')) a proposed rule change to list and trade shares of Hartford Large Cap Growth ETF (the ''Fund''), a series of Hartford Funds Exchange-Traded Trust (the ''Trust''), under Rule 14.11(m), Tracking Fund Shares. The shares of the Fund are referred to herein as the ''Shares.''

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/*), 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade shares of the Fund pursuant to Rule 14.11(m), Tracking Fund Shares,[4] which are securities issued by an actively managed open-end management investment company.[5] The Exchange is submitting this proposal as required by Rule 14.11(m)(2)(A), which provides that the Exchange must file separate proposals under Section 19(b) of the Act before listing and trading of a series of Tracking Fund Shares.

The Shares will be offered by the Trust, which is organized as a statutory trust under the laws of Delaware. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N–1A with the Commission.[6] Hartford Funds Management Company LLC (the ''Adviser'') will be the investment adviser to the Fund. Wellington Management Company LLP is the sub-adviser (''Sub-Adviser'') to the Fund. State Street Bank and Trust Company is the administrator, custodian, and transfer agent for the Trust. ALPS Distributors, Inc. serves as the distributor for the Trust.

Rule 14.11(m)(2)(E) provides that, if the investment adviser to the investment company issuing Tracking Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, Rule 14.11(m)(2)(E) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the investment company portfolio. Neither the Adviser nor the Sub-Adviser is registered as a broker-dealer, but both have their own, independent broker-dealer affiliates. The Adviser and Sub-Adviser each represent that a fire wall exists and will be maintained between the respective personnel at each of (i) the Adviser and Sub-Adviser, and (ii) their respective affiliated broker-dealers with respect to access to information concerning the composition and/or changes to the Fund's portfolio and Tracking Basket.[8] Specifically, the Adviser and the Sub-Adviser each represent that the personnel who make decisions on the Fund's portfolio composition and/or Tracking Basket or who have access to nonpublic information regarding the Fund Portfolio[9] and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Tracking Basket. In the event that (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer; it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund Portfolio and/or Tracking Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Tracking Basket. Any person or entity, including any service provider for the Fund, who has access to nonpublic information regarding the Fund Portfolio or Tracking Basket or changes thereto for the Fund will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio or Tracking Basket or changes thereto. Further, any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer, must have erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket. The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Shares will conform to the initial and continued listing criteria under

[4] As defined in Rule 14.11(m)(3)(A), the term ''Tracking Fund Share'' means a security that: (i) Represents an interest in an investment company (''Investment Company'') registered under the Investment Company Act of 1940 (the ''1940 Act'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined Net Asset Value (''NAV''); (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined NAV; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

[5] Rule 14.11(m) was approved along with the listing and trading of three series of Tracking Fund Shares by the Commission on May 15, 2020. *See* Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (the ''Tracking Fund Shares Approval Order'').

[6] The Trust is registered under the 1940 Act. On July 16, 2021, the Trust filed a registration statement on Form N–1A relating to the Fund (File No. 333–215165) (the ''Registration Statement''). The descriptions of the Fund and the Shares contained herein are based, in part, on information included in the Registration Statement. The Fund is an actively-managed exchange-traded fund that submitted an application for exemptive relief (the ''Application'') which was granted under an exemptive order (the ''Exemptive Order'', and the Exemptive Order together with the Application the ''Exemptive Relief'') issued on August 5, 2021 (File No. 812–15232). The Fund's Application incorporated the conditions and requirements to an exemptive order from the SEC under the 1940 Act (15 U.S.C. 80a–1) to Fidelity Management & Research Company and FMR Co., Inc., Fidelity Beach Street Trust, and Fidelity Distributors Corporation (File No. 812–14364), issued on December 10, 2019. *See* Investment Company Act Release No. 33683 (November 14, 2019), 84 FR 64140 (November 20, 2019) (the Notice) and 33712 (December 10, 2019) (the Order).

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser, Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] As defined in Rule 14.11(m)(3)(E), the term ''Tracking Basket'' means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Tracking Fund Shares.

[9] As defined in Rule 14.11(m)(3)(B), the term ''Fund Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

Rule 14.11(m) as well as all terms in the Exemptive Relief. The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act.[10] A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share of the Fund will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: The net asset value, the Tracking Basket, and the Fund Portfolio. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

Hartford Large Cap Growth ETF

The Fund's holdings will conform to the permissible investments as stated herein and as set forth in the Exemptive Relief and the holdings will be consistent with all requirements in the Exemptive Relief.[11] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'')[12] or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund's investment objective is to seek to provide capital appreciation. The Fund seeks to achieve its investment objective by investing in a diversified portfolio of common stocks and other securities covering a broad range of industries, companies and market capitalizations that the Sub-Adviser believes exhibit long-term growth potential. The Sub-Adviser identifies such companies using a fundamental analysis of a company, which involves the analysis of factors such as each issuer's financial condition and industry position, as well as market and economic conditions. Under normal circumstances, the Fund will invest at least 80% of its assets in equity securities of large capitalization companies.[13] The Fund may invest up to 25% of its net assets in ADRs representing securities of foreign issuers.

Trading Halts

Rule 14.11(m)(4)(B)(iv) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: The net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

Trading Rules

The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.[14] As provided in Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01. The Exchange has appropriate rules to facilitate trading in Tracking Fund Shares during all trading sessions.

Tracking Basket for the Proposed Fund

For the Fund, the Tracking Basket will consist of a combination of Strategy Components,[15] Representative ETFs,[16] and cash and cash equivalents. The Exchange notes that the Tracking Basket methodology used by the Fund is substantively identical to a proposal previously approved by the Commission.[17] Representative ETFs selected for inclusion in the Tracking Basket will be consistent with the Fund's objective and selected based on certain criteria, including, but not limited to, liquidity, assets under management, holding limits and compliance considerations. Representative ETFs can provide a useful mechanism to reflect the Fund's holdings' exposures within the Tracking Basket without revealing the Fund's exact positions.[18] Intraday pricing information for all constituents of the Tracking Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The Exchange notes that the Fund's NAV will form the basis for creations and redemptions for the Fund and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares. The Adviser expects that the Shares of the Fund will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as the Fund's Tracking Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In the event that the

[10] *See* 17 CFR 240.10A–3.

[11] Pursuant to the Exemptive Relief, the Fund's permissible investments include only the following instruments: ETFs, notes, common stocks, preferred stocks, American Depositary Receipts (ADRs), real estate investment trusts, commodity pools, metals trusts, and currency trusts, in each case that are traded on a U.S. securities exchange; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Fund's shares; exchange-traded futures that are traded on a U.S. futures exchange contemporaneously with the Fund's shares; and cash and cash equivalents (which are short-term U.S. Treasury securities, government money market funds, and repurchase agreements). The Fund will not purchase any securities that are illiquid investments (as defined in Rule 22e–4(a)(8) of 1940 Act) at the time of purchase. In addition, pursuant to the Exemptive Relief, the Fund will not: Borrow for investment purposes; hold short positions; or invest in ''penny stocks'' (as defined in Rule 3a51–1 under the Act).

[12] For a list of the current members of ISG, *see www.isgportal.com.* The Exchange notes that all components, except the cash and cash equivalent components, of the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[13] The Fund defines large-cap securities as companies with market caps within the collective range of the Russell 1000 Index and S&P 500 Index.

[14] With respect to trading in Tracking Fund Shares, all of the BZX member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange will continue to monitor its members for compliance with such requirements.

[15] ''Strategy Components'' refers to recently disclosed portfolio holdings.

[16] ''Representative ETFs'' refers to liquid ETFs that convey information about the types of instruments (that are not otherwise fully represented by the Strategy Components) in which the Fund invests.

[17] *See* Tracking Fund Shares Approval Order.

[18] The set of ETFs that are ''representative'' to be used in the Tracking Basket will depend on certain factors, including the Fund's investment objective, past holdings, and benchmark, and may change from time to time. For example, a U.S. diversified fund benchmarked to a diversified U.S. index would use liquid U.S. exchange-traded ETFs to capture size (large, mid or small capitalization), style (growth or value) and/or sector exposures in the Fund's portfolio. Leveraged and inverse ETFs will not be included in the Tracking Basket. Representative ETFs may constitute no more than 50% of the Tracking Basket's assets on each business day at the time that the Tracking Basket is published.

value of the Tracking Basket is not the same as the Fund's NAV, the creation and redemption baskets will consist of the securities included in the Tracking Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Tracking Basket, as further described below.

The Tracking Basket will be constructed utilizing a proprietary optimization process to minimize daily deviations in return of the Tracking Basket relative to the Fund and is used to facilitate the creation/redemption process and arbitrage. Typically, the Tracking Basket is expected to be rebalanced on schedule with the public disclosure of the Fund's holdings; however, a new optimized Tracking Basket may be generated as frequently as daily, and therefore, rebalancing may occur more frequently at the Adviser's discretion. In determining whether to rebalance a new optimized Tracking Basket, the Adviser will consider various factors, including liquidity of the securities in the Tracking Basket, tracking error, and the cost to create and trade the Tracking Basket.[19] For example, if the Adviser determines that a new Tracking Basket would reduce the variability of return differentials between the Tracking Basket and the Fund when balanced against the cost to trade the new Tracking Basket, rebalancing may be appropriate. In addition to disclosure of the Tracking Basket, the Fund publishes the Tracking Basket Weight Overlap on its website on each business day before the commencement of trading in shares on the listing exchange.[20] The Tracking Basket Weight Overlap is the percentage weight overlap between the holdings of the prior day's Tracking Basket compared to the holdings of the Fund that formed the basis for the Fund's calculation of NAV at the end of the prior business day. It is calculated by taking the lesser weight of each asset held in common between the Fund's portfolio and the Tracking Basket, and adding the totals. The Tracking Basket Weight Overlap is intended to provide investors with an understanding of the degree to which the Tracking Basket and the Fund's portfolio overlap and help investors evaluate the risk that the performance of the Tracking Basket may deviate from the performance of the portfolio holdings of the Fund.

As noted above, the Fund will also disclose the entirety of its portfolio holdings including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter. The Fund's website, at no charge, will include additional quantitative information updated on a daily basis, including, on a per Share basis for the Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. Price information for the exchange-listed instruments held by the Fund, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities. The Exchange notes that the concept of the Tracking Basket employed under this structure is designed to provide investors with the traditional benefits of ETFs while protecting the Fund from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of the Fund.

The Exchange believes that the particular instruments that may be included in the Fund's Fund Portfolio and Tracking Basket do not raise any concerns related to the Tracking Basket being able to closely track the NAV of the Fund because such instruments include only instruments that trade on an exchange contemporaneously with the Shares.[21] In addition, the Fund's Tracking Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund.

The Adviser anticipates that the returns between the Fund and its Tracking Basket will have a consistent relationship and that the deviation in the returns between the Fund and the Tracking Basket will be sufficiently small such that the Tracking Basket will provide authorized participants, arbitrageurs, and certain other market participants (collectively, ''Market Makers'') with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Fund will allow Market Makers to understand the relationship between the performance of the Fund and its Tracking Basket. Market Makers will be able to estimate the value of and hedge positions in the Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[22] in general and Section 6(b)(5) of the Act[23] 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, 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.

The Exchange notes that a significant amount of information about the Fund and its Fund Portfolio will be publicly available at all times. The Fund will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. The Fund will also disclose the entirety of its portfolio holdings including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a

[19] The Adviser uses a trading cost model to develop estimates of costs to trade a new Tracking Basket. There are essentially two elements to this cost: (1) The cost to purchase securities constituting the Tracking Basket, *i.e.,* the cost to put on the hedge for the Authorized Participant, and (2) the cost of any adjustments that need to be made to the composition of the Tracking Basket, *i.e.,* the cost to the Authorized Participant to change or maintain the hedge position. The inclusion of the trading cost model in the optimization process is intended to result in a Tracking Basket that is cost effective and liquid without compromising its tracking ability.

[20] Investors can access such information at *www.hartfordfunds.com.*

[21] The Exchange notes that to the extent that the Fund Portfolio or Tracking Basket includes any foreign common stocks, such securities will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[22] 15 U.S.C. 78f.

[23] 15 U.S.C. 78f(b)(5).

daily basis, including, on a per Share basis for the Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. Price information for the exchange-listed instruments held by the Fund, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities.

The Exchange represents that the Shares of the Fund will comply with all other requirements applicable to Tracking Fund Shares, including the dissemination of key information such as the Tracking Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the Shares, and firewalls as set forth in the Rules applicable to Tracking Fund Shares and the Tracking Fund Shares Approval Order. Moreover, U.S.-listed equity securities held by the Fund will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[24] All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to the Fund under Exchange Rule 14.12.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices in that the Rules relating to listing and trading of Tracking Fund Shares provide specific initial and continued listing criteria required to be met by such securities.

Rules 14.11(m)(4)(B)(iii) and (iv) provide that the Exchange will consider the suspension of trading in and will commence delisting proceedings for the Fund pursuant to Rule 14.12 under any of the circumstances described above and that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

Additionally, the Exchange believes that the requirements related to information protection enumerated under Rule 14.11(m)(2)(F) will act as a strong safeguard against any misuse and improper dissemination of information related to the Fund Portfolio, the Tracking Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto will act to prevent any individual or entity from sharing such information externally.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Tracking Fund Shares. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All futures contracts that the Fund may invest in will be traded on a U.S. futures exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying U.S. exchange-listed equity securities, and U.S. exchange-listed futures with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying equity securities, and U.S. exchange-listed futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

As provided in Rule 14.11(m)(2)(D), the Adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of the Fund. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading the Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the Shares.

In addition, Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain the Fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR and its Form N–CEN. The prospectus, Statement of Additional Information, and Shareholder Reports are available free upon request, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.* The Exchange also notes that the Exemptive Relief provides that the Fund will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Tracking Fund Shares.

[24] *See* supra note 9 [sic].

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed line. The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. As provided in Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

*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 purpose of the Act. Rather, the Exchange notes that the proposed rule change will facilitate the listing of a new series of Tracking Fund Shares, thus enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and Rule 19b–4(f)(6) thereunder.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–063 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–2021–063. 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–2021–063 and should be submitted on or before November 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011–01–P**

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[27] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Senior Executive Service and Senior Level: Performance Review Board Members

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of members for the Performance Review Board.

Title 5 U.S.C. 4314(c) (4) requires each agency to publish notification of the appointment of individuals who may serve as members of that agency's Performance Review Board (PRB). The following individuals have been designated to serve on the PRB for the U.S. Small Business Administration.

**Members**

1. Victor Parker (Chair), Deputy Associate Administrator, Office of Field Operations
2. Antwaun Griffin, Chief of Staff, Office of the Administrator
3. Barbara Carson, Deputy Associate Administrator, Office of Disaster Assistance
4. Jason Bossie, Director of Program Performance, Analysis, and Evaluation, Office of Performance, Planning and the Chief Financial Officer
5. John Miller, Deputy Associate Administrator, Office of Capital Access
6. Kevin Wheeler, Associate Administrator, Office of Congressional and Legislative Affairs
7. Mark Madrid, Associate Administrator, Office of Entrepreneurial Development

**Isabella Casillas Guzman,**

*Administrator.*

[FR Doc. 2021–22298 Filed 10–13–21; 8:45 am]

**BILLING CODE 8026–03–P**

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments

**ACTION:** 60-Day notice and request for comments.

**SUMMARY:** The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

**DATES:** Submit comments on or before December 13, 2021.

**ADDRESSES:** Send all comments to Terrence Sutherland, Office of Entrepreneurial Education, SBA, *terrence.sutherland@sba.gov* (202) 205–6919.

**FOR FURTHER INFORMATION CONTACT:** Terrence Sutherland, Office of Entrepreneurial Education, SBA, *terrence.sutherland@sba.gov* (202) 205–6919 or Curtis B. Rich, Management Analyst, (202) 205–7030, *curtis.rich@sba.gov.*

**SUPPLEMENTARY INFORMATION:** Section 5004 of the American Rescue Plan Act of 2021 (Pub. L. 117–2) authorized SBA to establish a Community Navigator Pilot Program. Under this authority, SBA will make grants to private nonprofit organizations, resource partners, States, Tribes and units of local government to ensure the delivery of free community navigator services to current or prospective owners of small businesses in order to improve access to COVID-related assistance programs and resources.

To facilitate expeditious implementation of the program, SBA obtained emergency approval from OMB, including waiver of the public comment notice required by 5 CFR 1320.8(d). That authority expires on December 31, 2021. SBA is publishing this notice as a prerequisite to obtaining an extension of the approval period of the information collection, which consists of application requirements for the program, SBA Form 3516, Community Navigators Pilot Program Client and Program Information Form, and quarterly reporting requirements.

Information collected from applicants to the Community Navigator Program will be used to determine applicant's eligibility for an award. At this time the application period is no longer open; however, SBA is extending this requirement in the event an additional funding opportunity becomes available. Form 3516 will collect data on the clients served by the awardees of the Community Navigator Pilot Program, which will be used to track grantee performance and help to evaluate program success. The grantees' quarterly performance reports will help SBA to assess program activity and the extent to which grantees are achieving desired program results and appropriately utilizing grant funds in support of the Community Navigator Program.

#### Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

#### Summary of Information Collection

*OMB Control Number:* 3245–0423.

*Title:* Community Navigators Pilot Program.

*Description of Respondents:* Entrepreneurs receiving technical assistance and Community Navigators grantees providing technical assistance services.

*Form Number:* SBA 3516.

*Total Estimated Annual Responses:* 450,000.

*Total Estimated Annual Hour Burden:* 150,000.

**Curtis Rich,**

*Management Analyst.*

[FR Doc. 2021–22319 Filed 10–13–21; 8:45 am]

BILLING CODE 8026–03–P

## SUSQUEHANNA RIVER BASIN COMMISSION

### Public Hearing

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** The Susquehanna River Basin Commission will hold a public hearing on November 4, 2021. The Commission will hold this hearing telephonically. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. The Commission will also hear testimony on a proposed policy, Fee Incentives for the Withdrawal and Consumptive Use of AMD Impacted Waters & Treated Wastewater (formerly the draft Use of Lesser Quality Waters Policy), as well as proposals to amend its Regulatory Program Fee Schedule and a proposed Letter of Understanding (LOU) regarding program coordination between the Susquehanna River Basin Commission and the Pennsylvania Department of Environmental Protection (DEP). Such projects and proposals are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for December 17, 2021, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects and proposals. The deadline for the submission of written comments is November 15, 2021.

**DATES:** The public hearing will convene on November 4, 2021, at 6:30 p.m. The public hearing will end at 9:00 p.m. or at the conclusion of public testimony, whichever is earlier. The deadline for the submission of written comments is November 15, 2021.

**ADDRESSES:** This hearing will be held by telephone conference rather than at a physical location. Conference Call # 1–877–668–4493 (Toll-Free number)/ Access code: 177 163 3585.

**FOR FURTHER INFORMATION CONTACT:** Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423 or *joyler@srbc.net.* Information concerning the applications for the projects is available at the Commission's Water Application and Approval Viewer at *https://www.srbc.net/waav.* Information concerning the proposals can be found at *https://www.srbc.net/about/meetings-events/.* Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/regulatory/policies-guidance/docs/access-to-records-policy-2009-02.pdf.*

**SUPPLEMENTARY INFORMATION:** The Commission is proposing a policy for Fee Incentives for the Withdrawal and Consumptive Use of AMD Impacted Waters & Treated Wastewater (formerly the draft Use of Lesser Quality Waters Policy, which was revised based on prior public comment). This policy would replace the current Policy No. 2009–01. The Commission is also proposing changes to its Regulatory Program Fee Schedule, which it typically does on an annual basis. The Commission is also seeking public comment on the LOU with the

Pennsylvania DEP. The LOU would replace the current MOU with DEP signed in 1999. The public hearing will cover the following projects:

**Projects Scheduled for Action**

1. Project Sponsor and Facility: Artesian Water Company, Inc., New Garden Township, Chester County, Pa. Application for renewal of the transfer of water of up to 3.000 mgd (30-day average) from the Chester Water Authority (Docket No. 19961105).

2. Project Sponsor and Facility: Chesapeake Appalachia, L.L.C. (Susquehanna River), Terry Township, Bradford County, Pa. Application for renewal and modification of surface water withdrawal of up to 3.000 mgd (peak day) (Docket No. 20170904).

3. Project Sponsor and Facility: Clearfield Municipal Authority, Pike Township, Clearfield County, Pa. Modification to extend the approval term of the groundwater withdrawal approval (Docket No. 19910704) to allow for project improvements.

4. Project Sponsor and Facility: Deep Woods Lake LLC, Dennison Township, Luzerne County, Pa. Applications for groundwater withdrawal of up to 0.200 mgd (30-day average) from Well SW–5 and consumptive use of up to 0.467 mgd (peak day).

5. Project Sponsor and Facility: Municipal Authority of the Township of East Hempfield dba Hempfield Water Authority, East Hempfield Township, Lancaster County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.353 mgd from Well 6, 0.145 mgd from Well 7, 1.447 mgd from Well 8, and 1.800 mgd from Well 11, and Commission-initiated modification to Docket No. 20120906, which approves withdrawals from Wells 1, 2, 3, 4, and 5 and Spring S–1 (Docket Nos. 19870306, 19890503, 19930101, and 20120906).

6. Project Sponsor: Farmers Pride, Inc. Project Facility: Bell & Evans Plant 3, Bethel Township, Lebanon County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.108 mgd from Well PW–1, 0.139 mgd from Well PW–2, and 0.179 mgd from Well PW–4.

7. Project Sponsor: Glenn O. Hawbaker, Inc. Project Facility: Naginey Facility, Armagh Township, Mifflin County, Pa. Applications for groundwater withdrawal of up to 0.300 mgd (30-day average) from the Quarry Pit Pond and consumptive use of up to 0.310 mgd (peak day).

8. Project Sponsor: Hydro Recovery-Antrim LP. Project Facility: Antrim Treatment Plant (Antrim No. 1 Mine Discharge and Backswitch Mine Discharge), Duncan Township, Tioga County, Pa. Applications for renewal of surface water withdrawal of up to 1.872 mgd (peak day) and for consumptive use of up to 1.872 mgd (30-day average) (Docket No. 20090902).

9. Project Sponsor and Facility: Project Sponsor and Facility: Mifflin County Municipal Authority (formerly The Municipal Authority of the Borough of Lewistown), Armagh Township, Mifflin County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.770 mgd from McCoy Well 1, 1.152 mgd from McCoy Well 2, and 0.770 mgd from the Milroy Well.

10. Project Sponsor: Nature's Way Purewater Systems, Inc. Project Facility: USHydrations—Dupont Bottling Plant, Dupont Borough, Luzerne County, Pa. Modification to increase consumptive use (peak day) by an additional 0.100 mgd, for a total consumptive use of up to 0.449 mgd (Docket No. 20110618).

11. Project Sponsor and Facility: Shippensburg Borough Authority, Southampton Township, Cumberland County, Pa. Application for renewal of groundwater withdrawal of up to 2.000 mgd (30-day average) from Well 3 (Docket No. 20070305).

12. Project Sponsor and Facility: Walker Township Water Association, Inc., Walker Township, Centre County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.432 mgd from Zion Well 2 and 0.320 mgd from Hecla Well 1 (Docket Nos. 19910302 and 19950906).

**Project Scheduled for Action Involving a Diversion**

1. Project Sponsor and Facility: Chester Water Authority, New Garden Township, Chester County, Pa. Applications for renewal of consumptive use and for an out-of-basin diversion of up to 3.000 mgd (30-day average) (Docket No. 19961104).

**Commission-Initiated Project Approval Modification**

1. Project Sponsor and Facility: Chester Water Authority, New Garden Township, Chester County, Pa. Applications for renewal of consumptive use and for an out-of-basin diversion of up to 3.000 mgd (30-day average) (Docket No. 19961104).

**Opportunity To Appear and Comment**

Interested parties may call into the hearing to offer comments to the Commission on any business listed above required to be the subject of a public hearing. Given the telephonic nature of the meeting, the Commission strongly encourages those members of the public wishing to provide oral comments to pre-register with the Commission by emailing Jason Oyler at *joyler@srbc.net* prior to the hearing date. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Access to the hearing via telephone will begin at 6:15 p.m. Guidelines for the public hearing are posted on the Commission's website, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be the subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *https://www.srbc.net/regulatory/public-comment/.* Comments mailed or electronically submitted must be received by the Commission on or before November 15, 2021, to be considered.

*Authority:* Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: October 7, 2021.

**Jason E. Oyler,**

*General Counsel and Secretary to the Commission.*

[FR Doc. 2021–22265 Filed 10–13–21; 8:45 am]

BILLING CODE 7040–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Women in Aviation Advisory Board; Notice of Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a meeting of the Women in Aviation Advisory Board (the Board).

**DATES:** The meeting will be held on December 1, 2021, from 9:00 a.m. to 12:30 p.m. Eastern Standard Time.

Requests for accommodations to a disability must be received by November 17, 2021. Requests to submit written materials to be reviewed during the meeting must be received no later than November 17, 2021.

**ADDRESSES:** The meeting will be held virtually. Members of the public who wish to observe the virtual meeting may access the event live on the FAA's

*Twitter, Facebook* and *YouTube* channels. For copies of meeting minutes along with all other information, please visit the WIAAB internet website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/committee/browse/committeeID/817.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Aliah Duckett, Federal Aviation Administration, at *S612WomenAdvisoryBoard@faa.gov.* Any committee related request should be sent to the person listed in this section or by phone at 202–267–8361.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On October 3, 2019, FAA established the WIAAB under the Federal Advisory Committee Act (FACA) in accordance with section 612 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254). The WIAAB will develop and provide recommendations and strategies to the FAA Administrator to explore opportunities for encouraging women and girls to enter the field of aviation with the objective of promoting organizations and programs that are providing education, training, mentorship, outreach, and recruitment of women in the aviation industry.

The charter was renewed October 3, 2021.

## II. Agenda

At the meeting, the agenda will cover the following topics:

- Official Statement of the Designated Federal Officer
- Welcome/Opening Remarks
- Approval of Previous Meeting Minutes
- Subcommittee Presentations
- Review of Action Items
- Closing Remarks

A detailed agenda will be posted on the WIAAB internet website address listed in the **ADDRESSES** section at least 15 days in advance of the meeting. Copies of the meeting minutes will also be available on the WIAAB internet website.

## III. Public Participation

The meeting will be open to the public and livestreamed. Members of the public who wish to observe the virtual meeting can access the livestream on the FAA social media platforms listed in the **ADDRESSES** section on the day of the event.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. However, the public may present written statements to the Board by providing a copy to the Designated Federal Officer via the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC.

**Angela O. Anderson,**

*Director, Regulatory Support Division, Office of Rulemaking, Federal Aviation Administration.*

[FR Doc. 2021–22326 Filed 10–13–21; 8:45 am]

**BILLING CODE 4910–13–P**

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# DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**[Summary Notice No. PE–2021–0012]**

## Petition for Exemption; Summary of Petition Received; The Boeing Company

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before November 3, 2021.

**ADDRESSES:** Send comments identified by docket number FAA–2021–0681 using any of the following methods:

- *Federal eRulemaking 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:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*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 the 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:** Deana Stedman, AIR–612, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3187, email *deana.stedman@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 8, 2021.

**Daniel J. Commins,**

*Manager, Technical Writing Section.*

## Petition for Exemption

*Docket No.:* FAA–2021–0681.

*Petitioner:* The Boeing Company.

*Section(s) of 14 CFR Affected:* § 25.901(c) and appendix K25.1.1 to part 25.

*Description of Relief Sought:* Boeing Commercial Airplanes is petitioning for an exemption of the affected sections of 14 CFR for a period of 7 years, to allow for independent incorporation of safety improvements related to engine fan blade-out failure conditions. The affected aircraft are Model 737–600/–700/–700C/–800/–900/and –900ER airplanes.

[FR Doc. 2021–22446 Filed 10–13–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2021–0011]**

### Petition for Exemption; Summary of Petition Received; The Boeing Company

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before November 3, 2021.

**ADDRESSES:** Send comments identified by docket number FAA–2021–0673 using any of the following methods:

- *Federal eRulemaking 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:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*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 the 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:** Deana Stedman, AIR–612, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3187, email *deana.stedman@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 8, 2021.

**Daniel J. Commins,**

*Manager, Technical Writing Section.*

### Petition for Exemption

*Docket No.:* FAA–2021–0673.

*Petitioner:* The Boeing Company.

*Section(s) of 14 CFR Affected:* §§ 25.901(c) and 25.903(c), item 6 Engine Torque Loads of Special Conditions 25–ANM–78, and appendix K25.1.1 to part 25.

*Description of Relief Sought:* Boeing Commercial Airplanes is petitioning for an exemption of the affected sections of 14 CFR for a period of 5 years, to allow for independent incorporation of safety improvements related to engine fan blade-out failure conditions. The affected aircraft are Model 777–200 and 777–300 airplanes equipped with Pratt & Whitney engines.

[FR Doc. 2021–22445 Filed 10–13–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2021–0066]**

### Agency Information Collection Activities; Renewal of an Approved Information Collection: Medical Qualification Requirements

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. FMCSA requests approval to renew an ICR, titled ''Medical Qualification Requirements,'' and provides updated information for several of the information collections discussed. This ICR is needed to ensure that drivers, motor carriers, Medical Examiners (ME), and the States are complying with the physical qualification requirements of commercial motor vehicle (CMV) drivers. The information collected is used primarily to determine and certify driver medical fitness and must be collected in order for our highways to be safe. On May 6, 2021, FMCSA published a 60-day notice requesting comment on the renewal of this ICR. In response to this notice, two comments were received.

**DATES:** Please submit your comments by November 15, 2021. OMB must receive your comments by this date in order to act quickly on the ICR.

**ADDRESSES:** Comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Telephone: (202) 366–4001. Email Address: *fmcsamedical@dot.gov.* Office hours are from 9:00 a.m. to 5:00 p.m., ET, Monday through Friday, except Federal Holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Medical Qualification Requirements.

*OMB Control Number:* 2126–0006.

*Type of Request:* Renewal of a currently approved information collection.

*Respondents:* CMV drivers, motor carriers, Medical Examiners, testing centers, treating clinicians.

*Estimated Number of Respondents:* 6,225,262.

*Expiration Date:* November 30, 2021.

*Estimated Total Annual Burden:* 2,707,479 hours.

This information collection is comprised of the following six information collection activities.

*Physical Qualification Standards:* 2,144,680 annual burden hours; 5,444,680 annual respondents.

*Resolution of Medical Conflict:* 11 annual burden hours; 3 annual respondents.

*Medical Exemptions:* 2,529 annual burden hours; 4,749 annual respondents.

*SPE Certificate Program:* 2,808 annual burden hours; 2,567 annual respondents.

*National Registry of Certified Medical Examiners:* 556,797 annual burden hours; 768,357 annual respondents.

*Qualification of Drivers; Diabetes Standard:* 654 annual burden hours; 4,906 annual respondents.

*Background:* CMVs (trucks and buses) are longer, heavier, and more difficult to maneuver than automobiles, making them a threat to highway safety if not operated properly by qualified individuals. The public interest in, and right to have, safe highways requires the assurance that drivers of CMVs can safely perform the increased physical and mental demands of their duties. FMCSA's physical qualification standards provide this assurance by requiring drivers to be examined and medically certified as physically and mentally qualified to drive. Therefore, information used to determine and certify driver medical fitness must be collected. FMCSA is the Federal government agency authorized to require the collection of this information. FMCSA is required by statute to establish standards for the physical qualifications of drivers who operate CMVs in interstate commerce for non-excepted industries (49 U.S.C. 31136(a)(3) and 31502(b)). The physical qualification regulations relating to this information collection are found in the Federal Motor Carrier Safety Regulations (FMCSRs) at 49 CFR parts 390–399.

Below is a brief description of the included information collection activities and how the information is used.

**Physical Qualification Standards**

The FMCSRs at 49 CFR 391.41 set forth the physical qualification standards interstate CMV drivers who are subject to part 391 must meet, with the exception of commercial driver's license/commercial learner's permit (CDL/CLP) drivers transporting migrant workers (who must meet the physical qualification standards set forth in 49 CFR 398.3). The FMCSRs covering driver physical qualification records applicable to all drivers subject to part 391 are found at 49 CFR 391.43, which specifies that a physical qualification examination be performed on CMV drivers subject to part 391 who operate in interstate commerce. The results of examinations must be recorded on the Medical Examination Report (MER) Form, MCSA–5875. If the ME finds a driver is physically qualified to operate a CMV in accordance with 49 CFR 391.41, the ME must complete and furnish to the driver a Medical Examiner's Certificate (MEC), Form MCSA–5876. The provisions of 49 CFR 391.51 require that a motor carrier retain the MEC or, for CDL drivers, the Commercial Driver's License Information System (CDLIS) motor vehicle record, if it contains medical certification status, in the driver's qualification (DQ) file for 3 years. The MEC and CDLIS motor vehicle record affirm that the driver is physically qualified to operate a CMV in interstate commerce. With respect to drivers transporting migrant workers, 49 CFR 398.3 requires a motor carrier to retain in its files a copy of a doctor's certificate that affirms the driver has been examined in accordance with that section and determined to be physically qualified to operate a CMV.

Due to the potential for the onset of new conditions or changes in existing conditions that may adversely affect a driver's ability to safely operate a CMV and cause a risk to public safety, FMCSA requires drivers to be medically certified at least every 2 years. However, drivers with certain medical conditions must be certified more frequently than every 2 years. MEs have discretion to certify for shorter time periods on a case-by-case basis for medical conditions that require closer monitoring or that are more likely to change over time.

MEs are required to maintain records of the CMV driver physical qualification examinations they conduct. FMCSA does not require MEs to maintain these records electronically. However, there is nothing to preclude an ME from maintaining electronic records of the medical examinations the ME conducts. FMCSA is continuously evaluating new information technology in an attempt to decrease the burden on motor carriers and MEs.

Less frequent collection of driver data, MER Forms, and MECs would compromise FMCSA's ability to determine ME compliance with FMCSA's requirements for performing CMV driver physical qualification examinations. This could result in MEs being listed on FMCSA's National Registry of Certified Medical Examiners (National Registry) who should be removed and possibly drivers who do not meet the physical qualification standards possessing an MEC. Less frequent data collection would also result in decreased validity of the data (*i.e.,* less frequent data submission may increase the error rate due to unintentional omission of examination information). Therefore, less frequent collection of driver examination results is not an option.

**Resolution of Medical Conflict**

If two MEs disagree about the medical certification of a driver, the medical conflict provision provides a mechanism for drivers and motor carriers to request that FMCSA resolve the conflicting medical evaluations when either party does not accept the decision of a medical specialist. The requirements set forth in 49 CFR 391.47 mandate that the applicant (driver or motor carrier) submit a copy of a report including results of all medical testing and the opinion of an impartial medical specialist in the field in which the medical conflict arose. The applicant may choose to submit the information using fax or email. FMCSA uses the information collected from the applicant, including medical information, to determine if the driver should be qualified. Without this provision and its incumbent driver medical information collection requirements, an unqualified person may be permitted to drive and qualified persons may be prevented from driving.

**Medical Exemptions and the Skill Performance Evaluation (SPE) Certificate Program**

FMCSA may, on a case-by-case basis, grant a medical exemption from a physical qualification standard set forth in 49 CFR 391.41. To do so, the Agency must determine the exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation. Without an exemption, individuals who do not meet the requirements in 49 CFR 391.41 would not be qualified to operate a CMV in interstate commerce. Section 381.300 establishes the procedures that persons must follow to request exemptions from the FMCSRs. The Agency requires all medical exemptions to be renewed every 2 years to ensure that the granting of the exemption does not diminish safety. Exemption holders are required to submit annual medical information for review to ensure the driver continues to meet the criteria for an exemption.

Individuals with loss or impairment of limbs are permitted to operate a CMV if they are otherwise physically qualified and are issued an SPE certificate by FMCSA. The SPE certificate must be renewed every 2 years by submitting a renewal application.

The application process for medical exemptions and SPE certificates provides for electronic collection of the application information by FMCSA for those applicants who choose to submit

the information electronically. They may fax or scan and email documents to FMCSA. The Vision Exemption Program and the SPE Certificate Program maintain a database of application information. The Medical Programs Division maintains a database of application information for hearing and seizure exemptions.

FMCSA must collect medical information about the driver's medical condition in order to determine eligibility to receive a medical exemption or an SPE certificate. In the interest of highway safety, the medical examination, medical exemption renewal, and SPE certificate renewal should not be performed less frequently.

**The National Registry of Certified Medical Examiners**

The *National Registry of Certified Medical Examiners* final rule (77 FR 24104, Apr. 20, 2012) requires MEs who conduct physical qualification examinations for interstate CMV drivers to complete training concerning FMCSA's physical qualification standards, pass a certification test, and maintain competence through periodic training and testing, all of which require information collection. ME candidates submit demographic and eligibility data in order to register with the National Registry and begin the certification process. This data is used to provide the public with contact information for those healthcare professionals who are certified by FMCSA to conduct interstate CMV driver physical qualification examinations. Less frequent collection of ME candidate identity and eligibility information and test results could mean there are fewer MEs available to perform physical qualification examinations and to meet the needs of the CMV driver and motor carrier population. This could place a burden on drivers and motor carriers. Therefore, less frequent collection of ME candidate identity and eligibility information and test results is not an option.

MEs are required to transmit to FMCSA via the National Registry results of any CMV driver physical qualification examinations completed by midnight (local time) of the next calendar day following the examination. The reporting of results includes all CMV drivers (CDL/CLP and non-CDL/CLP) who are required to be medically certified to operate in interstate commerce and allows, but does not require, MEs to transmit any information about examinations performed in accordance with the FMCSRs with any applicable State variances, which will be valid for intrastate operations only. Less frequent collection of driver data would compromise FMCSA's ability to determine ME compliance with FMCSA requirements for performing CMV driver physical qualification examinations. This could result in MEs being listed on the National Registry who should be removed and possibly drivers who do not meet the physical qualification standards possessing an MEC. Less frequent data collection would also result in decreased validity of the data (*i.e.,* less frequent data submission may increase the error rate due to unintentional omission of examination information). Therefore, less frequent collection of driver examination results is not an option.

The National Registry final rule also requires motor carriers to verify the National Registry number of the MEs who certify their drivers and place a note in the DQ file. Less frequent verification of the National Registry numbers by motor carriers could mean drivers may not have been examined by an ME listed on the National Registry and may not meet the physical qualifications standards of the FMCSRs.

As a follow-on rule to the National Registry final rule, the *Medical Examiner's Certification Integration* final rule (80 FR 22790, Apr. 23, 2015), modified several of the requirements adopted in the National Registry final rule, some of which had a scheduled compliance date of June 22, 2018. Specifically, it requires (1) FMCSA to electronically transmit from the National Registry to the State Driver's Licensing Agencies (SDLAs) the driver identification information, examination results, and restriction information from examinations performed for holders of CLPs/CDLs (interstate and intrastate); (2) FMCSA to transmit electronically to the SDLAs the medical variance information for all CMV drivers; and (3) SDLAs to post the driver identification, examination results, and restriction information received electronically from FMCSA.

However, as the *Medical Examiner's Certification Integration* final rule compliance date approached, FMCSA concluded that the information technology infrastructure necessary to implement the portions of the final rule that required the electronic transmission of data would not be available on June 22, 2018. Accordingly, on June 21, 2018, FMCSA published a notice extending the compliance date for several of the provisions in the *Medical Examiner's Certification Integration* final rule to June 22, 2021 (83 FR 28774).

As the June 22, 2021 compliance date approached, FMCSA again concluded that additional time was needed for FMCSA to complete certain information technology system development tasks for its National Registry and to provide the SDLAs sufficient time to make the necessary information technology programming changes after the new National Registry system is available. Accordingly, on June 22, 2021, FMCSA amended its regulations to extend the compliance date from June 22, 2021, to June 23, 2025, for several provisions of its *Medical Examiner's Certification Integration* final rule (86 FR 32643). Since the compliance date for these provisions will be extended until June 23, 2025, the annual burden hours and costs are not covered as part of this ICR.

**Qualifications of Drivers; Diabetes Standard**

As a result of the September 19, 2018, *Qualifications of Drivers; Diabetes Standard* final rule (83 FR 47486), the FMCSRs were amended to permit drivers with a stable insulin regimen and properly controlled insulin-treated diabetes mellitus (ITDM) to operate CMVs in interstate commerce. An individual with ITDM can obtain an MEC from an ME for up to a maximum of 12 months. To do so, the treating clinician, the healthcare professional who manages, and prescribes insulin for, the treatment of the individual's diabetes must complete the Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5870, and attest to the ME that the individual maintains a stable insulin regimen and proper control of the individual's diabetes. The ME must review the form and determine the individual meets FMCSA's ITDM standard and other physical qualification standards. The information collection is necessary to ensure drivers meet these standards. FMCSA allows treating clinicians and drivers to provide the form to MEs, if they choose to do so, using electronic communication such as fax or email.

**Comments to the 60-Day Notice**

On May 6, 2021, FMCSA published a 60-day notice (86 FR 24433) requesting comment on the renewal of this ICR. In response to the notice, comments were received from the National School Transportation Association (NSTA) and the U.S. Equal Employment Opportunity Commission (EEOC). NSTA commented that it was in support of the renewal of this information collection. The EEOC suggested that FMCSA consider revising the requests for medical information on the MER Form to focus on medical conditions and medications that may interfere, are likely to interfere, or do interfere with

individuals' ability to control, drive, or otherwise operate a CMV safely. It also suggested that that FMCSA consider narrowing the length of time that certain medical issues must be reported. In addition, it provided other comments regarding information on FMCSA's website that were not related to information collection activities or the renewal of this ICR. Those comments will be considered by FMCSA outside of this ICR renewal process.

Regarding the EEOC's suggestions for the MER Form, the information collected in the driver health history section of the MER Form is relevant and necessary to obtain a full health history from the driver. The information obtained facilitates the completion of a thorough examination by the ME. An ME needs all pertinent information to make an appropriate assessment of whether the driver meets the physical qualifications standards. FMCSA emphasizes that the driver health history questions are linked to the physical qualification standards set out in 49 CFR 391.41(b). Most of the standards are worded broadly because many medical conditions may interfere with an individual's ability to operate a CMV safely. Therefore, it is not in the interest of safety for FMCSA to provide less information to the ME.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87.

**Thomas P. Keane,**

*Associate Administrator, Office of Research and Registration.*

[FR Doc. 2021–22285 Filed 10–13–21; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2021–0096]**

### Agency Information Collection Activities; Renewal of an Approved Information Collection: Electronic Logging Device (ELD) Vendor Registration

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew an ICR titled, ''Electronic Logging Device (ELD) Vendor Registration.'' This ICR is necessary for ELD vendors to register their ELDs with the Agency.

**DATES:** We must receive your comments on or before December 13, 2021.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2021–0096 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC, 20590–0001 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

*Public Participation:* The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Jose R. Cestero, Vehicle and Roadside Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–5541; email *jose.cestero@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* On December 16, 2015, FMCSA published a final rule titled ''Electronic Logging Devices and Hours of Service Supporting Documents,'' (80 FR 78292) that established minimum performance and design standards for hours-of-service (HOS) ELDs; requirements for the mandatory use of these devices by drivers currently required to prepare HOS records of duty status (RODS); requirements concerning HOS supporting documents; and measures to address concerns about harassment resulting from the mandatory use of ELDs.

To ensure consistency among ELD vendors and devices, detailed functional specifications were published as part of the December 2015 final rule. Each ELD vendor developing an ELD technology must register online at a secure FMCSA website where the ELD provider can securely certify that its ELD is compliant with the functional specifications. Each ELD vendor must certify that each ELD model and version has been sufficiently tested to meet the functional requirements in the rule

under the conditions in which the ELD would be used.

ELD vendors must self-certify and register their devices with FMCSA online via Form MCSA–5893, ''Electronic Logging Device (ELD) Vendor Registration and Certification.'' FMCSA expects 100% of respondents to submit their information electronically. Once completed, FMCSA issues a unique identification number that the ELD vendor will embed in their device(s). FMCSA maintains a list on its website of the current ELD vendors and devices that have been certified (by the vendors) to meet the functional specifications. The information is necessary for fleets and drivers to easily find a compliant ELD for their use in meeting the FMCSA regulation requiring the use of ELDs.

*Title:* Electronic Logging Device (ELD) Vendor Registration.

*OMB Control Number:* 2126–0062.

*Type of Request:* Renewal of a currently approved collection.

*Respondents:* ELD vendors.

*Estimated Annual Number of Respondents:* 75.

*Estimated Time per Response:* 15 minutes.

Expiration Date: March 31, 2022.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 150 hours [75 respondents × 2 devices per respondent × 4 updates per device × 15 minutes per response].

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87.

**Thomas P. Keane,**

*Associate Administrator for Research, Technology and Registration.*

[FR Doc. 2021–22287 Filed 10–13–21; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2014–0383; FMCSA–2014–0386; FMCSA–2018–0135]**

### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to renew exemptions for four individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on September 12, 2021. The exemptions expire on September 12, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

*A. Viewing Comments*

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2014–0383, FMCSA–2014–0386, or FMCSA–2018–0135 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

*B. Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

## II. Background

On August 31, 2021, FMCSA published a notice announcing its decision to renew exemptions for four individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (86 FR 48794). The public comment period ended on September 30, 2021, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

## III. Discussion of Comments

FMCSA received no comments in this proceeding.

## IV. Conclusion

Based upon its evaluation of the four renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41(b)(11).

As of September 12, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the

hearing requirement in the FMCSRs for interstate CMV drivers (86 FR 48794):

Daniel Alcozer (TX)
Jason Gensler (OH)
Jay Larson (TX)
Eduwin Pineiro (NJ)

The drivers were included in docket number FMCSA–2014–0383, FMCSA–2014–0386, or FMCSA–2018–0135. Their exemptions were applicable as of September 12, 2021 and will expire on September 12, 2023.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2021–22316 Filed 10–13–21; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2012–0154; FMCSA–2013–0124; FMCSA–2014–0383; FMCSA–2014–0385; FMCSA–2014–0386; FMCSA–2018–0138]**

### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to renew exemptions for eight individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on August 13, 2021. The exemptions expire on August 13, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### I. Public Participation

*A. Viewing Comments*

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2012–0154, FMCSA–2013–0124, FMCSA–2014–0383, FMCSA–2014–0385, FMCSA–2014–0386, or FMCSA–2018–0138 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

*B. Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

### II. Background

On August 18, 2021, FMCSA published a notice announcing its decision to renew exemptions for eight individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (86 FR 46311). The public comment period ended on September 17, 2021, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

### III. Discussion of Comments

FMCSA received no comments in this proceeding.

### IV. Conclusion

Based upon its evaluation of the eight renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41 (b)(11).

As of August 13, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (86 FR 46311):

Timothy Finley (CA)
Frankye Helbig (FL)
William Jones (MN)
Tommy Lynn, Jr. (AZ)
David Presley (TX)
Joseph Strassburg (SD)
Jason Swearington (TX)
Holly Cameron Wright (NC)

The drivers were included in docket number FMCSA–2012–0154, FMCSA–2013–0124, FMCSA–2014–0383, FMCSA–2014–0385, FMCSA–2014–0386, or FMCSA–2018–0138. Their exemptions were applicable as of August 13, 2021 and will expire on August 13, 2023.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals

and objectives of 49 U.S.C. 31136(e) and 31315(b).

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2021–22314 Filed 10–13–21; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2021–0015]**

### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 25 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on October 8, 2021. The exemptions expire on October 8, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

### *A. Viewing Comments*

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2021–0015, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

### *B. Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

## II. Background

On August 31, 2021, FMCSA published a notice announcing receipt of applications from 25 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (86 FR 48769). The public comment period ended on September 30, 2021, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

## III. Discussion of Comments

FMCSA received no comments in this proceeding.

## IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

## V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must report any crashes or accidents as defined in § 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a

copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

**VI. Preemption**

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

**VII. Conclusion**

Based upon its evaluation of the 25 exemption applications, FMCSA exempts the following drivers from the hearing standard, § 391.41(b)(11), subject to the requirements cited above:

Judith Badore (VT)
Eric Bastian (NY)
Michael Camacho-Luna (VA)
Kevin Clickner (MI)
Tiffany Davis (FL)
Jonathon DeBoer (CA)
Michael Garman (IN)
Dareous Glover (IL)
Delroy Hunt (FL)
Andrew Jones (IA)
Lawrence Mills (OH)
John Norman (IL)
Destin Overstreet (UT)
Damiere Phillips (PA)
Stuart Randles (FL)
David Ritter (WA)
Beau Robinson (TX)
Jose Rosales (MD)
Christopher Shaw (MD)
Harmeet Singh (CA)
William Smitley (CA)
Kyle Voss (TX)
Deborah Wagner (PA)
Donald Weyand (MI)
Steven Woods (TN)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

**Larry W. Minor,**
*Associate Administrator for Policy.*

[FR Doc. 2021–22315 Filed 10–13–21; 8:45 am]
BILLING CODE 4910–EX–P

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

### Funding Opportunities: Bank Enterprise Award (BEA) Program; FY 2021 Funding Round

*Funding Opportunity Title:* Notice of Funds Availability (NOFA) inviting Applications for the Fiscal Year (FY) 2021 Funding Round of the Bank Enterprise Award Program (BEA Program).

*Announcement Type:* Announcement of funding opportunity.

*Funding Opportunity Number:* CDFI–2021–BEA.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 21.021.

*Dates:*

TABLE 1—FY 2021 BEA PROGRAM FUNDING ROUND—KEY DATES FOR APPLICANTS

| Description | Deadline | Time (eastern time—ET) | Contact information |
|---|---|---|---|
| Grant Application Package/SF–424 Mandatory (Application for Federal Assistance). *Submission Method: Electronically via Grants.gov.* | November 12, 2021 | 11:59 p.m | Contact *Grants.gov* at 800–518–4726 or *support@grants.gov.* |
| Last day to register a user and organization in AMIS. | December 10, 2021 | 5:00 p.m | CDFI Fund IT Helpdesk: 202–653–0422 or IT Award Management Information System (AMIS) Service Request.[1] |
| Last day to enter, edit or delete BEA transactions, and verify addresses/census tracts in AMIS. | December 10, 2021 | 5:00 p.m | CDFI Fund IT Helpdesk: 202–653–0422 or IT AMIS Service Request.[2] |
| Last day to contact BEA Program Staff re: BEA Program Application materials. | December 10, 2021 | 5:00 p.m | CDFI Fund BEA Helpdesk: 202–653–0421 or BEA AMIS Service Request.[3] |
| Last day to contact Certification, Compliance Monitoring and Evaluation (CCME) staff. | December 10, 2021 | 5:00 p.m | CCME Helpdesk: 202–653–0423 or Compliance and Reporting AMIS Service Request.[4] |
| Last day to contact IT Help Desk re. AMIS support and submission of the FY 2021 BEA Program Electronic Application in AMIS. | December 14, 2021 | 5:00 p.m | CDFI Fund IT Helpdesk: 202–653–0421 or IT AMIS Service Request.[5] |
| FY 2021 BEA Program Electronic Application *Submission Method: Electronically via AMIS.* | December 14, 2021 | 5:00 p.m | CDFI Fund IT Helpdesk: 202–653–0422 or IT AMIS Service Request.[6] |

[1] For Information Technology support, the preferred method of contact is to submit a Service Request (SR) within AMIS. For the SR, select ''Technical Issues'' from the Program drop down menu.
[2] Ibid.
[3] For questions regarding completion of the BEA Application materials, the preferred electronic method of contact with the BEA Program Office is to submit a Service Request (SR) within AMIS. For the SR, select ''BEA Program'' from the Program drop down menu of the Service Request.
[4] For Compliance and Reporting related questions, the preferred electronic method of contact is to submit a Service Request (SR) within AMIS. For the SR, select ''Compliance and Reporting'' from the Program drop down menu of the Service Request.
[5] For Information Technology support, the preferred method of contact is to submit a Service Request (SR) within AMIS. For the SR, select ''Technical Issues'' from the Program drop down menu of the Service Request.
[6] Ibid.

*Executive Summary:* This NOFA is issued in connection with the fiscal year (FY) 2021 funding round of the Bank Enterprise Award Program (BEA Program). The BEA Program is administered by the U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund). Through the BEA Program, the CDFI Fund awards formula-based grants to depository institutions that are insured by the Federal Deposit

Insurance Corporation (FDIC) for increasing their levels of loans, investments, Service Activities, and technical assistance to residents and businesses in the most economically Distressed Communities, and financial assistance and technical assistance to certified Community Development Financial Institutions (CDFIs) through equity investments, equity-like loans, grants, stock purchases, loans, deposits, and other forms of assistance, during a specified period.

**I. Program Description**

*A. History:* The CDFI Fund was established by the Riegle Community Development and Regulatory Improvement Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs. Since its creation in 1994, the CDFI Fund has provided more than $3.9 billion through a variety of monetary awards programs to CDFIs, community development organizations, and financial institutions. In addition, the CDFI Fund has allocated $61.0 billion in tax credit allocation authority to Community Development Entities through the New Markets Tax Credit Program (NMTC Program), and has guaranteed more than $1.7 billion in bonds through the CDFI Bond Guarantee Program.

The BEA Program complements the community development activities of banks and thrifts (collectively referred to as banks for purposes of this NOFA), by providing financial incentives to expand investments in CDFIs and to increase lending, investment, and Service Activities within Distressed Communities. Providing monetary awards to banks for increasing their community development activities leverages the CDFI Fund's dollars and puts more capital to work in Distressed Communities throughout the nation.

*B. Authorizing Statutes and Regulations:* The BEA Program was authorized by the Bank Enterprise Award Act of 1991, as amended. The regulations governing the BEA Program can be found at 12 CFR part 1806 (the Interim Rule). The Interim Rule provides the evaluation criteria and other requirements of the BEA Program. Detailed BEA Program requirements are also found in the application materials associated with this NOFA (the Application). The CDFI Fund encourages interested parties and Applicants to review the authorizing statute, Interim Rule, this NOFA, the Application, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Requirements) for a complete understanding of the BEA Program. Capitalized terms in this NOFA are defined in the authorizing statute, the Interim Rule, this NOFA, the Application, or the Uniform Requirements. Details regarding Application content requirements are found in the Application and related materials. Application materials can be found on *Grants.gov* and the CDFI Fund's website at *www.cdfifund.gov/bea.*

*C. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200):* The Uniform Administrative Requirements codify financial, administrative, procurement, and program management standards that Federal award-making agencies and Award Recipients must follow. When evaluating award applications, awarding agencies must evaluate the risks to the program posed by each Applicant, and each Applicant's merits and eligibility. These requirements are designed to ensure that Applicants for Federal assistance receive a fair and consistent review prior to an award decision. This review will assess items such as the Applicant's financial stability, quality of management systems, history of performance, and audit findings. In addition, the Uniform Requirements include guidance on audit requirements and other award requirements with which Award Recipients must comply.

*D. Priorities:* Through the BEA Program, the CDFI Fund specifies the following priorities:

*1. Estimated Award Amounts:* The award percentage used to derive the estimated award amount for Applicants that are CDFIs is three times greater than the award percentage used to derive the estimated award amount for Applicants that are not CDFIs;

*2. Priority Factors:* Priority Factors will be assigned based on an Applicant's asset size, as described in Section V.A.14 of this NOFA (Application Review Information: Priority Factors); and

*3. Priority of Awards:* The CDFI Fund will rank Applicants in each category of Qualified Activity according to the priorities described in Section V.A.16. of this NOFA (Application Review Information: Award Percentages, Award Amounts, Application Review Process, Selection Process, Programmatic Financial Risk, and Application Rejection), and specifically parts V.B.2: Selection Process, V.B.3: Programmatic and Financial Risk, and V.B.4: Persistent Poverty Counties.

*E. Baseline Period and Assessment Period Dates:* A BEA Program Award is based on an Applicant's increase in Qualified Activities from the Baseline Period to the Assessment Period, as reported on an individual transaction basis in the Application. For the FY 2021 funding round, the Baseline Period is calendar year 2019 (January 1, 2019 through December 31, 2019), and the Assessment Period is calendar year 2020 (January 1, 2020 through December 31, 2020).

*F. Funding Limitations:* The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA. The CDFI Fund also reserves the right to reallocate funds from the amount that is available through this NOFA to other CDFI Fund programs, or to reallocate remaining funds to a future BEA Program funding round, particularly if the CDFI Fund determines that the number of awards made through this NOFA is fewer than projected.

*G. Persistent Poverty Counties:* Pursuant to the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), Congress mandated that at least ten percent of the CDFI Fund's appropriations be directed to counties that meet the criteria for ''Persistent Poverty'' designation. Persistent Poverty Counties (PPCs) are defined as any county, including county equivalent areas in Puerto Rico, that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and the 2011–2015 5-year data series available from the American Community Survey of the Census Bureau or any other territory or possession of the United States that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990, 2000 and 2010 Island Areas Decennial Censuses, or equivalent data, of the Bureau of the Census and published by the CDFI Fund at: *https://www.cdfifund.gov/Documents/PPC%20updated%20Oct.2017.xlsx.* The tabular BEA Program Eligibility Data, which is located on the CDFI Fund's website, indicates whether a census tract also meets ''Persistent Poverty County'' (PPC) criteria. The tabular BEA Program Eligibility Data can be located by clicking on ''Research and Data,'' scrolling to ''Program Eligibility Guidance'' and selecting ''BEA Program Updated 2011–2015 ACS Data,'' or by going to the following hyperlink: *https://www.cdfifund.gov/Documents/BEA%20ACS_2015_V12.xlsx.* Applicants that apply under this NOFA will be required to indicate the minimum and maximum percentage of

the BEA Program Award that the Applicant will commit to investing in PPCs.

## II. Federal Award Information

*A. Funding Availability:* The CDFI Fund expects to award up to $26 million for the FY 2021 BEA Program Award round under this NOFA. The CDFI Fund reserves the right to award in excess of said funds under this NOFA, provided that the appropriated funds are available. The CDFI Fund reserves the right to impose a minimum or maximum award amount; however, under no circumstances will an award be higher than $1 million for any Award Recipient.

*B. Types of Awards:* BEA Program Awards are made in the form of grants.

*C. Anticipated Start Date and Period of Performance:* The CDFI Fund anticipates the period of performance for the FY 2021 funding round will begin in the fall of calendar year 2021. Specifically, the period of performance begins on the Federal Award Date and will conclude at least one (1) full year after the Federal Award Date as further specified in the BEA Program Award Agreement (Award Agreement), during which the Award Recipient must meet the performance goals set forth in the Award Agreement.

*D. Eligible Activities:* Eligible activities for BEA Program Applicants are referred to as Qualified Activities and are defined in the Interim Rule to include CDFI Related Activities, Distressed Community Financing Activities, and Service Activities (12 CFR 1806.103).

CDFI Related Activities (12 CFR 1806.103) means CDFI Equity and CDFI Support Activities. CDFI Equity consists of Equity Investments, Equity-Like Loans, and Grants. CDFI Support Activities includes Loans, Deposits and Technical Assistance. Distressed Community Financing Activities (12 CFR 1806.103) means Consumer Loans and Commercial Loans and Investments. Consumer Loans include Affordable Housing Loans; Education Loans; Home Improvement Loans; and Small Dollar Consumer Loans. Commercial Loans and Investments includes Affordable Housing Development Loans and related Project Investments; Commercial Real Estate Loans and related Project Investments; and Small Business Loans and related Project Investments. Service Activities (12 CFR 1806.103) include Deposit Liabilities, Financial Services, Community Services, Targeted Financial Services, and Targeted Retail Savings/Investment Products. When calculating BEA Program Award amounts, the CDFI Fund will only consider the amount of a Qualified Activity that has been fully disbursed or, in the case of a partially disbursed Qualified Activity, will only consider the amount that an Applicant reasonably expects to disburse for a Qualified Activity within 12 months from the end of the Assessment Period. Subject to the requirements outlined in Section VI. of this NOFA, in the case of Commercial Real Estate Loans and related Project Investments, the total principal amount of the transaction must be $10 million or less to be considered a Qualified Activity. Notwithstanding the foregoing, the CDFI Fund, in its sole discretion, may consider transactions with a total principal value of over $10 million, subject to review.

An activity funded with prior BEA Program Award dollars, or funded to satisfy requirements of an Award Agreement from a prior BEA Program award or an agreement under any CDFI Fund program, shall not constitute a Qualified Activity for the purposes of calculating or receiving an award.

*E. Distressed Community:* A Distressed Community must meet certain minimum geographic area and eligibility requirements, which are defined in the Interim Rule at 12 CFR 1806.103 and more fully described in 12 CFR 1806.401. Applicants should use the CDFI Fund's Information Mapping System (CIMS Mapping Tool) to determine whether a Baseline Period activity or Assessment Period activity is located in a qualified Distressed Community. The CIMS Mapping Tool can be accessed through AMIS or the CDFI Fund's website at *https://www.cdfifund.gov/Pages/mapping-system.aspx.* The CIMS Mapping Tool contains a step-by-step training manual on how to use the tool. In addition, further instructions to determine whether an activity is located in a qualified BEA Distressed Community can be located at: *https://www.cdfifund.gov/programs-training/Programs/bank_enterprise_award/Pages/apply-step.aspx#,* Step1, when selecting the BEA Program Application CIMS3 Instructions document in the ''Application Materials'' section of the BEA web page on the CDFI Fund's website. If you have any questions or problems with accessing the CIMS Mapping Tool, please contact the CDFI Fund IT Help Desk by telephone at (202) 653–0300, or by IT AMIS Service Request. Please note that a Distressed Community as defined by the BEA Program is not the same as an Investment Area as defined by the CDFI Program, a Low-Income Community as defined by the NMTC Program, or an Area of Economic Distress as defined by the Capital Magnet Fund Program.

*1. Designation of Distressed Community by a CDFI Partner:* CDFI Partners that receive CDFI Support Activities in the form of loans, technical assistance or deposits from an Applicant must be integrally involved in a Distressed Community. Applicants must provide evidence that each CDFI Partner that is the recipient of CDFI Support Activities is integrally involved in a Distressed Community, as noted in the Application. CDFI Partners that receive Equity Investments, Equity-Like Loans or grants are not required to demonstrate Integral Involvement. Additional information on Integral Involvement can be found in Section V. of this NOFA.

*2. Distressed Community Determination by a BEA Applicant:* Applicants applying for a BEA Program Award for performing Distressed Community Financing Activities or Service Activities must verify that addresses of both Baseline Period and Assessment Period activities are in Distressed Communities when completing their Application.

A BEA Applicant shall determine an area is a Distressed Community by:

a. Selecting a census tract where the Qualified Activity occurred that meets the minimum area and eligibility requirements; or

b. selecting the census tract where the Qualified Activity occurred, plus one or more census tracts directly contiguous to where the Qualified Activity occurred that when considered in the aggregate, meet the minimum area and eligibility requirements set forth in this section.

*F. Award Agreement:* Each Award Recipient under this NOFA must electronically sign an Award Agreement via AMIS prior to payment of the award proceeds by the CDFI Fund. The Award Agreement contains the terms and conditions of the award. For further information, see Section VI. of this NOFA.

*G. Use of Award:* It is the policy of the CDFI Fund that BEA Program Awards may not be used by Award Recipients to recover overhead or Indirect Costs. The Award Recipient may use up to fifteen percent (15%) of the total BEA Program award amount on Qualified Activities as Direct Administrative Expenses. ''Direct Administrative Expenses'' shall mean Direct Costs, as described in section 2 CFR 200.413 of the Uniform Requirements, which are incurred by the Award Recipient to carry out the Qualified Activities. Such costs must be able to be specifically identified with the Qualified Activities and not also recovered as Indirect Costs.

''Indirect Costs'' means costs or expenses defined in accordance with section 2 CFR 200.1 of the Uniform Requirements. In addition, the Award Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

## III. Eligibility Information

*A. Eligible Applicants:* For the purposes of this NOFA, the following table sets forth the eligibility criteria to receive a BEA Program award from the CDFI Fund.

TABLE 2—ELIGIBILITY REQUIREMENTS FOR APPLICANTS

| Criteria | Description |
|---|---|
| Eligible Applicants | • The depository institution holding company of an Insured Depository Institution may not apply on behalf of an Insured Depository Institution. Applications received from depository institution holding companies will be disqualified.<br>• Eligible Applicants for the BEA Program must be Insured Depository Institutions, as defined in the Interim Rule.<br>• For the FY 2021 funding round, an Applicant must have been FDIC-insured as of the first day of the Baseline Period, January 1, 2019, and maintain its FDIC-insured status at the time of Application to be eligible for consideration for a BEA Program Award under this NOFA.<br>• The depository institution holding company of an Insured Depository Institution may not apply on behalf of an Insured Depository Institution. Applications received from depository institution holding companies will be disqualified. |
| CDFI Applicant | • For the FY 2021 funding round, an eligible certified-CDFI Applicant is an Insured Depository Institution that was certified as a CDFI as of December 31, 2020 and maintains its status as a certified CDFI at the time BEA Program Awards are announced under this NOFA. No CDFI Applicant may receive a FY 2021 BEA Program Award if it has: (1) An application pending for assistance under the FY 2021 round of the CDFI Program; (2) been included on the list of Award Recipients under the CDFI Program award announcement within the 12-month period prior to the Federal Award Date of the FY 2021 BEA Program Award Agreement; (3) been awarded assistance from the CDFI Fund under the CDFI Program within the 12-month period prior to the Federal Award Date of the FY 2021 BEA Program Award Agreement; or (4) ever received assistance under the CDFI Program for the same activities for which it is seeking a FY 2021 BEA Program Award. Please note that Applicants may apply for both a CDFI Program award and a BEA Program Award in FY 2021; however, receiving a FY 2021 CDFI Program award removes an Applicant from eligibility for a FY 2021 BEA Program Award. |
| Debarment/Do Not Pay Verification | • The CDFI Fund will conduct a debarment check and will not consider an Application submitted by an Applicant (or Affiliate of an Applicant) if the Applicant is delinquent on any Federal debt.<br>• The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government. The Do Not Pay Business Center provides delinquency information to the CDFI Fund to assist with the debarment check. |

*B. Prior Award Recipients:* The previous success of an Applicant in any of the CDFI Fund's programs will not be considered under this NOFA. Prior BEA Program Award Recipients and prior Award Recipients of other CDFI Fund programs are eligible to apply under this NOFA, except as noted in the following table:

TABLE 3—ELIGIBILITY REQUIREMENTS FOR APPLICANTS WHICH ARE PRIOR AWARD RECIPIENTS

| Criteria | Description |
|---|---|
| Pending resolution of noncompliance | • If an Applicant (or Affiliate of an Applicant) that is a prior Award Recipient or Allocatee under any CDFI Fund program: (i) Has demonstrated it has been in noncompliance with a previous assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance with or default of its previous agreement, the CDFI Fund will consider the Applicant's Application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. |
| Default or Noncompliance status | • The CDFI Fund will not consider an Application submitted by an Applicant (or Affiliate of such Applicant) that has a previously executed assistance agreement, award agreement, bond loan agreement, or agreement to guarantee or allocation agreement if, as of the date of the Application, (i) the CDFI Fund has made a determination that such entity is noncompliant with and or in default of such previously executed agreement, and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for or receive any future CDFI Fund awards or allocations. Such entities will be ineligible to submit an Application for such time period as specified by the CDFI Fund in writing. |

*C. Contact the CDFI Fund:* Accordingly, Applicants that are prior Award Recipients and/or Allocatees under any CDFI Fund program are advised to comply with requirements specified in an assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee. All outstanding reports and compliance questions should be directed to the Certification, Compliance Monitoring and Evaluation helpdesk by submitting a BEA Compliance and Reporting AMIS Service Request or by telephone at (202)

653–0423. The CDFI Fund will respond to Applicants' reporting, compliance, or disbursement questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting on the date of the publication of this NOFA. The CDFI Fund will not respond to Applicants' reporting, compliance, or disbursement telephone calls or electronic inquiries received after 5:00 p.m. ET on December 10, 2021, until after the Application deadline. The CDFI Fund will respond to technical issues related to AMIS Accounts through 5:00 p.m. ET on December 14, 2021, via an IT AMIS Service Request, email at *AMIS@cdfi.treas.gov,* or by telephone at (202) 653–0422.

*D. Cost sharing or matching fund requirements:* Not applicable.

## IV. Application and Submission Information

*A. Address to Request an Application Package:* Application materials can be found on *Grants.gov* and the CDFI Fund's website at *www.cdfifund.gov/bea.* Applicants may request a paper version of any Application material by contacting the CDFI Fund Help Desk at *cdfihelp@cdfi.treas.gov.*

*B. Content and Form of Application Submission:* All Application materials must be prepared using the English language and calculations must be made in U.S. dollars. Applicants must submit all materials described in and required by the Application by the applicable deadlines. Detailed Application content requirements including instructions related to the submission of the Grant Application Package in *Grants.gov* and the FY 2021 BEA Program Application in AMIS, the CDFI Fund's web-based portal, are provided in detail in the Application Instructions. Once an Application is submitted, the Applicant will not be allowed to change any element of the Application. The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application.

*C. Application Submission:* The CDFI Fund has a two-step submission process for BEA Applications that requires the submission of required application information on two separate deadlines and in two separate and distinct systems, *Grants.gov* and the CDFI Fund's AMIS. The first step is the submission of the Grant Application, which consists solely of the Office of Management and Budget Standard Form—424 Mandatory (SF–424 Mandatory) *Application for Federal Assistance,* in *Grants.gov*. The second step is to submit an FY 2021 BEA Program Application in AMIS.

*D. Grants.gov:* Applicants must be registered with *Grants.gov* to submit the Grants Application Package. The Grants Application Package consists of one item, the SF–424 Mandatory. In order to register with *Grants.gov*, Applicants must have a DUNS number and have an active registration with *SAM.gov*. The CDFI Fund strongly encourages Applicants to start the *Grants.gov* registration process as soon as possible (refer to the following link: *https://www.grants.gov/web/grants/register.html*) as it may take several weeks to complete. Applicants that have previously registered with *Grants.gov* must verify that their registration is current and active. Applicants should contact *Grants.gov* directly with questions related to the registration or submission process as the CDFI Fund does not administer or maintain this system.

Applicants are required to submit a Grant Application Package in *Grants.gov* and have it validated by the *Grants.gov* submission deadline of November 12, 2021. The Grant Application Package is validated by *Grants.gov* after the Applicant's initial submission and it may take *Grants.gov* up to 48 hours to complete the validation process. Therefore, the CDFI Fund encourages Applicants to submit the Grant Application Package as early as possible. This will help to ensure that the Grant Application Package is validated before the *Grants.gov* submission deadline and provide time for Applicants to contact *Grants.gov* directly to resolve any submission issues since the CDFI Fund does not administer or maintain that system. For more information about *Grants.gov*, please visit *https://www.grants.gov* and see Table 8 for *Grants.gov* contact information.

The CDFI Fund electronically retrieves validated Grant Application Packages from *Grants.gov* and therefore only considers the submission of the Grant Application Package to be successful when it has been validated by *Grants.gov* before the submission deadline. It is the Applicant's sole responsibility to ensure that its Grant Application Package is submitted and validated by *Grants.gov* before the submission deadline. Applicants that do not successfully submit their Grant Application Package and have it validated by the *Grants.gov* submission deadline will not be able to submit a FY 2021 BEA Program Application in AMIS. The CDFI Fund will electronically retrieve validated Grant Application Packages from *Grants.gov* on a daily basis. Applicants are advised that it will take up to 48 hours from when the CDFI Fund retrieves the validated Grant Application Package for it to be available in AMIS to associate with a FY 2021 BEA Program Application.

Once the CDFI Fund has retrieved the validated Grant Application Package from *Grants.gov* and made it available in AMIS, Applicants must associate it with their Application. Applicants can begin working on their FY 2021 BEA Program Application in AMIS at any time, however, they will not be able to submit the application until the validated Grant Application Package is associated, by the Applicant, with the application. Applicants are advised that the CDFI Fund will not notify them when the validated Grant Application Package has been retrieved from *Grants.gov* or when it is available in AMIS. It is the Applicant's responsibility to ensure that the validated SF–424 Mandatory is associated with its FY 2021 BEA Application in AMIS. Applicants will not be able to submit their FY 2021 BEA Program Application without completing this step.

Applicants are advised that the lookup function in the FY 2021 BEA Application in AMIS, uses the DUNS number reported on the validated Grant Application Package to match it with the correct AMIS Organization account. Therefore, Applicants must make sure the DUNS number included in the Grant Application Package submitted in *Grants.gov* matches the DUNS number in their AMIS Organization account. If, for example, the DUNS number does not match because the Applicant inadvertently used the DUNS number of their Bank Holding Company on the Grant Application Package in *Grants.gov* and is attempting to associate with AMIS Organization account of their FDIC-Insured Bank subsidiary, the lookup function will not return any results and the Applicant will not be able to submit the FY 2021 BEA Application.

Applicants are also highly encouraged to provide EIN, Authorized Representative and/or Contact Person information on the Grant Application Package that matches the information included in AMIS Organization account.

*E. Dun & Bradstreet Universal Numbering System (DUNS):* Pursuant to the Uniform Administrative Requirements, each Applicant must provide, as part of its Application submission, a Dun and Bradstreet Universal Numbering System (DUNS) number. Applicants without a DUNS number will not be able to submit a

Grant Application Package in *Grants.gov*.

Applicants should allow sufficient time for Dun & Bradstreet to respond to inquiries and/or requests for DUNS numbers.

*F. System for Award Management (SAM):* An active SAM account is required to submit the required Grant Application Package in *Grants.gov*. Any entity applying for Federal grants or other forms of Federal financial assistance through *Grants.gov* must be registered in SAM in order to submit its Grant Application Package in *Grants.gov* or FY 2021 BEA Program Application in AMIS. When accessing *SAM.gov*, users will be asked to create a *login.gov* user account (if they don't already have one). Going forward, users will use their *login.gov* username and password every time when logging in to *SAM.gov*. Applicants must have established an active *SAM.gov* account no later than 30 days after the release of this NOFA. The SAM registration process can take three weeks or longer to complete so Applicants are strongly encouraged to begin the registration process upon release of this NOFA in order to avoid potential application submission problems. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Applicants are advised to complete the *SAM.gov* process at least 48 hours in advance of the Grants Application Package deadline. Applicants are required to maintain a current and active SAM account at all times during which it has an active Federal award or an Application under consideration for an award by a Federal awarding agency.

An original, signed notarized letter identifying the authorized Entity Administrator for the entity associated with the DUNS number is required by SAM and must be mailed to the Federal Service Desk. This requirement is applicable to new entities registering in SAM, as well as existing entities with registrations being updated or renewed in SAM. Additional information on the notarized letter process can be located at: *https://www.gsa.gov/about-us/organization/federal-acquisition-service/office-of-systems-management/integrated-award-environment-iae/sam-update-updated-july-11-2018.*

The CDFI Fund will not consider any Applicant that fails to properly register or activate its SAM's account and, as a result, is unable to submit its Grant Application Package in *Grants.gov*, or FY 2021 BEA Program Application in AMIS by the respective deadlines. Applicants must contact SAM directly with questions related to SAM registration or account changes as the CDFI Fund does not administer or maintain this system. For more information about SAM, please visit *https://www.sam.gov* or call 866–606–8220.

*G. AMIS:* All Applicants must complete an FY 2021 BEA Program Application in AMIS, the CDFI Fund's web-based portal. All Applicants must register User and Organization accounts in AMIS by December 10, 2021. In addition, all BEA transactions must be finalized in AMIS by December 10, 2021; this includes address/census tract verification. No transactions can be added, edited, or deleted after this deadline. Failure to register and complete a FY 2021 BEA Program Application in AMIS in accordance with the deadlines noted in Table 1: FY 2021 BEA Program Funding Round—Key Dates for Applicants will result in the CDFI Fund being unable to accept the Application. As AMIS is the CDFI Fund's primary means of communication with Applicants and Award Recipients, institutions must make sure that they update their contact information in their AMIS accounts. In addition, the Applicant should ensure that the institution information (name, EIN, DUNS number, Authorized Representative, contact information, etc.) on the Grant Application Package submitted as part of the Grant Application Package in *Grants.gov* matches the information in AMIS. EINs and DUNS numbers in the Applicant's SAM account must match those listed in AMIS. For more information on AMIS, please see the information available through the AMIS Home page at *https://amis.cdfifund.gov.* Qualified Activity documentation and other attachments as specified in the applicable BEA Program Application must also be submitted electronically via AMIS. Detailed instructions regarding submission of Qualified Activity documentation is provided in the Application Instructions and AMIS Training Manual for the BEA Program Application. Applicants will not be allowed to submit missing Qualified Activity documentation after the BEA Transactions deadline and any Qualified Activity missing the required documentation will be disqualified. Qualified Activity documentation delivered by hard copy to the CDFI Fund's Washington, DC office address will be rejected, unless the Applicant previously requested a paper version of the Application as described in Section IV.A.

*H. Submission Dates and Times:* The following table provides the critical deadlines for the FY 2021 BEA Funding Round. Applications and any other required documents or attachments received after the applicable deadline will be rejected. The document submission deadlines stated in this NOFA and the Application are strictly enforced. The CDFI Fund will not grant exceptions or waivers for late submissions except where the submission delay was a direct result of a Federal government administrative or technological error.

TABLE 4—CRITICAL DEADLINES FOR FY 2021 BEA FUNDING ROUND

| Description | Deadline | Time (eastern time) |
|---|---|---|
| Grant Application Package/SF–424 Mandatory, *Submission Method: Electronically via Grants.gov.* | November 12, 2021 .... | 11:59 p.m. ET. |
| FY 2021 BEA Program Application, *Submission Method: Electronically via AMIS* ..... | December 14, 2021 .... | 5:00 p.m. ET. |

*1. Confirmation of Application Submission:* Applicants may verify that their Grant Application Package was successfully submitted and validated in *Grants.gov* and that their FY 2021 BEA Program Application was successfully submitted in AMIS. Applicants should note that the Grant Application Package consists solely of the SF–424 Mandatory and has a different deadline than the FY 2021 BEA Program Application. These deadlines are provided above in Table 4: FY 2021 BEA Program Funding Round Critical Deadlines for Applicants. If the Grant Application Package is not successfully submitted and subsequently validated by *Grants.gov* by the deadline, the CDFI Fund will not review the FY 2021 BEA Program Application or any of the application related material submitted in AMIS and

the Application will be deemed ineligible.

*a. Grants.gov Submission Information:* In order to determine whether the Grant Application Package was submitted properly, each Applicant should: (1) Receive two separate emails from *Grants.gov*, and (2) perform an independent step in *Grants.gov* to determine whether the Grant Application was validated. Each Applicant will receive the first email from *Grants.gov* immediately after the Grant Application Package is submitted confirming that the submission has entered the *Grants.gov* system. This email will contain a tracking number. Within 48 hours, the Applicant will receive a second email which will indicate if the submitted Grant Application Package was successfully validated or rejected with errors. However, Applicants should not rely on the second email notification from *Grants.gov* to confirm that the Grant Application Package was validated. Instead, Applicants should then perform an independent step in *Grants.gov* to determine if the Grant Application Package status shows as ''Validated'' by clicking on the ''Applicants'' menu, followed by clicking ''Track my Application,'' and then entering the tracking number provided in the first email. The Grant Application Package cannot be retrieved by the CDFI Fund until it has been validated by *Grants.gov*.

*b. AMIS Submission Information:* AMIS is the web-based portal where Applicants will directly enter their application information and add supporting documentation, when applicable. The CDFI Fund strongly encourages the Applicant to allow sufficient time to confirm the Application content, review the material submitted, and remedy any issues prior to the BEA Transactions deadline. Only the Authorized Representative or an Application Point of Contact can submit the FY 2021 BEA Program Application in AMIS.

Applicants will not receive an email confirming that their FY 2021 BEA Program Application was successfully submitted in AMIS. Instead, Applicants should check their AMIS account to ensure that the status of the FY 2021 BEA Program Application shows ''Under Review.'' Step-by-step instructions for submitting an FY 2021 BEA Program Application in AMIS are provided in the Application Instructions, Supplemental Guidance, and AMIS Training Manual for the BEA Program Electronic Application.

*2. Multiple Application Submissions:* If an Applicant submits multiple versions of its Grant Application Package in *Grants.gov*, the Applicant can only associate one with its FY 2021 BEA Program Application in AMIS.

Applicants can only submit one FY 2021 BEA Program Application in AMIS. Upon submission, the Application will be locked and cannot be resubmitted, edited, or modified in any way. The CDFI Fund will not unlock a submitted Application or allow multiple Application submissions.

*3. Late Submission:* The CDFI Fund will not accept an SF–424 Mandatory in *Grants.gov* or an FY 2021 BEA Program Application in AMIS if it is not signed by an Authorized Representative or submitted after the respective deadlines. In either case, the CDFI Fund will not review any material submitted, and the Application will be deemed ineligible, except where the submission delay was a direct result of a Federal government administrative or technological error. This exception includes any errors associated with *Grants.gov*, *SAM.gov*, AMIS or any other applicable government system. Please note that this exception does not apply to errors arising from obtaining a DUNS number from Dun & Bradstreet, which is not a government entity. An Applicant unable to make timely submission of its Application due to any errors in the process of obtaining a DUNS number will not be allowed to submit its Application after the Application deadline has passed. In such case, the Applicant must submit their request for acceptance of a late Application submission to the BEA Program Office via an AMIS Service Request with documentation that clearly demonstrates the error by no later than two business days after the applicable Application deadline for *Grants.gov* or AMIS. The CDFI Fund will not respond to a request for acceptance of late Application submissions after that time period. The AMIS Service Request must be directed to the BEA Program with a subject line of ''FY 2021 BEA Late Application Submission Request.''

*I. Funding Restrictions:* BEA Program Awards are limited by the following:

1. The Award Recipient shall use BEA Program Award funds only for the eligible activities described in Section II. D. of this NOFA and the Authorized BEA Program Activities described in its Award Agreement.

2. The Award Recipient may not distribute BEA Program Award funds to an Affiliate, Subsidiary, or any other entity, without the CDFI Fund's prior written approval.

3. BEA Program Award funds shall only be disbursed to the Award Recipient.

4. The CDFI Fund, in its sole discretion, may disburse BEA Program Award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

*J. Other Submission Requirements:* None.

## V. Application Review Information

*A. Criteria:* If the Applicant submitted a complete and eligible Application, the CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, the Application guidance, and the Uniform Requirements. The CDFI Fund reserves the right to contact the Applicant by telephone, email, or mail for the sole purpose of clarifying or confirming Application information. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or run the risk that its Application will be rejected.

The CDFI Fund will not collect or accept any Personally Identifiable Information (PII) in AMIS or in any of the application submission materials. PII is information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Although Applicants are required to enter addresses of individual borrowers/residents of Distressed Communities in AMIS, Applicants must not include the following PII for the individuals who received the financial products or services in AMIS or in the supporting documentation: Name of the individual, Social Security Number, driver's license or state identification number, passport number, and Alien Registration Number. This information should be redacted from all supporting documentation. If the CDFI Fund discovers PII during the review of an Application, the transaction will be deleted from the application record and deemed ineligible.

*1. CDFI Related Activities:* CDFI Related Activities include Equity Investments, Equity-Like Loans, and CDFI Support Activities provided to eligible CDFI Partners.

*2. Eligible CDFI Partner:* CDFI Partner is defined as a certified CDFI that has been provided assistance in the form of CDFI Related Activities by an unaffiliated Applicant (12 CFR 1806103). For the purposes of this NOFA, an eligible CDFI Partner must have been certified as a CDFI as of the date that the BEA Applicant made its investment or provided support, and be Integrally Involved in a Distressed

Community (if the BEA Applicant provided CDFI Support Activities to the CDFI Partner).

*3. Integrally Involved:* Integrally Involved is defined at 12 CFR 1806.103. For purposes of this NOFA, in order for an Applicant to report CDFI Support Activities in its Application, the CDFI Partner which received the support must be deemed to be Integrally Involved by demonstrating it has: (i) Provided at least 10 percent of the number of its financial transactions or dollars transacted (*e.g.,* loans or Equity Investments), or 10 percent of the number of its Development Service Activities (as defined in 12 CFR 1805.104) or value of the administrative cost of providing such services, in one or more Distressed Communities identified by the CDFI Partner, in each of the three calendar years preceding the date of this NOFA; (ii) transacted at least 25 percent of the number of its financial transactions or dollars transacted (*e.g.,* loans or equity investments) in one or more Distressed Communities in at least one of the three calendar years preceding the date of this NOFA, or 25 percent of the number of its Development Service Activities (as defined in 12 CFR 1805.104) or value of the administrative cost of providing such services, in one or more Distressed Communities identified by the CDFI Partner, in at least one of the three calendar years preceding the date of this NOFA; (iii) demonstrated that it has attained at least 10 percent of market share for a particular financial product in one or more Distressed Communities (such as home mortgages originated in one or more Distressed Communities) in at least one of the three calendar years preceding the date of this NOFA; or (iv) at least 25 percent of the CDFI Partner's physical locations (*e.g.,* offices or branches) are located in one or more Distressed Communities where it provided financial transactions or Development Service Activities during the one calendar year preceding the date of the NOFA.

*4. Limitations on eligible Qualified Activities provided to certain CDFI Partners:* A CDFI Applicant cannot receive credit for any financial assistance or Qualified Activities provided to a CDFI Partner that is also an FDIC-insured depository institution or depository institution holding company.

*5. Certificates of Deposit:* Section 1806.103 of the Interim Rule states that any certificate of deposit (CD) placed by an Applicant or its Subsidiary in a CDFI Partner that is a bank, thrift, or credit union must be: (i) Uninsured and committed for at least three years; or (ii) insured, committed for a term of at least three years, and provided at an interest rate that is materially below market rates, in the determination of the CDFI Fund.

a. For purposes of this NOFA, ''materially below market interest rate'' is defined as an annual percentage rate that does not exceed the yields on Treasury securities at constant maturity as interpolated by Treasury from the daily yield curve and available on the Treasury website at *www.treas.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml.* For example, for a three-year CD, Applicants should use the three-year rate U.S. Government securities, Treasury Yield Curve Rate posted for that business day. The Treasury updates the website daily at approximately 5:30 p.m. ET. CDs placed prior to that time may use the rate posted for the previous business day. The annual percentage rate on a CD should be compounded daily, quarterly, semi-annually, or annually. If a variable interest rate is used, the CD must also have an interest rate that is materially below the market interest rate over the life of the CD, in the determination of the CDFI Fund. If a variable rate is used, the Applicant must describe its methodology for determining that the interest rate over the life of the CD is a materially below market interest rate. The CDFI Fund reserves the right to follow up with an Applicant regarding variable interest rate CD transactions.

b. For purposes of this NOFA, a deposit placed by an Applicant directly with a CDFI Partner that participates in a deposit network or service may be treated as eligible under this NOFA if it otherwise meets the criteria for deposits in 12 CFR 1806.103 and the CDFI Partner retains the full amount of the initial deposit or an amount equivalent to the full amount of the initial deposit through a deposit network exchange transaction.

*6. Equity Investment:* An Equity Investment means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in this NOFA, in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the CDFI Fund.

*7. Equity-Like Loan:* An Equity-Like Loan is a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment, as such characteristics may be specified by the CDFI Fund (12 CFR 1806.103). For purposes of this NOFA, an Equity-Like Loan must meet the following characteristics:

a. At the end of the initial term, the loan must have a definite rolling maturity date that is automatically extended on an annual basis if the CDFI borrower continues to be financially sound and carry out a community development mission;

b. Periodic payments of interest and/or principal may only be made out of the CDFI borrower's available cash flow after satisfying all other obligations;

c. Failure to pay principal or interest (except at maturity) will not automatically result in a default of the loan agreement; and

d. The loan must be subordinated to all other debt except for other Equity-Like Loans. Notwithstanding the foregoing, the CDFI Fund reserves the right to determine, in its sole discretion and on a case-by-case basis, whether an instrument meets the above-stated characteristics of an Equity-Like Loan.

*8. CDFI Support Activity:* A CDFI Support Activity is defined as assistance provided by an Applicant or its Subsidiary to a CDFI that is Integrally Involved in a Distressed Community, in the form of a loan, Technical Assistance, or deposits.

*9. CDFI Program Matching Funds:* Equity Investments, Equity-Like Loans, and CDFI Support Activities (except Technical Assistance) provided by a BEA Applicant to a CDFI and used by the CDFI for matching funds under the CDFI Program are eligible as a Qualified Activity under the CDFI Related Activity category.

*10. Commercial Loans and Investments:* Commercial Loans and Investments is a sub-category of Distressed Community Financing Activities and is defined as the following lending activity types: Affordable Housing Development Loans and related Project Investments; Commercial Real Estate Loans and related Project Investments; and Small Business Loans and related Project Investments.

*11. Consumer Loans:* Consumer Loans is a sub-category of Distressed Community Financing Activities and is defined as the following lending activity types: Affordable Housing Loans; Education Loans; Home Improvement Loans; and Small Dollar Consumer Loans.

*12. Distressed Community Financing Activities and Service Activities:* Distressed Community Financing Activities comply with consumer protection laws and are defined as (1) Consumer Loans; or (2) Commercial Loans and Investments. In addition to

the requirements set forth in the Interim Rule, this NOFA provides the following additional requirements:

*a. Affordable Housing Development Loans and Related Project Investments:* For purposes of this NOFA, eligible Affordable Housing Development Loans and related Project Investments do not include housing for students, or school dormitories. In addition, for such transactions, Applicants will be required to provide supporting documentation that demonstrates that at least 60 percent of the units in the property financed are or will be sold or rented to Eligible Residents who meet Low-and-Moderate-income requirements, as noted in the Application instructions.

*b. Commercial Real Estate Loans and related Project Investments:* For purposes of this NOFA, eligible Commercial Real Estate Loans (12 CFR 1806.103) and related Project Investments are generally limited to transactions with a total principal value of $10 million or less. Notwithstanding the foregoing, the CDFI Fund, in its sole discretion, may consider transactions with a total principal value of over $10 million, subject to review. For such transactions, Applicants must provide a separate narrative, or other information, to demonstrate that the proposed project offers, or significantly enhances the quality of, a facility or service not currently provided to the Distressed Community.

*c. Small Dollar Consumer Loan:* For purposes of this NOFA, eligible Small Dollar Consumer Loans are affordable loans that serve as available alternatives to the marketplace for individuals who are Eligible Residents with a total principal value of no less than $500 and no greater than $5,000 and have a term of ninety (90) days or more.

*d. Distressed Community Financing Activities—Transactions Less Than $250,000:* For purposes of this NOFA, Applicants are expected to maintain records for any transaction submitted as part of the FY 2021 BEA Program Application, including supporting documentation for transactions in the Distressed Community Financing Activity category of less than $250,000. The CDFI Fund reserves the right to request supporting documentation from an Applicant during its Application Review process for a Distressed Community Financing Activities transaction less than $250,000.

*e. Low- and Moderate-Income residents:* For the purposes of this NOFA, Low-Income means borrower income that does not exceed 80 percent of the area median income, and Moderate-Income means borrower income may be 81 percent to no more than 120 percent of the area median income, according to the U.S. Census Bureau data.

*13. Reporting Certain Financial Services:* The CDFI Fund will value the administrative cost of providing certain Financial Services using the following per unit values:

a. $100.00 per account for Targeted Financial Services including safe transaction accounts, youth transaction accounts, Electronic Transfer Accounts and Individual Development Accounts;

b. $50.00 per account for checking and savings accounts that do not meet the definition of Targeted Financial Services;

c. $5.00 per check cashing transaction;

d. $50,000 per new ATM installed at a location in a Distressed Community;

e. $500,000 per new retail bank branch office opened in a Distressed Community, including school-based bank branches approved by the Applicant's Federal bank regulator;

f. In the case of Applicants engaging in Financial Services activities not described above, the CDFI Fund will determine the unit value of such services;

g. When reporting the opening of a new retail bank branch office, the Applicant must certify that such new branch is intended to remain in operation for at least the next five years;

h. Financial Service Activities must be provided by the Applicant to Eligible Residents or enterprises that are located in a Distressed Community. An Applicant may determine the number of Eligible Residents who are Award Recipients of Financial Services by either: (i) Collecting the addresses of its Financial Services customers, or (ii) certifying that the Applicant reasonably believes that such customers are Eligible Residents or enterprises located in a Distressed Community and providing a brief analytical narrative with information describing how the Applicant made this determination. Citations must be provided for external sources. In addition, if external sources are referenced in the narrative, the Applicant must explain how it reached the conclusion that the cited references are directly related to the Eligible Residents or enterprises to whom it is claiming to have provided the Financial Services; and

i. When reporting changes in the dollar amount of deposit accounts, only calculate the net change in the total dollar amount of eligible Deposit Liabilities between the Baseline Period and the Assessment Period. Do not report each individual deposit. If the net change between the Baseline Period and Assessment Period is a negative dollar amount, then a negative dollar amount may be recorded for Deposit Liabilities only. Instructions for determining the net change is available in the FY 2021 BEA Program Application in AMIS.

*14. Priority Factors: Priority Factors are the numeric values assigned to individual types of activity within:* (i) The Distressed Community Financing Activities, and (ii) Services Activities categories of Qualified Activities. For the purposes of this NOFA, Priority Factors will be based on the Applicant's asset size as of the end of the Assessment Period (December 31, 2020) as reported by the Applicant in the Application. Asset size classes (*i.e.,* small institutions, intermediate-small institutions, and large institutions) will correspond to the Community Reinvestment Act (CRA) asset size classes set by the three Federal bank regulatory agencies and that were effective as of the end of the Assessment Period. The Priority Factor works by multiplying the change in a Qualified Activity by the assigned Priority Factor to achieve a ''weighted value.'' This weighted value of the change would be multiplied by the applicable Award percentage to yield the Award amount for that particular activity. For purposes of this NOFA, the CDFI Fund is establishing Priority Factors based on Applicant asset size to be applied to all activity types within the Distressed Community Financing Activities and Service Activities categories only, as follows:

TABLE 5—CRA ASSET SIZE CLASSIFICATION

| | Priority factor |
|---|---|
| Small institutions (assets of less than $330 million as of 12/31/2020) | 5.0 |
| Intermediate—small institutions (assets of at least $330 million but less than $1.322 billion as of 12/31/2020) | 3.0 |
| Large institutions (assets of $1.322 billion or greater as of 12/31/2020) | 1.0 |

*15. Certain Limitations on Qualified Activities:*

*a. Low-Income Housing Tax Credits:* Financial assistance provided by an Applicant for which the Applicant receives benefits through Low-Income Housing Tax Credits, authorized pursuant to Section 42 of the Internal Revenue Code, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a BEA Program Award.

*b. New Markets Tax Credits:* Financial assistance provided by an Applicant for which the Applicant receives benefits as an investor in a Community Development Entity that has received an allocation of New Markets Tax Credits, authorized pursuant to Section 45D of the Internal Revenue Code, as amended (26 U.S.C. 45D), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a BEA Program Award. Leverage loans used in New Markets Tax Credit structured transactions that meet the requirements outlined in this NOFA are considered Distressed Community Financing Activities. The application materials will provide further guidance on requirements for BEA transactions which were leverage loans used in a New Markets Tax Credit structured transaction.

*c. Loan Renewals and Refinances:* Financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of calculating or receiving a BEA Program Award if such financial assistance consists of a loan to a borrower that has matured and is then renewed by the Applicant, or consists of a loan to a borrower that is retired or restructured using the proceeds of a new commitment by the Applicant.

*d. Certain Business Types:* Financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of financing the following business types: Adult entertainment providers, golf courses, race tracks, gambling facilities, country clubs, facilities offering massage services, hot tub facilities, suntan facilities, or stores where the principal business is the sale of alcoholic beverages for consumption off premises.

*e. Prior BEA Program Awards:* Qualified Activities funded with prior funding round BEA Program Award dollars or funded to satisfy requirements of the BEA Program Award Agreement shall not constitute a Qualified Activity for the purposes of calculating or receiving a BEA Program Award.

*f. Prior CDFI Fund Awards:* No Applicant may receive a BEA Program Award for the same activities funded by another CDFI Fund program or Federal program.

*16. Award Percentages, Award Amounts, Application Review Process, Selection Process, Programmatic and Financial Risk, and Application Rejection:* The Interim Rule and this NOFA describe the process for selecting Applicants to receive a BEA Program Award and determining Award amounts.

*a. Award percentages:* In the CDFI Related Activities subcategory of CDFI Equity, for all Applicants, the estimated award amount will be equal to 18 percent of the increase in Qualified Activities reported in this subcategory.

In the CDFI Related Activities subcategory of CDFI Support Activities, for a certified CDFI Applicant, the estimated award amount will be equal to 18 percent of the increase in Qualified Activities in this subcategory. If an Applicant is not a certified CDFI, the estimated award amount will be equal to 6 percent of the increase in Qualified Activities in this subcategory.

In Distressed Community Financing Activities' subcategory of Consumer Lending, the estimated award amount for certified CDFI Applicants will be 18 percent of the weighted value of the increase in Qualified Activities in this subcategory. If an Applicant is not a certified CDFI Applicant, the estimated award amount will be equal to 6 percent of the weighted value of the increase in Qualified Activities in this subcategory.

In the Distressed Community Financing Activities subcategory of Commercial Lending and Investments, for a certified CDFI Applicant, the estimated award amount will be equal to 9 percent of the weighted value of the increase in Qualified Activities in this subcategory. If an Applicant is not a certified CDFI, the estimated award amount will be equal to 3 percent of the weighted value of the increase in Qualified Activity in this subcategory.

In the Service Activities category, for a certified CDFI Applicant, the estimated award amount will be equal to 9 percent of the weighted value of the increase in Qualified Activity for the category. If an Applicant is not a certified CDFI, the estimated award amount will be equal to 3 percent of the weighted value of the increase in Qualified Activity for the category.

*b. Award Amounts:* An Applicant's estimated award amount will be calculated according to the procedure outlined in the Interim Rule (at 12 CFR 1806.403). As outlined in the Interim Rule at 12 CFR 1806.404, the CDFI Fund will determine actual Award amounts based on the availability of funds, increases in Qualified Activities from the Baseline Period to the Assessment Period, and the priority ranking of each Applicant.

In calculating the increase in Qualified Activities, the CDFI Fund will determine the eligibility of each transaction for which an Applicant has applied for a BEA Program Award. In some cases, the actual award amount calculated by the CDFI Fund may not be the same as the estimated award amount requested by the Applicant.

For purposes of calculating award payment amounts, the CDFI Fund will treat Qualified Activities with a total principal amount less than or equal to $250,000 as fully disbursed. For all other Qualified Activities, Award Recipients will have 12 months from the end of the Assessment Period to make disbursements and 15 months from the end of the Assessment Period to submit to the CDFI Fund subsequent payment requests for the corresponding portion of their awards, after which the CDFI Fund will rescind and de-obligate any outstanding award balance and said outstanding award balance will no longer be available to the Award Recipient.

*B. Review and Selection Process:*

*1. Application Review Process:* All Applications will be initially evaluated by external non-Federal reviewers. Reviewers are selected based on their experience in understanding various financial transactions, reading and interpreting financial documentation, strong written communication skills, and strong mathematical skills. Reviewers must complete the CDFI Fund's conflict of interest process and be approved by the CDFI Fund.

*2. Selection Process:* If the amount of funds available during the funding round is insufficient for all estimated Award amounts, Award Recipients will be selected based on the process described in the Interim Rule at 12 CFR 1806.404. This process gives funding priority to Applicants that undertake activities in the following order: (i) CDFI Related Activities, (ii) Distressed Community Financing Activities, and (iii) Service Activities, as described in the Interim Rule at 12 CFR 1806.404(c).

Within each category, CDFI Applicants will be ranked first according to the ratio of the actual award amount calculated by the CDFI Fund for the category to the total assets of the Applicant, followed by Applicants that are not CDFI Applicants according to the ratio of the actual

award amount calculated by the CDFI Fund for the category to the total assets of the Applicant.

Selections within each priority category will be based on the Applicants' relative rankings within each such category, subject to the availability of funds and any established maximum dollar amount of total awards that may be awarded for the Distressed Community Financing Activities category of Qualified Activities, as determined by the CDFI Fund.

The CDFI Fund, in its sole discretion: (i) May adjust the estimated award amount that an Applicant may receive; (ii) may establish a maximum amount that may be awarded to an Applicant; and (iii) reserves the right to limit the amount of an award to any Applicant if the CDFI Fund deems it appropriate.

The CDFI Fund reserves the right to contact the Applicant to confirm or clarify information. If contacted, the Applicant must respond within the CDFI Fund's time parameters or the Application may be rejected.

The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures. If those changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information regarding the changes through the CDFI Fund's website.

*3. Programmatic and Financial Risk:* The CDFI Fund will consider safety and soundness information from the appropriate Federal bank regulatory agency as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)). If the appropriate Federal bank regulatory agency identifies safety and soundness concerns, the CDFI Fund will assess whether the concerns cause or will cause the Applicant to be incapable of completing the activities for which funding has been requested. The CDFI Fund will not approve a BEA Program Award under any circumstances for an Applicant if the appropriate Federal bank regulatory agency indicates that the Applicant received a composite rating of ''5'' on its most recent examination, performed in accordance with the Uniform Financial Institutions Rating System.

Furthermore, the CDFI Fund will not approve a BEA Program Award for an Applicant that has:

(i) A CRA assessment rating of below ''Satisfactory'' on its most recent examination; (ii) a financial audit with: A going concern paragraph, an adverse opinion, a disclaimer of opinion, or a withdrawal of an opinion on its most recent audit; or (iii) a Prompt Corrective Action directive from its regulator imposing restrictions on its level of lending activities, that was active at the time the Applicant submitted its Application to the CDFI Fund or becomes active during the CDFI Fund's evaluation of the Application for: Activities which funding has been requested, activities which meet the BEA Program criteria of Qualified Activities, or other circumstances which may impact an Applicant's ability to successfully manage, re-invest, and/or report on a FY 2021 BEA Program Award.

Applicants and/or their appropriate Federal bank regulator agency may be contacted by the CDFI Fund to provide additional information related to Federal bank regulatory or CRA information. The CDFI Fund will consider this information and may choose to not approve a FY 2021 BEA Program Award for an Applicant if the information indicates that the Applicant may be unable to responsibly manage, re-invest, and/or report on a FY 2021 BEA Program Award during the period of performance.

*4. Persistent Poverty Counties:* Should the CDFI Fund determine, upon analysis of the initial pool of BEA Program Award Recipients, that it has not achieved the 10 percent PPC requirement mandated by Congress, Award preference will be given to Applicants that committed to deploying a minimum of 10 percent of their FY 2021 BEA Program Award in PPCs. Applicants may be required to deploy more than the minimum commitment percentage, but the percentage required should not exceed the maximum commitment percentage provided in the Application. Applicants that committed to serving PPCs and are selected to receive a FY 2021 BEA Program award, will have their PPC commitment incorporated into their Award Agreement as a Performance Goal which will be subject to compliance and reporting requirements. No Applicant, however, will be disqualified from consideration for not making a PPC commitment in its BEA Program Application.

*5. Application Rejection:* The CDFI Fund reserves the right to reject an Application if information (including administrative error) comes to the CDFI Fund's attention that either: adversely affects an Applicant's eligibility for an award; adversely affects the CDFI Fund's evaluation or scoring of an Application; or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application.

There is no right to appeal the CDFI Fund's award decisions. The CDFI Fund's award decisions are final. The CDFI Fund will not discuss the specifics of an Applicant's FY 2021 BEA Program Application or provide reasons why an Applicant was not selected to receive a FY 2021 BEA Program Award. The CDFI Fund will only respond to general questions regarding the FY 2021 BEA Program Application and award decision process until 30 days after the award announcement date.

*C. Anticipated Announcement and Federal Award Dates:* The CDFI Fund anticipates making its FY 2021 BEA Program award announcement in the summer of 2021. The Federal Award Date shall be the date that the CDFI Fund executes the Award Agreement.

## VI. Federal Award Administration Information

*A. Federal Award Notices:* The CDFI Fund will notify an Applicant of its selection as an Award Recipient by delivering a notification or letter. The Award Agreement will contain the general terms and conditions governing the CDFI Fund's provision of an Award. The Award Recipient will receive a copy of the Award Agreement via AMIS. The Award Recipient is required to sign the Award Agreement via an electronic signature in AMIS. The CDFI Fund will subsequently execute the Award Agreement. Each Award Recipient must also ensure that complete and accurate banking information is reflected in its SAM account at *www.sam.gov* in order to receive its award payment.

*B. Administrative and National Policy Requirements:* If, prior to entering into an Award Agreement, information (including an administrative error) comes to the CDFI Fund's attention that adversely affects: The Award Recipient's eligibility for an award; the CDFI Fund's evaluation of the Application; the Award Recipient's compliance with any requirement listed in the Uniform Requirements; or indicates fraud or mismanagement on the Award Recipient's part, the CDFI Fund may, in its discretion and without advance notice to the Award Recipient, terminate the award or take other actions as it deems appropriate.

If the Award Recipient's certification status as a CDFI changes, the CDFI Fund reserves the right, in its sole discretion, to re-calculate the award, and modify the Award Agreement based on the Award Recipient's non-CDFI status.

By executing an Award Agreement, the Award Recipient agrees that, if the CDFI Fund becomes aware of any information (including an administrative error) prior to the

effective date of the Award Agreement that either adversely affects the Award Recipient's eligibility for an award, or adversely affects the CDFI Fund's evaluation of the Award Recipient's Application, or indicates fraud or mismanagement on the part of the Award Recipient, the CDFI Fund may, in its discretion and without advance notice to the Award Recipient, terminate the Award Agreement or take other actions as it deems appropriate.

The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Award Recipient fails to return the Award Agreement, signed by the authorized representative of the Award Recipient, and/or provide the CDFI Fund with any other requested documentation, within the CDFI Fund's deadlines.

In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Award Agreement and the award made under this NOFA for any criteria described in the following table:

TABLE 6—CRITERIA THAT MAY RESULT IN AWARD TERMINATION PRIOR TO THE EXECUTION OF AN AWARD AGREEMENT

| Criteria | Description |
|---|---|
| Failure to maintain FDIC-insured status | • If prior to entering into an Award Agreement under this NOFA, the Award Recipient does not maintain its FDIC-insured status, the CDFI Fund will terminate and rescind the Award Agreement and the award made under this NOFA. |
| Failure to meet reporting requirements | • If an Applicant is a prior CDFI Fund Award Recipient or Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds, until said prior Award Recipient or Allocatee is current on the reporting requirements in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee. Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete and therefore met reporting requirements. If said prior Award Recipient or Allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award made under this NOFA. |
| Pending resolution of noncompliance .. | • If, at any time prior to entering into an Award Agreement under this NOFA, an Applicant (or Affiliate of an Applicant) that is a prior CDFI Fund Award Recipient or Allocatee under any CDFI Fund program: (i) Has demonstrated it has been in noncompliance with a previous assistance, award, allocation agreement, bond loan agreement, or agreement to guarantee, but (ii) the CDFI Fund has yet to make a final determination regarding whether or not the entity is in noncompliance with or in default of its previous assistance, award, allocation, bond loan agreement, or agreement to guarantee, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a payment of award proceeds, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance.<br>• If said prior Award Recipient or Allocatee is unable to meet this requirement, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award made under this NOFA. |
| Default or Noncompliance status ..... | • If prior to entering into an Award Agreement under this NOFA: (i) The CDFI Fund has made a final determination that an Applicant (or an Affiliate of an Applicant) that is a prior CDFI Fund Award Recipient or Allocatee under any CDFI Fund program whose award or allocation terminated in default or noncompliance of such prior agreement; (ii) the CDFI Fund has provided written notification of such determination to such organization; and (iii) the anticipated date for entering into the Award Agreement under this NOFA is within a period of time specified in such notification throughout which any new award, allocation, assistance, bond loan agreement(s), or agreement to guarantee is prohibited, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Award Agreement and the award made under this NOFA. |
| Compliance with Federal civil rights requirements. | • If prior to entering into an Award Agreement under this NOFA, the Award Recipient receives a final determination, made within the last three years, in any proceeding instituted against the Award Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the Award Recipient has violated the following laws: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975, (42 U.S.C. 6101–6107), and Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, the CDFI Fund will terminate and rescind the Award Agreement and the award made under this NOFA. |
| Do Not Pay ..... | • The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government.<br>• The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Award Recipient (or Affiliate of a Recipient) is identified as ineligible to be an Award Recipient per the Do Not Pay database. |
| Safety and Soundness ..... | • If it is determined the Award Recipient is or will be incapable of meeting its award obligations, the CDFI Fund will deem the Award Recipient to be ineligible or require it to improve safety and soundness conditions prior to entering into an Award Agreement. |

*C. Award Agreement:* After the CDFI Fund selects an Award Recipient, unless an exception detailed in this NOFA applies, the CDFI Fund and the Award Recipient will enter into an Award Agreement. The Award Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the approved uses of the award; (iii) the performance goals and measures; (iv) the period of performance; and (v) the reporting requirements. The Award Agreement shall provide that an Award

Recipient shall: (i) Carry out its Qualified Activities in accordance with applicable law, the approved Application, and all other applicable requirements; (ii) not receive any disbursement of award dollars until the CDFI Fund has determined that the Award Recipient has fulfilled all applicable requirements; and (iii) use the BEA Program Award amount for Qualified Activities. Award Recipients which committed to serving PPCs will have their PPC commitment incorporated into their Award Agreement as a performance goal which will be subject to compliance and reporting requirements.

*D. Reporting:* Through this NOFA, the CDFI Fund will require each Award Recipient to account for and report to the CDFI Fund on the use of the award. This will require Award Recipients to establish administrative controls, subject to applicable OMB Circulars. The CDFI Fund will collect information from each such Award Recipient on its use of the award at least once following the award and more often if deemed appropriate by the CDFI Fund in its sole discretion. The CDFI Fund will provide guidance to Award Recipients outlining the format and content of the information required to be provided to describe how the funds were used.

The CDFI Fund may collect information from each Award Recipient including, but not limited to, an Annual Report with the following components:

TABLE 7—REPORTING REQUIREMENTS

| Criteria | Description |
|---|---|
| Use of BEA Program Award Report—for all Award Recipients. | Award Recipients must submit the Use of Award report to the CDFI Fund via AMIS. |
| Use of BEA Program Award Report—Funds Deployed in Persistent Poverty Counties—as applicable. | The CDFI Fund will require each Award Recipient with Persistent Poverty County commitments to report data for Award funds deployed in persistent poverty counties and maintain proper supporting documentation and records which are subject to review by the CDFI Fund. |
| Explanation of Noncompliance or successor report—as applicable. | If the Award Recipient fails to meet a Performance Goal or reporting requirement, it must submit the Explanation of Noncompliance via AMIS. |

Each Award Recipient is responsible for the timely and complete submission of the reporting requirements. The CDFI Fund reserves the right to contact the Award Recipient to request additional information and documentation. The CDFI Fund may consider financial information filed with Federal regulators during its compliance review. The CDFI Fund will use such information to monitor each Award Recipient's compliance with the requirements in the Award Agreement and to assess the impact of the BEA Program. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice has been provided to Award Recipients.

*E. Financial Management and Accounting:* The CDFI Fund will require Award Recipients to maintain financial management and accounting systems that comply with Federal statutes, regulations, and the terms and conditions of the award. These systems must be sufficient to permit the preparation of reports required by general and program specific terms and conditions, including the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the award.

Each of the Qualified Activities categories will be ineligible for indirect costs and an associated indirect cost rate. The cost principles used by Award Recipients must be consistent with Federal cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the BEA Program Award. In addition, the CDFI Fund will require Award Recipients to: Maintain effective internal controls; comply with applicable statutes, regulations, and the Award Agreement; evaluate and monitor compliance; take action when not in compliance; and safeguard personally identifiable information, as described in Section V.A. of this NOFA.

## VII. Federal Awarding Agency Contacts

*A. Questions Related to Application and Prior Award Recipient Reporting, Compliance and Disbursements:* The CDFI Fund will respond to questions concerning this NOFA, the Application and reporting, compliance, or disbursements between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that this NOFA is published through the date listed in Table 1. The CDFI Fund will post responses to frequently asked questions in a separate document on its website. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *https://www.cdfifund.gov.*

The following table lists contact information for the CDFI Fund, *Grants.gov* and SAM:

TABLE 8—CONTACT INFORMATION

| Type of question | Telephone No. (not toll free) | Electronic contact method |
|---|---|---|
| BEA Program | 202–653–0421 | BEA AMIS Service Request. |
| Certification, Compliance Monitoring, and Evaluation | 202–653–0423 | BEA Compliance and Reporting AMIS Service Request. |
| AMIS—IT Help Desk | 202–653–0422 | IT AMIS Service Request. |
| *Grants.gov* Help Desk | 800–518–4726 | *support@grants.gov.* |
| *SAM.gov* (Federal Service Desk) | 866–606–8220 | Web form via *https://www.fsd.gov/fsd-gov/login.do.* |

*B. Information Technology Support:* People who have visual or mobility impairments that prevent them from using the CDFI Fund's website should call (202) 653–0422 for assistance (this is not a toll free number).

*C. Communication with the CDFI Fund:* The CDFI Fund will use its AMIS internet interface to communicate with

Applicants and Award Recipients under this NOFA. Award Recipients must use AMIS to submit required reports. The CDFI Fund will notify Award Recipients by email using the addresses maintained in each Award Recipient's AMIS account. Therefore, an Award Recipient and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in their AMIS account(s).

*D. Civil Rights and Diversity:* Any person who is eligible to receive benefits or services from CDFI Fund or Award Recipients under any of its programs is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Diversity enforces various Federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of membership in a protected group, s/he may file a complaint with: Office of Civil Rights and Diversity, 1500 Pennsylvania Ave NW, Washington, DC 20220 or (202) 622–1160 (not a toll-free number).

*E. Statutory and National Policy Requirements:* The CDFI Fund will manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, statutory, and public policy requirements: Including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## VIII. Other Information

*A. Reasonable Accommodations:* Requests for reasonable accommodations under section 504 of the Rehabilitation Act should be directed to Mr. Jay Santiago, Community Development Financial Institutions Fund, U.S. Department of the Treasury, at *SantiagoJ@cdfi.treas.gov* no later than 72 hours in advance of the application deadline.

*B. Paperwork Reduction Act:* Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the BEA Program funding Application has been assigned the following control number: 1559–0005.

*C. Application Information Sessions:* The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, please visit the CDFI Fund's website at *https://www.cdfifund.gov.*

*Authority:* 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

**Jodie L. Harris,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. 2021–22450 Filed 10–13–21; 8:45 am]

**BILLING CODE 4810–70–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning assumption of partner liabilities.

**DATES:** Written comments should be received on or before December 13, 2021 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

**SUPPLEMENTARY INFORMATION:** The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

*Title:* Assumption of Partner Liabilities.

*OMB Number:* 1545–1843.

*Regulation Project Number:* TD 9207.

*Abstract:* This document contains final regulations relating to the definition of liabilities under Internal Revenue Code (IRC) section 752. These regulations provide rules regarding a partnership's assumption of certain fixed and contingent obligations in connection with the issuance of a partnership interest and provide conforming changes to certain regulations. These regulations also provide rules under IRC section 358(h) for assumptions of liabilities by corporations from partners and partnerships. Finally, this document also contains temporary regulations relating to the assumption of certain liabilities under IRC section 358(h).

*Current Actions:* There is no change to the existing collection.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals or households.

*Estimated Number of Responses:* 250.

*Estimated Time per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 7, 2021.

**Jon R. Callahan,**

*Tax Analyst.*

[FR Doc. 2021–22311 Filed 10–13–21; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning combined information reporting.

**DATES:** Written comments should be received on or before December 13, 2021 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

**SUPPLEMENTARY INFORMATION:** The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

*Title:* Combined Information Reporting.

*OMB Number:* 1545–1667.

*Regulation Project Number:* Revenue Procedure 99–50.

*Abstract:* Revenue Procedure 99–50 permits combined information reporting by a successor business entity (*i.e.,* a corporation, partnership, or sole proprietorship) in certain situations following a merger or an acquisition. Combined information reporting may be elected by a successor with respect to certain Forms 1042–S and all forms in series 1098, 1099, and 5498. The procedures also apply to Forms 1097, 3921, 3922, and W–2G. The successor must file a statement with the IRS indicating what forms are being filed on a combined basis.

*Current Actions:* There is no change to the existing collection.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, and farms.

*Estimated Number of Responses:* 6,000.

*Estimated Time per Respondent:* 5 minutes.

*Estimated Total Annual Burden Hours:* 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 7, 2021.

**Jon R. Callahan,**

*Tax Analyst.*

[FR Doc. 2021–22310 Filed 10–13–21; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Requesting Comments on Form 1127

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 1127, Application for Extension of Time for Payment of Tax Due to Undue Hardship.

**DATES:** Written comments should be received on or before December 13, 2021 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

**SUPPLEMENTARY INFORMATION:** The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

*Title:* Application for Extension of Time for Payment of Tax Due to Undue Hardship.

*OMB Number:* 1545–2131.

*Form Number:* Form 1127.

*Abstract:* Internal Revenue Code section 6161 allows individual and business taxpayers to request an extension of time for payment of tax shown or required to be shown on a return or for a tax due on a notice of

deficiency. Form 1127 must be filed with supporting documentation to approve an extension, providing evidence the taxpayer would sustain a substantial financial loss if forced to pay the tax or deficiency on the due date.

*Current Actions:* There is no change to the existing collection.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, Business or other for-profit organizations.

*Estimated Number of Responses:* 1,000.

*Estimated Time per Respondent:* 7 hours, 26 minutes.

*Estimated Total Annual Burden Hours:* 7,470.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 7, 2021.

**Jon R. Callahan,**

*Tax Analyst.*

[FR Doc. 2021–22309 Filed 10–13–21; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employer's Annual Information Return of Tip Income and Allocated Tips

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury 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. The public is invited to submit comments on these requests.

**DATES:** Comments must be received on or before November 15, 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.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

**Internal Revenue Service (IRS)**

*Title:* Employer's Annual Information Return of Tip Income and Allocated Tips.

*OMB Control Number:* 1545–0714.

*Type of Review:* Extension without change of a currently approved collection.

*Description:* Employers must annually report to the IRS receipts and tips from their large food or beverage establishments. Employers use Form 8027 to report that information. In addition, employers use Form 8027 to determine if the employer must allocate tips for tipped employees. Filers of Form 8027 may be required to file electronically. Employers operating more than one food or beverage establishment use Form 8027–T to send multiple Forms 8027 to the IRS.

*Affected Public:* Businesses or other-for-profits; Non-profit institutions; State, Local, or Tribal Governments.

*Form Number:* IRS Form 8027 and IRS Form 8027–T.

*Estimated Number of Respondents:* 52,050.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 52,050.

*Estimated Time per Response:* 10 hours 22 minutes.

*Estimated Total Annual Burden Hours:* 488,161 hours.

*Authority:* 44 U.S.C. 3501 *et seq.*

Dated: October 8, 2021.

**Molly Stasko,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2021–22455 Filed 10–13–21; 8:45 am]

**BILLING CODE 4830–01–P**

## UNIFIED CARRIER REGISTRATION PLAN

### Sunshine Act; Meeting

**TIME AND DATE:** October 21, 2021, 12:00 p.m. to 2:00 p.m., Eastern time.

**PLACE:** This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll) or (ii) 1–877–853–5247 (US Toll Free) or 1–888–788–0099 (US Toll Free), Meeting ID: 966 7365 6618, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/j/96673656618.*

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Audit Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

**Proposed Agenda**

**I. Call to Order—Subcommittee Chair**

The Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

**II. Verification of Publication of Meeting Notice—UCR Executive Director**

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

**III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—Subcommittee Chair**

*For Discussion and Possible Subcommittee Action*

The Agenda will be reviewed, and the Subcommittee will consider adoption.

Ground Rules

➢ Subcommittee action only to be taken in designated areas on agenda.

**IV. Review and Approval of Subcommittee Minutes From the May 20, 2021 Meeting—Subcommittee Chair**

*For Discussion and Possible Subcommittee Action*

Draft minutes from the May 20, 2021 Subcommittee meeting via teleconference will be reviewed. The Subcommittee will consider action to approve.

**V. Proposal To Select New External Auditing Firm of the UCR Depository—UCR Executive Director and UCR Depository Manager**

*For Discussion and Possible Subcommittee Action*

The UCR Executive Director and the UCR Depository Manager will present a proposal to the Subcommittee to consider initiating a request-for-proposal (RFP) process to identify and engage a new independent auditing firm to conduct an assurance engagement of the UCR Depository's financial statements for the year ending December 31, 2021. It is a widespread practice to rotate auditing firms every four years to ensure proper integrity of the audit process. The current firm has now provided these audit services for the past four years from 2017 through 2020. The Subcommittee may consider a recommendation to the Board to initiate an RFP process to engage a new auditing firm for the financial statements ending December 31, 2021.

**VI. Proposal To Adopt Written Internal Controls Procedures for the UCR Depository—UCR Executive Director and UCR Depository Manager**

*For Discussion and Possible Subcommittee Action*

The UCR Executive Director and the UCR Depository Manager will lead a review of the draft of written internal controls intended for implementation by the Depository. The Subcommittee may consider a recommendation to the Board to adopt the written internal controls procedures.

**VII. Review the Impact on UCR From Future Changes to the Federal Motor Carrier Safety Administration's (FMCSA) Unified Registration System (URS)—Subcommittee Chair**

The Subcommittee Chair will discuss the potential impact from future changes to the URS and its affect to limit state users' abilities to update data in the Motor Carrier Management Information System (MCMIS).

**VIII. Support States To Improve Registration Compliance—Subcommittee Chair and DSL Transportation, Inc. (DSL)**

The Subcommittee Chair and DSL will lead a discussion regarding methods to help participating states improve registration compliance (percentages). Suggested methods might include educating various parties such as state registration offices, state motor carrier association offices, state highway patrols, etc. New entrant audits are an additional suggestion. Input from the Subcommittee on other ideas is encouraged.

**IX. Improve Low Registration Compliance Among Non-Participating States (NPS)—Subcommittee Chair and DSL**

The Subcommittee Chair and DSL will lead a discussion regarding methods to address low registration compliance (percentages) among the NPS. Suggested methods would include those described above.

**X. Review 2020 Audits and Focused Anomaly Reviews (FARs) Collection Procedures—Subcommittee Chair**

The Subcommittee Chair will review the 2020 audit and FARs collection procedures through the end of calendar year 2021 based on audits conducted through the Administrative Portal.

**XI. Review Inspection Audits Assigned in the National Registration System (NRS)—Subcommittee Chair, Subcommittee Vice-Chair, and SeikoSoft**

The Subcommittee Chair, Subcommittee Vice-Chair, and SeikoSoft will review inspection audits assigned in the NRS. The intent of the discussion is to understand what causes an inspection audit in the current year to potentially result in the auto-generation in the NRS of an inspection audit for a previous or subsequent registration year.

**XII. Introduction/Update on Plate Violations Report—Subcommittee Chair and DSL**

The Subcommittee Chair and DSL will update the Subcommittee on the Plates Violations Report prepared by DSL. The purpose for the report is to raise awareness of IRP violations and encourage states to follow-up with violators and get them compliant with UCR when necessary.

**XIII. Other Business—Subcommittee Chair**

The Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

**XIV. Adjournment—Subcommittee Chair**

The Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, October 12, 2021 at: *https://plan.ucr.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

**Alex B. Leath,**

*Chief Legal Officer, Unified Carrier Registration Plan.*

[FR Doc. 2021–22502 Filed 10–12–21; 11:15 am]

BILLING CODE 4910–YL–P

# FEDERAL REGISTER

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Part II

## Department of Labor

Employee Benefits Security Administration

29 CFR Part 2550

Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights; Proposed Rule

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**29 CFR Part 2550**

**RIN 1210–AC03**

# Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Labor (Department) in this document proposes amendments to the Investment Duties regulation under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), to clarify the application of ERISA's fiduciary duties of prudence and loyalty to selecting investments and investment courses of action, including selecting qualified default investment alternatives, exercising shareholder rights, such as proxy voting, and the use of written proxy voting policies and guidelines.

**DATES:** Comments on the proposal must be submitted on or before December 13, 2021.

**ADDRESSES:** You may submit written comments, identified by RIN 1210–AC03 to either of the following addresses:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights.

*Instructions:* All submissions received must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. Persons submitting comments electronically are encouraged not to submit paper copies. Comments will be available to the public, without charge, online at *www.regulations.gov* and *www.dol.gov/agencies/ebsa* and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N–1513, 200 Constitution Avenue NW, Washington, DC 20210.

*Warning:* Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the internet as received and can be retrieved by most internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Fred Wong, Acting Chief of the Division of Regulations, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

*Customer Service Information:* Individuals interested in obtaining information from the Department of Labor concerning ERISA and employee benefit plans may call the Employee Benefits Security Administration (EBSA) Toll-Free Hotline, at 1–866–444–EBSA (3272) or visit the Department of Labor's website (*www.dol.gov/ebsa*).

**SUPPLEMENTARY INFORMATION:**

## A. Background and Purpose of Regulatory Action

### *1. General*

Title I of the Employee Retirement Income Security Act of 1974 (ERISA) establishes minimum standards that govern the operation of private-sector employee benefit plans, including fiduciary responsibility rules. Section 404 of ERISA, in part, requires that plan fiduciaries act prudently and diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.[1] Sections 403(c) and 404(a) also require fiduciaries to act solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan.[2]

For many years, the Department's non-regulatory guidance has recognized that, under the appropriate circumstances, ERISA fiduciaries can make investment decisions that reflect climate change and other environmental, social, or governance (''ESG'') considerations, including climate-related financial risk, and choose economically targeted investments (''ETIs'') selected, in part, for benefits apart from the investment return.[3] The Department's non-regulatory guidance has also recognized that the fiduciary act of managing employee benefit plan assets includes the management of voting rights as well as other shareholder rights connected to shares of stock, and that management of those rights, as well as shareholder engagement activities, is subject to ERISA's prudence and loyalty requirements.[4]

On June 30 and September 4, 2020, the Department published in the **Federal Register** proposed rules to remove prior non-regulatory guidance from the CFR and to amend the Department's Investment Duties regulation under Title I of ERISA at 29 CFR 2550.404a–1 (hereinafter ''current regulation'' or ''Investment Duties regulation,'' unless otherwise stated). The stated objective was to address perceived confusion about the implications of that non-regulatory guidance with respect to ESG considerations, ETIs, shareholder rights, and proxy voting. *See* 85 FR 39113 (June 30, 2020); 85 FR 55219 (Sept. 4, 2020). The preambles to the 2020 proposals expressed concern that some ERISA plan fiduciaries might be making improper investment decisions, and that plan shareholder rights were being exercised in a manner that subordinated the interests of plans and their participants and beneficiaries to unrelated objectives. *See* 85 FR 39116; 85 FR 55221.

On November 13, 2020, the Department published a final rule titled ''Financial Factors in Selecting Plan Investments,'' 85 FR 72846 (Nov. 13, 2020), which adopted amendments to the Investment Duties regulation that generally require plan fiduciaries to select investments and investment courses of action based solely on consideration of ''pecuniary factors.'' The current regulation also contains a prohibition against adding or retaining any investment fund, product, or model portfolio as a qualified default investment alternative (QDIA) as described in 29 CFR 2550.404c–5 if the fund, product, or model portfolio reflects non-pecuniary objectives in its investment objectives or principal investment strategies. On December 16, 2020, the Department published a final rule titled ''Fiduciary Duties Regarding Proxy Voting and Shareholder Rights,'' 85 FR 81658 (December 16, 2020), which also adopted amendments to the Investment Duties regulation to establish regulatory standards for the obligations of plan fiduciaries under ERISA when voting proxies and exercising other shareholder rights in connection with plan investments in shares of stock.

On January 20, 2021, the President signed Executive Order 13990 (E.O. 13990), titled ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,''

[1] 29 U.S.C. 1104.

[2] 29 U.S.C. 1103(c) and 1104(a).

[3] See, *e.g.,* Interpretive Bulletin 2015–01, 80 FR 65135 (Oct. 26, 2015).

[4] See, *e.g.,* Interpretive Bulletin 2016–01, 81 FR 95879 (Dec. 29, 2016).

86 FR 7037 (Jan. 25, 2021). Section 1 of E.O. 13990 acknowledges the Nation's ''abiding commitment to empower our workers and communities; promote and protect our public health and the environment.'' Section 1 also sets forth the policy of the Administration to listen to the science; improve public health and protect our environment; bolster resilience to the impacts of climate change; and prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals. Section 2 directed agencies to review all existing regulations promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, the policies set forth in section 1 of E.O. 13990. Section 2 further provided that for any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions.[5]

On March 10, 2021, the Department announced that it had begun a reexamination of the current regulation, consistent with E.O. 13990 and the Administrative Procedure Act. The Department also announced that, pending its review of the current regulation, the Department will not enforce the current regulation or otherwise pursue enforcement actions against any plan fiduciary based on a failure to comply with the current regulation with respect to an investment, including a Qualified Default Investment Alternative, or investment course of action or with respect to an exercise of shareholder rights. In announcing the enforcement policy, the Department also stated its intention to conduct significantly more stakeholder outreach to determine how to craft rules that better recognize the role that ESG integration can play in the evaluation and management of plan investments, while continuing to uphold fundamental fiduciary obligations. See *U.S. Department of Labor Statement Regarding Enforcement of its Final Rules on ESG Investments and Proxy Voting by Employee Benefit Plans* (Mar. 10, 2021).[6]

On May 20, 2021, the President signed Executive Order 14030 (E.O. 14030), titled ''Executive Order on Climate-Related Financial Risk,'' 86 FR 27967 (May 25, 2021). The policies set forth in section 1 of E.O. 14030 include advancing acts to mitigate climate-related financial risk and actions to help safeguard the financial security of America's families, businesses, and workers from climate-related financial risk that may threaten the life savings and pensions of U.S. workers and families. Section 4 of E.O. 14030 directed the Department to consider publishing, by September 2021, for notice and comment a proposed rule to suspend, revise, or rescind ''Financial Factors in Selecting Plan Investments,'' 85 FR 72846 (Nov. 13, 2020), and ''Fiduciary Duties Regarding Proxy Voting and Shareholder Rights,'' 85 FR 81658 (Dec. 16, 2020).

*2. The Department's Prior Non-Regulatory Guidance*

The Department has a longstanding position that ERISA fiduciaries may not sacrifice investment returns or assume greater investment risks as a means of promoting collateral social policy goals. These proscriptions flow directly from ERISA's stringent standards of prudence and loyalty under section 404(a) of the statute.[7] The Department has a similarly longstanding position that the fiduciary act of managing plan assets that involve shares of corporate stock includes making decisions about voting proxies and exercising shareholder rights. Over the years the Department repeatedly has issued non-regulatory guidance to assist plan fiduciaries in understanding their obligations under ERISA in these areas.

Interpretive Bulletin 94–1 (IB 94–1), published in 1994, addressed economically targeted investments (ETIs) selected, in part, for collateral benefits apart from the investment return to the plan investor.[8] The Department's objective in issuing IB 94–1 was to state that ETIs[9] are not inherently incompatible with ERISA's fiduciary obligations. The preamble to IB 94–1 explained that the requirements of sections 403 and 404 of ERISA do not prevent plan fiduciaries from investing plan assets in ETIs if the investment has an expected rate of return at least commensurate to rates of return of available alternative investments, and if the ETI is otherwise an appropriate investment for the plan in terms of such factors as diversification and the investment policy of the plan. Some commentators have referred to this as the ''all things being equal'' test or the ''tie-breaker'' standard. The Department stated in the preamble to IB 94–1 that when competing investments serve the plan's economic interests equally well, plan fiduciaries can use such collateral considerations as the deciding factor for an investment decision.

In 2008, the Department replaced IB 94–1 with Interpretive Bulletin 2008–01 (IB 2008–01),[10] and then, in 2015, the Department replaced IB 2008–01 with Interpretive Bulletin 2015–01 (IB 2015–01).[11] Although the Interpretive Bulletins differed in tone and content to some extent, each endorsed the ''all things being equal'' test, while also stressing that the paramount focus of plan fiduciaries must be the plan's financial returns and providing promised benefits to participants and beneficiaries. Each Interpretive Bulletin also cautioned that fiduciaries violate

[5] A Fact Sheet issued simultaneously with E.O. 13990, specifically confirmed that the Department was directed to review the final rule on ''Financial Factors in Selecting Plan Investments'' (*https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/*).

[6] Available at *www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/erisa/statement-on-enforcement-of-final-rules-on-esg-investments-and-proxy-voting.pdf.*

[7] 29 U.S.C. 1104(a).

[8] 59 FR 32606 (June 23, 1994) (appeared in Code of Federal Regulations as 29 CFR 2509.94–1). Prior to issuing IB 94–1, the Department had issued a number of letters concerning a fiduciary's ability to consider the collateral effects of an investment and granted a variety of prohibited transaction exemptions to both individual plans and pooled investment vehicles involving investments that produce collateral benefits. See Advisory Opinions 80–33A, 85–36A and 88–16A; Information Letters to Mr. George Cox, dated Jan. 16, 1981; to Mr. Theodore Groom, dated Jan. 16, 1981; to The Trustees of the Twin City Carpenters and Joiners Pension Plan, dated May 19, 1981; to Mr. William Chadwick, dated July 21, 1982; to Mr. Daniel O'Sullivan, dated Aug. 2, 1982; to Mr. Ralph Katz, dated Mar. 15, 1982; to Mr. William Ecklund, dated Dec. 18, 1985, and Jan. 16, 1986; to Mr. Reed Larson, dated July 14, 1986; to Mr. James Ray, dated July 8, 1988; to the Honorable Jack Kemp, dated Nov. 23, 1990; and to Mr. Stuart Cohen, dated May 14, 1993. The Department also issued a number of prohibited transaction exemptions that touched on these issues. See PTE 76–1, part B, concerning construction loans by multiemployer plans; PTE 84–25, issued to the Pacific Coast Roofers Pension Plan; PTE 85–58, issued to the Northwestern Ohio Building Trades and Employer Construction Industry Investment Plan; PTE 87–20, issued to the Racine Construction Industry Pension Fund; PTE 87–70, issued to the Dayton Area Building and Construction Industry Investment Plan; PTE 88–96, issued to the Real Estate for American Labor A Balcor Group Trust; PTE 89–37, issued to the Union Bank; and PTE 93–16, issued to the Toledo Roofers Local No. 134 Pension Plan and Trust, et al. In addition, one of the first directors of the Department's benefits office authored an article on this topic in 1980. See Ian D. Lanoff, *The Social Investment of Private Pension Plan Assets: May It Be Done Lawfully Under ERISA?,* 31 Labor L.J. 387, 391–92 (1980) (stating that ''[t]he Labor Department has concluded that economic considerations are the only ones which can be taken into account in determining which investments are consistent with ERISA standards,'' and warning that fiduciaries who exclude investment options for non-economic reasons would be ''acting at their peril'').

[9] IB 94–1 used the terms ETI and economically targeted investments to broadly refer to any investment or investment course of action that is selected, in part, for its expected collateral benefits, apart from the investment return to the employee benefit plan investor.

[10] 73 FR 61734 (Oct. 17, 2008).

[11] 80 FR 65135 (Oct. 26, 2015).

ERISA if they accept reduced expected returns or greater risks to secure social, environmental, or other policy goals.

Additionally, the preamble to IB 2015–01 explained that if a fiduciary prudently determines that an investment is appropriate based solely on economic considerations, including those that may derive from ESG factors, the fiduciary may make the investment without regard to any collateral benefits the investment may also promote. In Field Assistance Bulletin 2018–01 (FAB 2018–01), the Department indicated that IB 2015–01 had recognized that there could be instances when ESG issues present material business risk or opportunities to companies that company officers and directors need to manage as part of the company's business plan, and that qualified investment professionals would treat the issues as material economic considerations under generally accepted investment theories. As appropriate economic considerations, such ESG issues should be considered by a prudent fiduciary along with other relevant economic factors to evaluate the risk and return profiles of alternative investments. In other words, in these instances, the factors are not ''tie-breakers,'' but ''risk-return'' factors affecting the economic merits of the investment.

FAB 2018–01 cautioned, however, that ''[t]o the extent ESG factors, in fact, involve business risks or opportunities that are properly treated as economic considerations themselves in evaluating alternative investments, the weight given to those factors should also be appropriate to the relative level of risk and return involved compared to other relevant economic factors.'' [12] The Department further emphasized in FAB 2018–01 that fiduciaries ''must not too readily treat ESG factors as economically relevant to the particular investment choices at issue when making a decision,'' as ''[i]t does not ineluctably follow from the fact that an investment promotes ESG factors, or that it arguably promotes positive general market trends or industry growth, that the investment is a prudent choice for retirement or other investors.'' Rather, ERISA fiduciaries must always put first the economic interests of the plan in providing retirement benefits and ''[a] fiduciary's evaluation of the economics of an investment should be focused on financial factors that have a material effect on the return and risk of an investment based on appropriate investment horizons consistent with the plan's articulated funding and investment objectives.'' [13]

FAB 2018–01 also explained that in the case of an investment platform that allows participants and beneficiaries an opportunity to choose from a broad range of investment alternatives, a prudently selected, well managed, and properly diversified ESG-themed investment alternative could be added to the available investment options on a 401(k) plan platform without requiring the plan to remove or forgo adding other non-ESG-themed investment options to the platform.[14] According to the FAB, however, the selection of an investment fund as a qualified default investment alternative (QDIA) [15] is not analogous to a fiduciary's decision to offer participants an additional investment alternative as part of a prudently constructed lineup of investment alternatives from which participants may choose. FAB 2018–01 expressed concern that the decision to favor the fiduciary's own policy preferences in selecting an ESG-themed investment option as a QDIA for a 401(k)-type plan without regard to possibly different or competing views of plan participants and beneficiaries would raise questions about the fiduciary's compliance with ERISA's duty of loyalty.[16] In addition the field assistance bulletin stated that, even if consideration of such factors could be shown to be appropriate in the selection of a QDIA for a particular plan population, the plan's fiduciaries would have to ensure compliance with the previous guidance in IB 2015–01. For example, the selection of an ESG-themed target date fund as a QDIA would not be prudent if the fund would provide a lower expected rate of return than available non-ESG alternative target date funds with commensurate degrees of risk, or if the fund would be riskier than non-ESG alternative available target date funds with commensurate rates of return.

The Department's past non-regulatory guidance has also consistently recognized that the fiduciary act of managing employee benefit plan assets includes the management of voting rights as well as other shareholder rights connected to shares of stock, and that management of those rights, as well as shareholder engagement activities, is subject to ERISA's prudence and loyalty requirements.

The Department first issued non-regulatory guidance on proxy voting and the exercise of shareholder rights in the 1980s. For example, in 1988, the Department issued an opinion letter to Avon Products, Inc. (the Avon Letter), in which the Department took the position that the fiduciary act of managing plan assets that are shares of corporate stock includes the voting of proxies appurtenant to those shares, and that the named fiduciary of a plan has a duty to monitor decisions made and actions taken by investment managers with regard to proxy voting.[17] In 1994, the Department issued its first interpretive bulletin on proxy voting, Interpretive Bulletin 94–2 (IB 94–2).[18] IB 94–2 recognized that fiduciaries may engage in shareholder activities intended to monitor or influence corporate management if the responsible fiduciary concludes that, after taking into account the costs involved, there is a reasonable expectation that such shareholder activities (by the plan alone or together with other shareholders) will enhance the value of the plan's investment in the corporation. The Department also reiterated its view that ERISA does not permit fiduciaries, in voting proxies or exercising other shareholder rights, to subordinate the economic interests of participants and beneficiaries to unrelated objectives.

In October 2008, the Department replaced IB 94–2 with Interpretive Bulletin 2008–02 (IB 2008–02).[19] The Department's intent was to update the guidance in IB 94–2 and to reflect interpretive positions issued by the Department after 1994 on shareholder engagement and socially directed proxy voting initiatives. IB 2008–02 stated that fiduciaries' responsibility for managing proxies includes both deciding to vote and deciding not to vote.[20] IB 2008–02 further stated that the fiduciary duties described at ERISA sections 404(a)(1)(A) and (B) require that in voting proxies the responsible fiduciary shall consider only those factors that relate to the economic value of the plan's investment and shall not subordinate the interests of the participants and beneficiaries in their retirement income to unrelated objectives. In addition, IB 2008–02 stated that votes shall only be cast in accordance with a plan's economic interests. IB 2008–02 explained that if

[12] FAB 2018–01.

[13] *Id.*

[14] *Id.*

[15] 29 CFR 2550.404c–5.

[16] FAB 2018–01.

[17] Letter to Helmuth Fandl, Chairman of the Retirement Board, Avon Products, Inc. 1988 WL 897696 (Feb. 23, 1988). Only a few commenters on the proposal mentioned the Avon Letter, either supporting the views taken in the letter as being consistent with other professional codes of ethics or asserting that the proposed rule reversed the intent of the Avon Letter by establishing a presumption that voting proxies is a cost to be minimized and not an asset to be prudently managed.

[18] 59 FR 38860 (July 29, 1994).

[19] 73 FR 61731 (Oct. 17, 2008).

[20] 73 FR 61732.

the responsible fiduciary reasonably determines that the cost of voting (including the cost of research, if necessary, to determine how to vote) is likely to exceed the expected economic benefits of voting, the fiduciary has an obligation to refrain from voting.[21] The Department also reiterated in IB 2008–02 that any use of plan assets by a plan fiduciary to further political or social causes ''that have no connection to enhancing the economic value of the plan's investment'' through proxy voting or shareholder activism is a violation of ERISA's exclusive purpose and prudence requirements.[22]

In 2016, the Department issued Interpretive Bulletin 2016–01 (IB 2016–01), which reinstated the language of IB 94–2 with certain modifications.[23] IB 2016–01 reiterated and confirmed that ''in voting proxies, the responsible fiduciary [must] consider those factors that may affect the value of the plan's investment and not subordinate the interests of the participants and beneficiaries in their retirement income to unrelated objectives.'' [24] In its guidance, the Department has also stated that it rejects a construction of ERISA that would render the statute's tight limits on the use of plan assets illusory and that would permit plan fiduciaries to expend trust assets to promote myriad personal public policy preferences at the expense of participants' economic interests, including through shareholder engagement activities, voting proxies, or other investment policies.[25]

*3. Review of Current Regulation—the 2020 Final Rules*

As noted above, consistent with E.O. 13990 and E.O. 14030, the Department engaged in informal outreach to hear views from interested stakeholders on how to craft regulations that better recognize the important role that climate change and other ESG factors can play in the evaluation and management of plan investments, while continuing to uphold fundamental fiduciary obligations. The Department heard from a wide variety of stakeholders, including asset managers, labor organizations and other plan sponsors, consumer groups, service providers, and investment advisers. Many of the stakeholders expressed skepticism as to whether the current regulation properly reflects the scope of fiduciaries' duties under ERISA to act prudently and solely in the interest of plan participants and beneficiaries.

That outreach effort by the Department suggested that, rather than provide clarity, some aspects of the current regulation instead may have created further uncertainty surrounding whether a fiduciary under ERISA may consider ESG and other factors in making investment and proxy voting decisions that the fiduciary reasonably believes will benefit the plan and its participants and beneficiaries. Many stakeholders questioned whether the Department rushed the current regulation unnecessarily and failed to adequately consider and address substantial evidence submitted by public commenters suggesting that the use of climate change and other ESG factors can improve investment value and long-term investment returns for retirement investors. The Department has also heard from stakeholders that the current regulation, and investor confusion about it, including whether climate change and other ESG factors may be treated as ''pecuniary'' factors under the regulation, has already had a chilling effect on appropriate integration of climate change and other ESG factors in investment decisions, which has continued through the current non-enforcement period, including in circumstances that the current regulation may in fact allow.

After conducting a further review of the current regulation, the Department believes there is a reasonable basis for these concerns. A number of public comment letters criticized the 2020 proposed regulatory text for appearing to single out ESG investing for heightened scrutiny, which they asserted was inappropriate in light of research and investment practices suggesting that climate change and other ESG factors are material economic considerations.[26] In response, the Department did not include explicit references to ESG in the final regulation and furthermore acknowledged in the preamble discussion to the *Financial Factors in Selecting Plan Investments* final rulemaking that there are instances where one or more ESG factors may be properly taken into account by a fiduciary.[27] The preamble to the *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights* final rulemaking also acknowledged academic studies and investment experience surrounding the materiality of ESG considerations in investment decision-making.[28] However, other statements in the preamble appeared to express skepticism about fiduciaries' reliance on ESG considerations. For instance, the preamble to the *Financial Factors in Selecting Plan Investments* final rulemaking asserted that ESG investing raises heightened concerns under ERISA, and cautioned fiduciaries against ''too hastily'' concluding that ESG-themed funds may be selected based on pecuniary factors.[29] Similarly, the preamble to the *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights* final rulemaking expressed the view that it is likely that many environmental and social shareholder proposals have little bearing on share value or other relation to plan financial interests.[30] Many stakeholders have indicated that the rules have been interpreted as putting a thumb on the scale against the consideration of ESG factors, even when those factors are financially material.

The Department is concerned that, as stakeholders warned, uncertainty with respect to the current regulation may deter fiduciaries from taking steps that other marketplace investors would take in enhancing investment value and performance, or improving investment portfolio resilience against the potential financial risks and impacts often associated with climate change and other ESG factors. The Department is concerned that the current regulation has created a perception that fiduciaries are at risk if they include any ESG factors in the financial evaluation of

[21] *Id.*

[22] 73 FR 61734.

[23] 81 FR 95879 (Dec. 29, 2016). In addition, the Department issued a Field Assistance Bulletin to provide guidance on IB 2016–01 on April 23, 2018. *See* FAB 2018–01, at *www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2018-01.pdf.*

[24] 81 FR 95882.

[25] *See* 81 FR 95881.

[26] *See, e.g.,* Comment #567 at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95/00567.pdf* and Comment #709 at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95/00709.pdf.*

[27] See 85 FR 72859 (Nov. 13, 2020) (''[T]he Department believes that it would be consistent with ERISA and the final rule for a fiduciary to treat a given factor or consideration as pecuniary if it presents economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories'').

[28] 85 FR 81662 (Dec. 16, 2020) (''This [Fiduciary Duties Regarding Proxy Voting and Shareholder Rights] rulemaking project, similar to the recently published final rule on ERISA fiduciaries' consideration of financial factors in investment decisions, recognizes, rather than ignores, the economic literature and fiduciary investment experience that show a particular 'E,' 'S,' or 'G' consideration may present issues of material business risk or opportunities to a specific company that its officers and directors need to manage as part of the company's business plan and that qualified investment professionals would treat as economic considerations under generally accepted investment theories.'')

[29] 85 FR 72848, 72859 (Nov. 13, 2020).

[30] 85 FR 81681 (Dec. 16, 2020).

plan investments, and that they may need to have special justifications for even ordinary exercises of shareholder rights. The amendments proposed in this document are intended to address uncertainties regarding aspects of the current regulation and its preamble discussion relating to the consideration of ESG issues, including climate-related financial risk, by fiduciaries in making investment and proxy voting decisions, and to provide further clarity that will help safeguard the interests of participants and beneficiaries in the plan benefits. Accordingly, the proposal makes clear that climate change and other ESG factors are often material and that in many instances fiduciaries to should consider climate change and other ESG factors in the assessment of investment risks and returns. This is discussed further below in the Provisions of the Proposed Rule.

The Department believes that the changes proposed will improve the current regulation and further promote retirement income security and further retirement savings. Details on the estimated costs and benefits of this proposed rule can be found in the proposal's economic analysis.

**B. Provisions of the Proposed Rule**

The proposed rule would amend the ''Investment Duties'' regulation at 29 CFR 2550.404a–1. Although the changes to the regulation, as described below, are limited, the entire regulation is being republished in this proposal.

Paragraph (a) of the proposed rule includes a restatement of the statutory language of the exclusive purpose requirements of ERISA section 404(a)(1)(A), and the prudence duty of ERISA section 404(a)(1)(B).

*1. Investment Prudence Duties*

Paragraph (b) of the proposal addresses the duty of prudence under ERISA section 404(a)(1)(B). It provides a safe harbor for prudent investment and investment courses of action.[31] The Department proposes to change the title of the paragraph from ''Investment duties'' to ''Investment prudence duties'' to more precisely reflect the scope of the paragraph. Like the current regulation, paragraph (b)(1) of the proposed rule provides, as a safe harbor, that the requirements of section 404(a)(1)(B) of the Act set forth in paragraph (a) are satisfied with respect to a particular investment or investment course of action if the fiduciary (i) has given appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties, and (ii) has acted accordingly.

Paragraph (b)(2) of the proposal provides that for purposes of paragraph (b)(1), ''appropriate consideration'' shall include, but is not necessarily limited to (i) a determination by the fiduciary that the particular investment or investment course of action is reasonably designed, as part of the portfolio (or, where applicable, that portion of the plan portfolio with respect to which the fiduciary has investment duties), to further the purposes of the plan, taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action compared to the opportunity for gain (or other return) associated with reasonably available alternatives with similar risks, and (ii) consideration of the composition of the portfolio with regard to diversification, the liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan, and the projected return of the portfolio relative to the funding objectives of the plan as those factors relate to such portion of the portfolio.

The Department proposes additional language in paragraph (b)(2)(ii)(C) specifying that consideration of the projected return of the portfolio relative to the funding objectives of the plan may often require an evaluation of the economic effects of climate change and other ESG factors on the particular investment or investment course of action. Similar to paragraph (b)(4) of the proposal, this provision is intended to counteract negative perception of the use of climate change and other ESG factors in investment decisions caused by the 2020 Rules, and to clarify that a fiduciary's duty of prudence may often require an evaluation of the effect of climate change and/or government policy changes to address climate change on investments' risks and returns.

While the additional text in paragraph (b)(2)(ii)(C) is new, its substance is not. The Department has long acknowledged the materiality of ESG, including climate-related financial risk, in fiduciaries' investment decision-making and portfolio construction. In Interpretive Bulletin 2015–01, the Department recognized there could be instances when ESG issues present material business risk or opportunities, stating that ''environmental, social, and governance issues may have a direct relationship to the economic value of the plan's investment. In these instances, such issues are not merely collateral considerations or tie-breakers, but rather are proper components of the fiduciary's primary analysis of the economic merits of competing investment choices.'' [32] In Field Assistance Bulletin 2018–01, the Department stated that IB 2015–01 recognized that ESG issues could present material business risk or opportunities to companies, and that a prudent fiduciary should consider such issues when evaluating the risk and return profiles of investment opportunities.[33] As additional evidence on the materiality of climate change in particular has emerged in the intervening years, the Department believes that consideration of the projected return of the portfolio relative to the funding objectives of the plan not only allows but in many instances may require an evaluation of the economic effects of climate change on the particular investment or investment course of action.

For example, climate change is already imposing significant economic consequences on a wide variety of businesses as more extreme weather damages physical assets, disrupts productivity and supply chains, and forces adjustments to operations. Climate change is particularly pertinent to the projected returns of pension plan portfolios that, because of the nature of their obligations to their participants and beneficiaries, typically have long-term investment horizons. The effects of climate change such as sea level rise, changing rainfall patterns, and more severe droughts, wildfires, and flooding are expected to continue to pose a threat

[31] 85 FR at 72853 (Nov. 13, 2020); *see also* 44 FR 37222 (June 26, 1979).

[32] 80 FR 65135 (Oct. 26, 2015).

[33] FAB 2018–01, acknowledging that the Department recognized that ''there could be instances when otherwise collateral ESG issues present material business risk or opportunities to companies that company officers and directors need to manage as part of the company's business plan and that qualified investment professionals would treat as economic considerations under generally accepted investment theories. In such situations, these ordinarily collateral issues are themselves appropriate economic considerations, and thus should be considered by a prudent fiduciary along with other relevant economic factors to evaluate the risk and return profiles of alternative investments. In other words, in these instances, the factors are more than mere tie-breakers. To the extent ESG factors, in fact, involve business risks or opportunities that are properly treated as economic considerations themselves in evaluating alternative investments, the weight given to those factors should also be appropriate to the relative level of risk and return involved compared to other relevant economic factors.''

to investments far into the future. Additionally, imminent or proposed regulations, for example, to reduce greenhouse gas emissions in the power sector, and other policies incentivizing a shift from carbon-intensive investments to low-carbon investments, could significantly lower the value of carbon-intensive investments while raising the value of other investments. This could create a potentially serious risk for plan participants and beneficiaries. Taking climate change into account, such as by assessing the financial risks of investments for which government climate policies will affect performance and account for the risk of companies that are unprepared for the transition, can have a beneficial effect on portfolios by reducing volatility and mitigating the longer-term economic risks to plans' assets. While it is not always the case, a growing body of evidence suggests a generally positive relationship between the financial performance of investments that address or account for climate change.[34]

Additional language in paragraph (b)(2)(i) requires consideration of how an investment or investment course of action compares to reasonably available alternative investments or investment courses of action. This additional language in paragraph (b)(2)(i) of the proposal, which is being carried forward from the current regulation, reflects the Department's view, articulated in Interpretive Bulletin 94–1 (as well as subsequent Interpretive Bulletins) as well as earlier interpretive letters, that facts and circumstances relevant to an investment or investment course of action would include consideration of the expected return on alternative investments with similar risks available to the plan.[35] This provision is a statement of general applicability and is not unique to the use of ESG factors in selecting investments. As such, the Department expects that the provision should be commonly understood by plan fiduciaries and uncontroversial in nature. Comments are solicited on whether it is necessary to restate this principle of general applicability as part of this prudence safe harbor.

Paragraph (b)(3) of the proposal carries forward, without change, regulatory language dating back to the 1979 Investment Duties regulation, and states that an investment manager appointed pursuant to the provisions of section 402(c)(3) of the Act to manage all or part of the assets of a plan may, for purposes of compliance with the provisions of paragraphs (b)(1) and (2) of the proposal, rely on, and act upon the basis of, information pertaining to the plan provided by or at the direction of the appointing fiduciary, if such information is provided for the stated purpose of assisting the manager in the performance of the manager's investment duties, and the manager does not know and has no reason to know that the information is incorrect.

Paragraph (b)(4) is a new provision that addresses uncertainty under the current regulation as to whether a fiduciary may consider climate change and other ESG factors in making plan-related decisions under ERISA. This paragraph clarifies and confirms that a fiduciary may consider *any* factor material to the risk-return analysis, including climate change and other ESG factors. The intent of this new paragraph is to establish that material climate change and other ESG factors are no different than other ''traditional'' material risk-return factors, and to remove any prejudice to the contrary. Thus, under ERISA, if a fiduciary prudently concludes that a climate change or other ESG factor is material to an investment or investment course of action under consideration, the fiduciary can and should consider it and act accordingly, as would be the case with respect to any material risk-return factor. For the sake of clarity and to eliminate any doubt caused by the current regulation, paragraph (b)(4) of the proposal provides examples of factors, including climate change and other ESG factors, that a fiduciary may consider in the evaluation of an investment or investment course of action if material, including: (i) Climate change-related factors, such as a corporation's exposure to the real and potential economic effects of climate change, including its exposure to the physical and transitional risks of climate change and the positive or negative effect of Government regulations and policies to mitigate climate change; (ii) governance factors, such as those involving board composition, executive compensation, and transparency and accountability in corporate decision-making, as well as a corporation's avoidance of criminal liability and compliance with labor, employment, environmental, tax, and other applicable laws and regulations; and (iii) workforce practices, including the corporation's progress on workforce diversity, inclusion, and other drivers of employee hiring, promotion, and retention; its investment in training to develop its workforce's skill; equal employment opportunity; and labor relations. Paragraph (b)(4) of the proposal would not introduce any new conditions under the prudence safe harbor in paragraph (b); its sole purpose is to provide clarification through examples.

In the Department's view, and consistent with the comments of the concerned stakeholders mentioned above, the examples in paragraph (b)(4) of the proposal should eliminate unwarranted concerns about investing in climate change or ESG funds that are economically advantageous. If left unchanged, the rule could expose plans' investments and portfolios to avoidable climate-change-related risks which negatively impact performance, particularly over longer time horizons. The examples also reflect prior non-regulatory guidance on proxy voting, and include some examples which Interpretive Bulletin 2016–01 had previously indicated may be proper matters for fiduciary shareholder engagement activity.[36] To the extent such matters are appropriate for fiduciaries to consider when exercising shareholder rights with respect to existing plan investments, they would also be generally appropriate for fiduciaries to consider when making investments in the first place. The list of examples in paragraph (b)(4) of the proposal is not exclusive and the Department solicits comments on whether other or fewer examples would be helpful to avoid regulatory bias.

*2. Investment Loyalty Duties*

Paragraph (c) of the proposal and current regulation both address application of the duty of loyalty under ERISA. The proposal, however, differs in several respects from the current regulation. First, the standard applicable to a fiduciary's evaluation of an investment or investment course of

[34] Tensie Whelan, Ulrich Atz, Tracy Van Holt, and Casey Clark, ''ESG and Financial Performance: Uncovering the Relationship by Aggregating Evidence from 1,000 Plus Studies Published Between 2015–2020,'' NYU Stern Center for Sustainable Business and Rockefeller Asset Management (2021). Page 9 notes that, when assessing 59 climate change, or low carbon, studies related to financial performance, the majority found a positive result. *https://www.stern.nyu.edu/sites/default/files/assets/documents/NYU-RAM_ESG-Paper_2021%20Rev_0.pdf.*

[35] 59 FR at 32607 (''Other facts and circumstances relevant to an investment or investment course of action would, in the view of the Department, include consideration of the expected return on alternative investments with similar risks available to the plan''); *see, e.g.,* Information Letter to Mr. James Ray, dated July 8, 1988 (''It is the position of the Department that, to act prudently, a fiduciary must consider, among other factors, the availability, riskiness, and potential return of alternative investments.'').

[36] IB 2016–01, 81 FR 95879 (Dec. 29, 2016). *See also* IB 2015–01 (recognizing that ESG factors may be relevant economic factors considered, along with other relevant economic factors, in a prudent evaluation of alternative investments). The Department reaffirmed this view in FAB 2018–01.

action set forth in the proposal, by cross reference to paragraph (b)(4), includes clear text to indicate that ESG considerations, including climate-related financial risk, are, in appropriate cases, risk-return factors that fiduciaries should take into account when selecting and monitoring plan investments and investment courses of action.

Also, the proposal continues to include a ''tie-breaker'' standard, with the proposal more closely aligning with the Department's original non-regulatory guidance in this area, and eliminates the current regulation's specific documentation requirements, which singled out and created burdens specifically for investments providing collateral benefits, which many perceived as targeting ESG investing. The proposal makes it clear that the fiduciary is not prohibited from selecting the investment, or investment course of action, based on collateral benefits other than investment returns, so long as the requirements of the proposal are met. These include, in the case of such a collateral benefit for a designated investment alternative for an individual account plan, the prominent display of the collateral-benefit characteristic of the fund in disclosure materials. Further, the fiduciary cannot accept reduced returns or greater risks to secure the collateral-benefit.

Finally, the standards applicable to participant-directed individual account plans contained in paragraph (d) of the current regulation are merged into paragraph (c) of the proposal and revised to, among other things, eliminate the current regulation's special rule that prohibits certain investment alternatives from being used as a QDIA.

Paragraph (c)(1) of the proposal restates the Department's longstanding expression of a bedrock principle of ERISA's duty of loyalty in the context of investment decisions, as expressed in Interpretive Bulletins and associated preamble discussions. It provides that a fiduciary may not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives, and may not sacrifice investment return or take on additional investment risk to promote goals unrelated to the plan and its participants and beneficiaries. Paragraph (c)(2) of the current regulation contains similar language. The proposal would move this language from paragraph (c)(2) of the current regulation to paragraph (c)(1) to emphasize this bedrock principle encompassed within ERISA's duty of loyalty.

Proposed paragraph (c)(2) makes two modifications to the requirement contained in paragraph (c)(1) of the current regulation that a fiduciary's evaluation of an investment or investment course of action must be based on pecuniary factors, which is defined at paragraph (f)(3) of the current regulation as a factor that a fiduciary prudently determines is expected to have a material effect on the risk and/or return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and the funding policy established pursuant to section 402(b)(1) of ERISA. The first modification is a cross-reference to paragraph (b)(4) of the proposal to confirm that consideration of an economically material ESG factor, including climate-related financial risk, is consistent with ERISA's duty of loyalty. The second modification integrates the concept of ''risk/return'' factors directly into paragraph (c)(2) rather than as part of a separate definition of ''pecuniary'' factors. This approach addresses stakeholder concerns about ambiguity in the meaning and application of the ''pecuniary'' factors terminology of the current regulation and makes paragraph (c)(2) more readable. The separate definition of ''pecuniary factor'' in the current regulation, therefore, is unnecessary and is not included in the proposal.

Paragraph (c)(2) of the proposal thus provides that a fiduciary's evaluation of an investment or investment course of action must be based on risk and return factors that the fiduciary prudently determines are material to investment value. The proposal also expressly states that the weight given to any factor by a fiduciary should appropriately reflect a prudent assessment of its impact on risk-return. Whether any particular consideration is such a factor depends on the particular facts and circumstances. Depending on the investment or investment course of action under consideration, relevant factors may include such factors as the examples noted in paragraph (b)(4) of the proposal. As noted above, those examples include: (i) Climate change-related factors, such as a corporation's exposure to the real and potential economic effects of climate change, including exposure to the physical and transitional risks of climate change and the positive or negative effect of Government regulations and policies to mitigate climate change; (ii) governance factors, such as those involving board composition, executive compensation, transparency and accountability in corporate decision-making, as well as a corporation's avoidance of criminal liability and compliance with labor, employment, environmental, tax, and other applicable laws and regulations; (iii) workforce practices, including the corporation's progress on workforce diversity, inclusion, and other drivers of employee hiring, promotion, and retention; its investment in training to develop its workforce's skill; equal employment opportunity; and labor relations.

Paragraph (c)(3) of the proposal directly rescinds the ''tie-breaker'' standard in paragraph (c)(2) of the current regulation and replaces it with a standard that aligns more closely with the Department's original non-regulatory guidance, Interpretive Bulletin 94–1, which first advanced the ''tie-breaker'' concept. Specifically, paragraph (c)(3) of the proposal states that if, after the analysis described in paragraph (c)(2) of the proposal, a fiduciary prudently concludes that competing investment choices, or investment courses of action, equally serve the financial interests of the plan, a fiduciary can select the investment, or investment course of action, based on collateral benefits other than investment returns.

The tie-breaker provision in paragraph (c)(2) of the current regulation focuses on whether the competing investments are indistinguishable based on consideration of risk and return.[37] The Department has concerns, however, that this formulation could be interpreted too narrowly. For example, two investments may differ on a wide range of attributes, yet when considered in their totality, can serve the financial interests of the plan equally well. These investments are not indistinguishable, but they are equally appropriate additions to the plan's portfolio. Similarly, a fiduciary may prudently choose an investment as a hedge against a specific risk to the portfolio, even though the investment, when considered in isolation from the portfolio as a whole, is riskier or less likely to generate a significant positive return than other investments that do not serve the same hedging function.

Paragraph (c)(3) of the proposal, therefore, adopts a formulation of the tie-breaker standard that is intended to be broader and applies when choosing between competing choices or investment courses of action that a fiduciary prudently concludes ''equally serve the financial interests of the plan.''

[37] But it uses a different term, ''pecuniary factor,'' to do so.

The Department solicits comments on this approach, including whether it is sufficiently clear and appropriate in light of investment practices and strategies used by plan fiduciaries. The Department is also interested in other approaches that commenters believe may better reflect plan practices.

The proposal does not place parameters on the collateral benefits that may be considered by a fiduciary to break the tie. The Department believes this is consistent with prior non-regulatory guidance, but solicits comments on whether more specificity should be provided in the provision.[38] For instance, should the rule require that any collateral benefit relied upon as a tie-breaker be based upon an assessment of the shared interests or views of the participants, above and beyond their financial interests as plan participants, such as the investment's likely impact on participants' jobs or plan contribution rates?

Paragraph (c)(3) of the proposal also directly rescinds the current regulation's requirement for a fiduciary to specially document its analysis in those cases where the fiduciary has concluded that pecuniary factors alone were insufficient to be the deciding factor. As explained in the preamble to the current regulation, these provisions were included in paragraph (c)(2) of the current regulation ''to provide a safeguard against the risk that plan fiduciaries will improperly find economic equivalence and make decisions based on non-pecuniary factors without a proper analysis and evaluation.'' [39]

The Department, however, is concerned that singling out this one category of investment actions for a special documentation requirement may, in practice, chill investments based on climate change or other ESG factors, even when those factors are directly relevant to the financial merits of the investment decision or they are legitimately applied as a tie-breaker. For example, stakeholders assert that the entirety of the rulemaking process surrounding the current regulation, including negative preamble statements regarding the economic legitimacy of ESG investing, created a blanket perception that fiduciaries are uniquely at risk if they include climate change or other ESG factors in their financial evaluation of plan investments (even when they are expected to have a material effect on risk/return).[40] Therefore, many stakeholders misperceive that the consideration of climate change or other ESG factors may occur, if at all, only in the tie-breaker context and therefore only upon satisfaction of the documentation provisions. Consequently, even though the current regulation does not actually use the term ''ESG,'' many plans, plan fiduciaries, plan sponsors, and plan service providers believe the regulation (including the tie-breaker's documentation provisions) effectively singles out ESG investments for special scrutiny, even when these factors are directly relevant to the risk/return merits.

Similarly, all ESG is not equal, and when it is not material to the risk/return analysis, ESG still may be a legitimate collateral benefit for consideration under a tie-breaker analysis. In these circumstances, however, the documentation provisions in paragraph (c)(2) of the current regulation may have a chilling effect on their use. Likewise, the Department is concerned that the documentation provisions could have a chilling effect on the use of the tie-breaker provision more generally, including when ESG is not under consideration. For example, this might occur in instances when investments are selected on the basis of other factors that would benefit the plan and its participants, such as investment selection taking into account participant interest in investment options in order to increase retirement plan savings.[41] Contrary to the perception created during the promulgation of the current regulation, the Department does not view collateral benefits as being presumptively illegal, provided that the investment at issue is otherwise selected in accordance with ERISA's duties of prudence and loyalty.

In addition, the Department believes that a special documentation requirement is unnecessary given that fiduciaries are subject to a general prudence obligation and commonly document and maintain records about their investment selections pursuant to that obligation. Indeed, the Department is concerned that the documentation provisions in paragraph (c)(2) of the current regulation are too formulaic and rigid to consistently square with ERISA's prudence requirement. While the extent of documentation required to satisfy ERISA's general prudence obligations would depend on the individual facts and circumstances, the current regulation's tie-breaker provision sets out a one-size-fits-all documentation requirement. In practice, however, prudence may require something more, less, or different than is required under paragraph (c)(2) of the current regulation. The current documentation provisions, thus, could lead fiduciaries to over-documentation or under-documentation of their investment decisions. Importantly, the shortcoming of the documentation provisions in paragraph (c)(2) of the current regulation could become even more significant with the proposed broadening of the tie-breaker standard's formulation to choices or investment courses of action that a fiduciary prudently concludes ''equally serve the financial interests of the plan,'' as discussed above.

The Department's reconsidered view is that ERISA general prudence obligation is sufficiently protective in this context and, unlike the heightened documentation requirements in the current regulation, does not tip the scale against the particular investment that offers collateral benefits. In addition, as discussed later, as an added measure of transparency and protection, the proposal requires in the case of a designated investment alternative for an individual account plan, including a QDIA, that the plan fiduciary must ensure that the collateral-benefit characteristic of the fund, product, or model portfolio is prominently displayed in disclosure materials provided to participants and beneficiaries.

Finally, the Department notes that the current regulation's special rule that prohibits certain investment alternatives from being used as a QDIA is not carried forward in the proposal. Many stakeholders expressed concern that funds could be excluded from treatment as QDIAs solely because they expressly considered climate change or other ESG factors, even though the funds were prudent based on a consideration of their financial attributes alone. Often, QDIAs are the predominant investment for plan participants. If a fund expressly considers climate change or other ESG factors, is financially prudent, and meets the protective standards set out in the Department's QDIA regulation, 29 CFR 2550.404c–5 (Fiduciary Relief for Investments in Qualified Default

[38] *See, e.g.,* 80 FR 65135, 65137 (Oct. 26. 2015) (''The following Interpretive Bulletin [2015–01] deals solely with the applicability of the prudence and exclusive purpose requirements of ERISA as applied to fiduciary decisions to invest plan assets in ETIs, and in particular the collateral benefits they may provide apart from a plan's performance and the interests of participants and beneficiaries in their retirement income.'').

[39] 85 FR 72846, 72861.

[40] Some point to the skepticism of ESG considerations expressed in the preambles to the current regulation, such as a statement cautioning fiduciaries against ''too hastily'' concluding that ESG-themed funds may be selected based on pecuniary factors, as discussed above. *See, e.g.,* 85 FR 72859.

[41] 85 FR 72860.

Investment Alternatives), there appears to be no reason to foreclose plan fiduciaries from considering the fund as a QDIA.

However, with respect to the selection of designated investment alternatives under paragraph (c)(3) of the proposal, including QDIAs, for the collateral benefits they create in addition to investment return to the plan, paragraph (c)(3) adds a new requirement that the collateral-benefit characteristic of the fund, product, or model portfolio must be prominently displayed in disclosure materials provided to participants and beneficiaries. For example, if the tie-breaking characteristic of a particular designated investment alternative were that it better aligns with the corporate ethos of the plan sponsor or that it improves the esprit de corps of the workforce, for instance, then such feature or features prompting the selection of the investment must be prominently disclosed by the plan fiduciary under paragraph (c)(3) of the proposal. The essential purpose of this proposed disclosure requirement is to ensure that plan participants are given sufficient information to be aware of the collateral factor or factors that tipped the scale in favor of adding the investment option to the plan menu, as opposed to its economically equivalent peers that were not. It is possible, for instance, that a particular plan participant or a population of plan participants does not share the same preference for a given collateral purpose as the plan fiduciary that selected the designated investment alternative for placement on the menu among the plan's other options. The proposal intentionally provides flexibility in how plan fiduciaries may fulfill this requirement given the unknown spectrum of collateral benefits that might influence a plan fiduciary's selection. One likely way, however, is that the plan fiduciary could simply use the required disclosure under 29 CFR 2550.404a–5.[42] That regulation, adopted in 2012, already entitles participants in participant-directed individual account plans to receive sufficient information regarding designated investment alternatives to make informed decisions with regard to the management of their individual accounts. The information required by the 2012 rule includes information regarding the alternative's objectives or goals and the alternative's principal strategies (including a general description of the types of assets held by the investment) and principal risks. This proposal, therefore, assumes these existing disclosures are, or perhaps with minor modifications or clarifications could be, sufficient to satisfy the disclosure element of the tie-breaker provision in paragraph (c)(3) of the proposal. Accordingly, the Department believes such disclosures are already commonplace for many regulated investment products and, in any event, that this new disclosure will be useful to participants and beneficiaries in deciding how to invest their plan accounts. As with the tie-breaking provision in general, comments are solicited on the overall utility of this disclosure provision, including ideas on how best to operationalize the provision taking into account its intended purpose balanced against costs of implementation and compliance.

As indicated above, under the proposal, the standards applicable to selection of designated investment alternatives in participant-directed individual account plans contained in paragraphs (d)(1) and (d)(2)(i) of the current regulation are being incorporated into paragraph (c) of the proposal. Selection of an investment fund as a designated investment alternative under a plan is considered an ''investment course of action'' under the proposal, and therefore is covered under paragraph (c)(2) of the proposal. Additionally, as described above, paragraph (c)(3) of the proposal covers selection of designated investment alternatives for economic benefits they create in addition to investment return to the plan.

The current regulation's special provisions on QDIAs, at paragraph (d)(2)(ii) of the current regulation, are not being carried forward in this proposal. The Department's justification for these provisions was based on a perceived need for heightened protection for QDIAs given the important role they play in facilitating retirement savings under ERISA. The Department generally is of the view that QDIAs warrant special treatment because plan participants have not affirmatively directed the investment of their assets into the QDIA, but are nevertheless dependent on the investments for long-run financial security. Although the Department continues to believe as a general matter that special protections may be needed in some contexts for plans containing these investments, the Department no longer supports the particular restrictions in paragraph (d)(2)(ii) of the current regulation. As structured, paragraph (d)(2)(ii) of the current regulation disallows a fund to serve as a QDIA if it, or any of its component funds in a fund-of-fund structure, has investment objectives, goals, or principal investment strategies that include, consider, or indicate the use of non-pecuniary factors in its investment objectives, even if the fund is objectively economically prudent from a risk/return perspective or even best in class. Rather than protecting the interests of plan participants, stakeholders therefore allege that paragraph (d)(2)(ii) of the current regulation will only serve to harm participants by depriving them of otherwise financially prudent options as QDIAs. The Department agrees and, consequently, proposes to directly rescind paragraph (d)(2)(ii) of the current regulation. The rescission of this provision, however, does not leave participants and beneficiaries in plans with QDIAs without protections. QDIAs would continue to be subject to the same rules under the proposal as all other investments, including the prohibition against subordinating the interests of the participants and beneficiaries in their retirement income to other objectives. QDIAs also would continue to be subject to the separate protections of the QDIA regulation.[43] And, finally, participants in these plans would get the collateral benefit disclosure under the tie-breaker test in paragraph (c)(3) of the proposal, if applicable.

*3. Proxy Voting and Exercise of Shareholder Rights*

Paragraph (d) of the proposal contains provisions that address the application of the duties of prudence and loyalty under ERISA to the exercise of shareholder rights, including proxy voting. These provisions correspond to provisions contained in paragraph (e) of the current regulation. The proposed rule would move these provisions on the exercise of shareholder rights from paragraph (e) of the current regulation to paragraph (d) of the proposal for organizational purposes.

[42] 29 CFR 2550.404a–5 *Fiduciary Requirements for Disclosure in Participant-directed Individual Account Plans* (When the documents and instruments governing an individual account plan provide for the allocation of investment responsibilities to participants or beneficiaries, the plan administrator, as defined in section 3(16) of ERISA, must take steps to ensure, consistent with section 404(a)(1)(A) and (B) of ERISA, that such participants and beneficiaries, on a regular and periodic basis, are made aware of their rights and responsibilities with respect to the investment of assets held in, or contributed to, their accounts and are provided sufficient information regarding the plan, including fees and expenses, and regarding designated investment alternatives, including fees and expenses attendant thereto, to make informed decisions with regard to the management of their individual accounts.).

[43] 29 CFR 2550.404c–5.

(a) Major Changes to the Current Regulation

Paragraph (d) of the proposal includes four noteworthy changes from paragraph (e) of the current regulation. They are highlighted below followed by a technical overview of paragraph (d) of the proposal in its entirety.

First, the proposal would eliminate the statement in paragraph (e)(2)(ii) of the current regulation that ''the fiduciary duty to manage shareholder rights appurtenant to shares of stock does not require the voting of every proxy or the exercise of every shareholder right.'' The exercise of shareholder rights is important to ensuring management accountability to the shareholders that own the company.[44] Accordingly, the Department is concerned that the statement could be misread as suggesting that plan fiduciaries should be indifferent to the exercise of their rights as shareholders, particularly in circumstances where the cost is minimal as is typical of voting proxies. In general, fiduciaries should take their rights as shareholders seriously, and conscientiously exercise those rights to protect the interests of plan participants. Paragraph (d) of the proposal sets forth standards for compliance with ERISA's duties when making decisions on the exercise of shareholder rights and proxy voting.

The proposed removal of the statement, however, does not mean that fiduciaries must always vote proxies or engage in shareholder activism. The Department's longstanding view of ERISA is that proxies should be voted as part of the process of managing the plan's investment in company stock unless a responsible plan fiduciary determines voting proxies may not be in the plan's best interest (*e.g.,* if there are significant costs or efforts associated with voting).[45] Voting proxies are a crucial lever in ensuring that shareholders' interests, as the company's owners, are protected.[46] Moreover, abstaining from a vote is not a neutral act, which has no bearing on the outcome of the matter put to the shareholders for vote, but rather, depending on the relevant voting standard under state law and the company's governing documents, could determine whether a particular matter or proposal is approved.[47] Prudent fiduciaries should take steps to ensure that the cost and effort associated with voting a proxy is commensurate with the significance of an issue to the plan's financial interests. The solution to proxy-voting costs is not total abstention, but is, instead, for the fiduciary to be prudent in incurring expenses to make proxy decisions and, wherever possible, to rely on efficient structures (*e.g.,* proxy voting guidelines, proxy advisers/managers that act on behalf of large aggregates of investors, etc.).

Second, the proposal streamlines the regulation by eliminating a provision in the current regulation (paragraph (e)(2)(iii)) that sets out specific monitoring obligations where the authority to vote proxies or exercise shareholder rights has been delegated to an investment manager or where a proxy voting firm performs advisory services as to voting proxies. Instead, the regulation addresses such monitoring obligations in another provision that more generally covers selection and monitoring obligations (paragraph (d)(2)(ii)(E) of the proposal). The revised text does not represent a change in the Department's view or requirements under the current regulation. Rather, the Department believes that, as previously expressed in Interpretive Bulletin 2016–01,[48] the general prudence and loyalty duties under ERISA section 404(a)(1) already impose a monitoring requirement. Accordingly, the Department is concerned that the specific provision in the current regulation may be read as requiring some special obligations above and beyond the statutory obligations of prudence and loyalty that generally apply to monitoring the work of service providers.

Third, the proposal revises the provision of the current regulation that addresses proxy voting policies, paragraph (e)(3)(i) of the current regulation, by removing the two ''safe harbor'' examples for proxy voting policies that would be permissible under the provisions of the current regulation. The Department continues to believe, as it stated in Interpretive Bulletin 2016–1, that the maintenance by an employee benefit plan of a statement of investment policy designed to further the purposes of the plan and its funding policy is consistent with the fiduciary obligations set forth in section 404(a)(1)(A) and (B) of ERISA, and that since the act of managing plan assets that are shares of corporate stock includes the voting of proxies appurtenant to those shares, a statement of proxy voting policy is an important part of any comprehensive statement of investment policy.[49] The Department also continues to believe that proxy voting policies can help fiduciaries reduce costs and compliance burden. However, the Department recognizes that, because the examples in the current regulation are characterized as safe harbors, they may become widely adopted by plan fiduciaries. It therefore is crucial for the Department to have confidence that the safe harbors adequately safeguard the interests of plans and their participants and beneficiaries. Based on its outreach to interested stakeholders, the Department is not confident that the safe harbors are necessary or helpful for that purpose, and, accordingly, does not believe it is appropriate to include them in the proposal. Rather, the Department specifically solicits comments on those safe harbor provisions to assist the Department in its review of the proposed regulation.

Fourth, the proposal would eliminate the requirement in paragraph (e)(2)(ii)(E) of the current regulation that, when deciding whether to exercise shareholder rights and when exercising shareholder rights, plan fiduciaries must maintain records on proxy voting activities and other exercises of shareholder rights. The proposal would remove this provision from the current regulation because, in context, it appears to treat proxy voting and other exercises of shareholder rights differently from other fiduciary activities and may create a misperception that proxy voting and other exercises of shareholder rights are disfavored or carry greater fiduciary obligations, and therefore greater potential liability, than other fiduciary activities. Such a misperception may potentially chill plan fiduciaries from exercising their rights, or result in excessive expenditures as fiduciaries

[44] See, *e.g.,* Comment #262 at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB91/00262.pdf;* Comment #209 at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB91/00209.pdf.*

[45] 81 FR 95881.

[46] See, *e.g.,* Comment #290 at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB91/00290.pdf;* Comment #288 at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB91/00288.pdf;* Comment #142 at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB91/00142.pdf.*

[47] For example, an abstention would generally have the legal effect of an ''against'' vote if the voting standard for a proposal is the affirmative vote of the majority of the shares present and entitled to vote or the majority of the outstanding shares. Similarly, the failure of a shareholder who holds its shares in ''street name'' to provide voting instructions to its broker-dealer would generally have the legal effect of an ''against'' vote for a matter where the voting standard is the majority of the outstanding shares.

[48] 81 FR 95882–3.

[49] 81 FR 95883.

over-document their efforts. Removal of the requirement is intended to address this concern.

The first and third of these proposed changes (to paragraphs (e)(2)(ii) and (e)(3)(i)(A) and (B), respectively) would be direct rescissions of provisions in the current regulation. The intent of these to-be-rescinded provisions was to offer plan fiduciaries two examples of policies they might adopt to efficiently discharge their responsibilities under section 404 of ERISA with respect to voting proxies.[50] The Department continues to be supportive of the concept of policies that promote the efficient discharge of proxy voting responsibilities. In light of stakeholder feedback, however, the Department is concerned that these provisions will not achieve this objective. To the contrary, the Department believes that the ''no vote'' statement in paragraph (e)(2)(ii) of the current regulation and the two safe harbors in paragraph (e)(3)(i) of the current regulation, in combination, may be construed as little more than regulatory permission for plans to broadly abstain from proxy voting without properly considering their interests as shareholders and without legal repercussions. Moreover, the Department is concerned about the application of the safe harbors individually. In particular, the Department is concerned that fiduciaries may take too much comfort in the safe harbor in paragraph (e)(3)(i)(A) of the current regulation. This safe harbor vaguely overlaps with the general standard that precedes it and, to that extent, provides illusory safe harbor protection to plan fiduciaries. In addition, the safe harbor in paragraph (e)(3)(i)(B) of the current regulation appears to be subject to practical drawbacks that substantially erode its actual utility. In particular, stakeholders assert that the multiple investment managers of sub-portfolios of certain ERISA look-through investment vehicles lack the information necessary to calculate the requisite threshold across the sub-portfolios, at the plan level. Even if these managers are able to ascertain a particular plan's proportional interest in the sub-portfolios, the managers do not know the plan's total investment assets, according to the stakeholders. For these reasons, the Department is proposing to rescind these particular provisions.

(b) Technical Overview of Paragraph (d) of the Proposal

Paragraph (d)(1) of the proposal, like paragraph (e)(1) of the current regulation and prior Interpretive Bulletins, provides that the fiduciary duty to manage plan assets that are shares of stock includes the management of shareholder rights appurtenant to those shares, such as the right to vote proxies.

Paragraph (d)(2)(i) of the proposal provides that when deciding whether to exercise shareholder rights and when exercising such rights, including the voting of proxies, fiduciaries must carry out their duties prudently and solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan.

Paragraph (d)(2)(ii) of the proposal sets forth specific standards for fiduciaries to meet when deciding whether to exercise shareholder rights and when exercising shareholder rights. In particular, a fiduciary must act solely in accordance with the economic interest of the plan and its participants and beneficiaries (paragraph (d)(2)(ii)(A)) and consider any costs involved (paragraph (d)(2)(ii)(B)). Additionally, the proposal expressly provides that a fiduciary must not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to benefits or goals unrelated to those financial interests of the plan's participants and beneficiaries (paragraph (d)(2)(ii)(C)). Furthermore, a fiduciary must evaluate material facts that form the basis for any particular proxy vote or other exercise of shareholder rights (paragraph (d)(2)(ii)(D)). Paragraph (d)(2)(ii)(E) of the proposal additionally requires that a fiduciary must exercise prudence and diligence in the selection and monitoring of persons, if any, chosen to exercise shareholder rights or otherwise to advise on or assist with exercises of shareholder rights, such as providing research and analysis, recommendations regarding proxy votes, administrative services with voting proxies, and recordkeeping and reporting services. This provision (paragraph (d)(2)(ii)(E)) is broader than the current regulation and covers obligations related to monitoring service providers such as investment managers and proxy advisory firms that are addressed in paragraph (e)(2)(iii) of the current regulation. These provisions (paragraphs (d)(2)(ii)(A) through (E)) are intended to confirm and restate what the prudence and loyalty obligations of ERISA section 404(a)(1)(A) and (B) would require in these areas. The Department specifically invites comments on whether these provisions are necessary and whether they may be read as creating special duties and requirements beyond what ERISA section 404(a)(1)(B) would demand. We note that, as discussed above, paragraph (d)(2)(ii) does not carry forward the current regulation's specific requirement (paragraph (e)(2)(ii)(E)) for maintenance of records on proxy voting activities and other exercise of shareholder rights.

Paragraph (d)(2)(iii) of the proposal states that a fiduciary may not adopt a practice of following the recommendations of a proxy advisory firm or other service provider without a determination that such firm or service provider's proxy voting guidelines are consistent with the fiduciary's obligations described in provisions of the regulation. This provision of the current regulation was intended to address specific concerns involving fiduciaries' use of proxy advisory firms and similar service providers, including use of automatic voting mechanisms relying on proxy advisory firms.[51] The Department invites comments on whether this provision is necessary given the more general requirement in paragraph (d)(2)(ii)(E) of the proposal that fiduciaries must exercise prudence and diligence in the selection and monitoring of persons, if any, selected to exercise shareholder rights or otherwise advise on or assist with exercises of shareholder rights.

Paragraph (d)(3)(i) of the proposal provides that in deciding whether to vote a proxy pursuant to paragraphs (d)(2)(i) and (ii) of the proposal, fiduciaries may adopt proxy voting policies providing that the authority to vote a proxy shall be exercised pursuant to specific parameters prudently designed to serve the plan's interest in providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. As discussed above, this provision is not carrying forward the two ''safe harbor'' proxy voting policies contained in the current regulation. The Department is concerned that the policies described in the current regulation may effectively encourage adoption of proxy voting policies that may be biased against the exercise of a plan's voting rights.

Paragraph (d)(3)(ii) of the proposal requires plan fiduciaries to periodically review proxy voting policies adopted pursuant to the regulation. Paragraph (d)(3)(iii) further provides that no proxy voting policies adopted pursuant to paragraph (d)(3)(i) of the proposal shall

[50] 85 FR 81672.

[51] *See* 85 FR 81668 (Dec. 16, 2020).

preclude submitting a proxy vote when the fiduciary prudently determines that the matter being voted upon is expected to have a material effect on the value of the investment or the investment performance of the plan's portfolio (or investment performance of assets under management in the case of an investment manager) after taking into account the costs involved, or refraining from voting when the fiduciary prudently determines that the matter being voted upon is not expected to have such a material effect after taking into account the costs involved. This provision in the proposal recognizes that, depending on the circumstances, a fiduciary may conclude that the best interests of the plan and its participant and beneficiaries would not be served by following the plan's proxy voting policies in a particular case. In such cases, paragraph (d)(3)(iii) of the proposal ensures that a fiduciary will have the needed flexibility to deviate from those policies and take a different approach.

Paragraphs (d)(4)(i) and (ii) of the proposal, like paragraphs (e)(4)(i) and (ii) of the current regulation, reflect longstanding positions expressed in the Department's prior Interpretive Bulletins. Paragraph (d)(4)(i)(A) of the proposal states that the responsibility for exercising shareholder rights lies exclusively with the plan trustee except to the extent that either the trustee is subject to the directions of a named fiduciary pursuant to ERISA section 403(a)(1); or the power to manage, acquire, or dispose of the relevant assets has been delegated by a named fiduciary to one or more investment managers pursuant to ERISA section 403(a)(2). Paragraph (d)(4)(ii)(B) of the proposal states that where the authority to manage plan assets has been delegated to an investment manager pursuant to ERISA section 403(a)(2), the investment manager has exclusive authority to vote proxies or exercise other shareholder rights appurtenant to such plan assets in accordance with this section, except to the extent the plan, trust document, or investment management agreement expressly provides that the responsible named fiduciary has reserved to itself (or to another named fiduciary so authorized by the plan document) the right to direct a plan trustee regarding the exercise or management of some or all of such shareholder rights.

Paragraph (d)(4)(ii) of the proposal describes obligations of an investment manager of a pooled investment vehicle that holds assets of more than one employee benefit plan. The provision provides that an investment manager of such a pooled investment vehicle may be subject to an investment policy statement that conflicts with the policy of another plan. Furthermore, it provides that compliance with ERISA section 404(a)(1)(D) requires the investment manager to reconcile, insofar as possible, the conflicting policies (assuming compliance with each policy would be consistent with ERISA section 404(a)(1)(D)).[52] The provision further states that, in the case of proxy voting, to the extent permitted by applicable law, the investment manager must vote (or abstain from voting) the relevant proxies to reflect such policies in proportion to each plan's economic interest in the pooled investment vehicle. Such an investment manager may, however, develop an investment policy statement consistent with Title I of ERISA and the regulation, and require participating plans to accept the investment manager's investment policy statement, including any proxy voting policy, before they are allowed to invest. In such cases, a fiduciary must assess whether the investment manager's investment policy statement and proxy voting policy are consistent with Title I of ERISA and the regulation before deciding to retain the investment manager.

Paragraph (d)(4)(ii) of the proposal is identical to paragraph (e)(4)(ii) of the current regulation. Although the provision in the current regulation, and thus the proposal uses different language than prior Interpretive Bulletins in describing the obligations of investment managers to pooled investment funds, as explained in the preamble to the *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights* final rule, the objective was to clarify the requirement and not fundamentally alter that guidance.[53] The Department solicits comments on whether this provision would be clearer if revised to conform more closely to the prior Interpretive Bulletins.

Finally, paragraph (d)(5) of the proposal provides that the regulation does not apply to voting, tender, and similar rights with respect to shares of stock that, pursuant to the terms of an individual account plan, are passed through to participants and beneficiaries with accounts holding such shares.

*4. Miscellaneous*

Paragraph (e) defines the terms used in the proposal. The terms and definitions do not include a definition of ''pecuniary factors'' because the proposal does not rely on that term.

Under paragraph (e)(1) of the proposal, ''investment duties'' means any duties imposed upon, or assumed or undertaken by, a person in connection with the investment of plan assets which make or will make such person a fiduciary of an employee benefit plan or which are performed by such person as a fiduciary of an employee benefit plan as defined in section 3(21)(A)(i) or (ii) of ERISA. Paragraph (e)(2) defines the term ''investment course of action'' as any series or program of investments or actions related to a fiduciary's performance of the fiduciary's investment duties, and includes the selection of an investment fund as a plan investment, or in the case of an individual account plan, a designated investment alternative under the plan. Paragraph (e)(3) defines ''plan'' to mean an employee benefit plan to which Title I of ERISA applies. Finally, under paragraph (e)(4) of the proposal, the term ''designated investment alternative'' means any investment alternative designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The provision further provides that the term ''designated investment alternative'' shall not include ''brokerage windows,'' ''self-directed brokerage accounts,'' or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

Paragraph (f) of the proposal, like paragraph (h) of the current regulation, provides that if any provision of the regulation is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof.

Finally, this proposed regulation does not undermine serious reliance interests on the part of fiduciaries selecting investments and investment courses of action and exercising shareholder rights. Nor does it upend a longstanding view of the agency on the standards governing the selection of investments

[52] Section 404(a)(1)(D) of ERISA provides that a fiduciary must discharge its duties with respect to the plan in accordance with the documents and instruments governing the plan insofar as such documents are consistent with the provisions of title I and title IV of ERISA. Under section 404(a)(1)(D), a fiduciary to whom an investment policy applies would be required to comply with such policy unless, for example, it would be imprudent to do so in a given instance.

[53] 85 FR 81675.

and investment courses of action or the exercise of shareholder rights, including the voting of proxies. It instead addresses new policies included in a recently promulgated regulation. Further, the Department stayed its enforcement of the regulation immediately after its effective date and before its full applicability. Consequently, the Department concludes serious reliance on the 2020 rule is unlikely, and certainly would not overwhelm the Department's good reasons for this change.

**C. Request for Public Comments**

The Department invites comments from interested persons on all facets of the proposed rule. Commenters are free to express their views not only on the specific provisions of the proposal as set forth in this document, but on any issues germane to the subject matter of the proposal. Comments should be submitted in accordance with the instructions at the beginning of this document.

**D. Regulatory Impact Analysis**

This section of the preamble analyzes the regulatory impact of proposed amendments to 29 CFR 2550.404a–1. As explained earlier in this preamble, the proposed amendments would clarify the legal standard imposed by sections 404(a)(1)(A) and 404(a)(1)(B) of ERISA with respect to the selection of a plan investment or, in the case of an ERISA section 404(c) plan or other individual account plan, a designated investment alternative under the plan, and with respect to the exercise of shareholder rights, including proxy voting.

The primary benefit of the proposal is clarification of legal standards and the prevention of confusion to plan fiduciaries that otherwise might persist as a result of certain provisions in the current regulation that are the subject of the proposed amendments. The Department has heard from stakeholders that the current regulation, and investor confusion about it, has already had a chilling effect on appropriate integration of climate change and other ESG factors in investment decisions, including in circumstances that the current regulation may in fact allow. Based on stakeholder feedback, the Department has concerns that aspects of the current regulation could deter plan fiduciaries from: (a) Taking into account climate change and other ESG factors when they are material to a risk-return analysis; (b) engaging in proxy voting and other exercises of shareholder rights when doing so is in the plan's best interest; and (c) choosing QDIAs that include climate change and other ESG factors in their investments. If these concerns with the current regulation are correct, and left unaddressed, the current regulation could continue to have (a) a negative impact on plans' financial performance as they avoid materially sound investments or integration of climate change and other ESG considerations that are often material in investment analysis, (b) a negative impact on plans' financial performance as they shy away from economically relevant considerations in voting and from exercising shareholder rights on material issues, and (c) broader negative economic/societal impacts (*e.g.,* negative impacts on climate change, on workers' productivity and engagement, and on corporate managers' accountability). The proposal's clarification of the relevant legal standards is intended to address these negative impacts.

Other benefits of the proposal consist of costs savings associated with revisions and improvements to the current regulation, for example, the elimination of the current regulation's special documentation provisions, elimination of its proxy voting safe harbors, clarification of its tie-breaker standard, and the clarification of its standards governing QDIAs. All benefits of the proposal are discussed below in Section 1.3. As discussed in Section 1.4 below, the proposal would also impose some modest additional costs. For example, some plans will incur costs to review the rule to ensure compliance. But, the costs of the proposal are expected to be relatively small, in part because the Department assumes most plan fiduciaries are complying with the pre-2020 interpretive bulletins (specifically Interpretive Bulletin 2016–1 and 2015–1), which the proposal tracks. Overall, the Department estimates that the proposal's benefits justify its costs.

The Department has examined the effects of this proposal as required by Executive Order 12866,[54] Executive Order 13563,[55] the Congressional Review Act,[56] the Paperwork Reduction Act of 1995,[57] the Regulatory Flexibility Act,[58] section 202 of the Unfunded Mandates Reform Act of 1995,[59] and Executive Order 13132.[60]

*1. Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Department and OMB have determined that this proposed rule is significant within the meaning of section 3(f)(4) of Executive Order 12866, under which rules are significant if they ''[r]aise novel legal or policy issues arising out of legal mandates [or] the President's priorities.'' The Department and OMB also treat the regulation as economically significant within the meaning of section 3(f)(1) of that Executive order. Given the large scale of investments held by covered plans, approximately $12.2 trillion, we assume that changes in investment decisions and/or plan performance are likely to be economically significant under the Executive order.[61] Therefore, the Department provides an assessment of the potential costs, benefits, and

[54] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[55] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011).

[56] 5 U.S.C. 804(2) (1996).

[57] 44 U.S.C. 3506(c)(2)(A) (1995).

[58] 5 U.S.C. 601 *et seq.* (1980).

[59] 2 U.S.C. 1501 *et seq.* (1995).

[60] Federalism, 64 FR 43255 (Aug. 10, 1999).

[61] EBSA projected ERISA covered pension, welfare, and total assets based on the 2018 Form 5500 filings with the U.S. Department of Labor (DOL), reported SIMPLE assets from the Investment Company Institute (ICI) Report: The U.S. Retirement Market, First Quarter 2021, and the Federal Reserve Board's Financial Accounts of the United States Z1 June 10, 2021.

transfers associated with the proposal below.

1.1. Introduction and Need for Regulation

In late 2020, the Department published two final rules dealing with the selection of plan investments and the exercise of shareholder rights, including proxy voting. The Department published those rules to provide clarity and certainty to plan fiduciaries regarding their legal duties under ERISA section 404 in connection with making plan investments and for exercising shareholder rights. The Department was also concerned that some investment products may be marketed to ERISA fiduciaries on the basis of purported benefits and goals unrelated to financial performance. Before issuing the rules, the Department had periodically considered and issued guidance pertaining to the application of ERISA's fiduciary rules to plan investment decisions that are based, in whole or part, on factors unrelated to financial performance. Confusion with respect to these factors persisted, perhaps due in part to varied statements the Department had made on the subject over the years in non-regulatory guidance. Accordingly, the 2020 rules were intended to interpret ERISA and provide clarity and certainty regarding the scope of fiduciary duties surrounding such issues.

Responses to the 2020 rules, however, suggest that the new rules may have inadvertently caused more confusion than clarity. Many interested stakeholders have told the Department that the terms and tone of the final rules and preambles have increased concerns and uncertainty about the extent to which plan fiduciaries may consider climate change and other ESG factors in their investment decisions, and that the final rules have chilling effects contrary to the interests of participants and beneficiaries. Consequently, on March 10, 2021, the Department announced that it would stay enforcement of the 2020 rules pending a complete review of the matter. Subsequently, on May 20, 2021, the President issued Executive Order 14030, entitled ''Executive Order on Climate-Related Financial Risk.'' Section 4 of the Executive order directs the Department to consider suspending, revising, or rescinding any rules from the prior administration that would have barred plan fiduciaries (and their investment-firm service providers) from considering climate change and other ESG factors in their investment decisions related to workers' pensions.[62] In light of the foregoing, the Department concluded that additional notice and comment rulemaking was necessary to safeguard the interests of participants and beneficiaries in their retirement and welfare plan benefits.

The baseline for purposes of the analysis in this section is a future in which the current regulation is implemented. However, immediately after its effective date in January but before its full applicability date, the Department stayed enforcement of the current regulation pursuant the March 10 non-enforcement policy.[63] The Department assumes that this stay, in conjunction with the President's Executive order in January, prevented plans from incurring sunk-costs. Comments are requested on the accuracy of this assumption. Specifically, how many plans, if any, had already incurred costs to comply with the current regulation between its January effective date and the March stay, and what was the magnitude of the costs incurred? Commenters are encouraged to be as specific as possible in responding to this solicitation and to support their comments with data when possible.

1.2. Affected Entities

The clarifications in the proposal would affect subsets of ERISA-covered plans and their participants and beneficiaries. The subset of plans affected by the proposed modifications of paragraphs (c) of § 2550.404a–1 include those plans whose fiduciaries consider or will begin considering climate change and other ESG factors when selecting investments and the participants in those plans. Another subset of affected plans include ERISA-covered plans (pension, health, and other welfare) that hold shares of corporate stock. This subset of plans would be affected by the proposed modifications to paragraph (d) (relating to proxy voting) of § 2550.404a–1. Some plans would be in both subsets, some in only one subset, and some in neither. There is substantial uncertainty on the number and size of the affected plans. Moreover, if the Department had not immediately stayed enforcement of the 2020 rules, the class of affected entities could have looked somewhat different.

a. Subset of Plans Affected by Proposed Modifications of Paragraph (c) of § 2550.404a–1

The best data on affected plans comes from surveys of ESG investing by plans. The plans affected by the proposed modifications of paragraph (c) of § 2550.404a–1 consist of those ERISA-covered plans whose fiduciaries consider or will begin considering climate change and other ESG factors when selecting investments and the participants in those plans. A challenge in relying on survey data, however, is that one cannot readily determine how much of the ESG investing is driven by material risk-return factors as opposed to non-risk-return or collateral factors.[64]

The Department estimates as a lower bound that approximately 11 percent of retirement plans, or 78,300 plans, would be affected by paragraph (c) of the proposal.

This estimate of the share of retirement plans already considering ESG factors is derived from combining estimates of 9 percent for participant-directed defined contribution plans and 19 percent for other plans, weighted to reflect the relative prevalence of these types of retirement plans. These estimates are drawn from survey findings and administrative data. According to the Plan Sponsor Council of America, about 3 percent of 401(k) and/or profit sharing plans offered at least one ESG-themed investment option in 2019.[65] Vanguard's 2018 administrative data suggest that approximately 9 percent of DC plans offered one or more ''socially responsible'' domestic equity fund options.[66] In a comment letter, Fidelity Investments reported that 14.5 percent of corporate DC plans with fewer than 50 participants offered an ESG option, and that the figure is higher for large

[62] *See* White House Fact Sheet titled *FACT SHEET: President Biden Directs Agencies to Analyze and Mitigate the Risk Climate Change Poses to Homeowners and Consumers, Businesses and Workers, and the Financial System and Federal Government Itself* (May 20, 2021) (stating, ''The Executive Order directs the Labor Secretary to consider suspending, revising, or rescinding any rules from the prior administration that would have barred investment firms from considering environmental, social and governance factors, including climate-related risks, in their investment decisions related to workers' pensions.'').

[63] U.S. Department of Labor Statement Regarding Enforcement of its Final Rules on ESG Investments and Proxy Voting by Employee Benefit Plans (Mar. 10, 2021), available at *www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/erisa/statement-on-enforcement-of-final-rules-on-esg-investments-and-proxy-voting.pdf.*

[64] *See* Max Schanzenbach & Robert Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee,* 72 Stan. L. Rev. 381 (2020) (distinguishing between ''collateral benefits ESG'' investing—defined as ''ESG investing for moral or ethical reasons or to benefit a third party''—which is not permissible under ERISA, and ''risk-return ESG'' investing, which is).

[65] *63rd Annual Survey of Profit Sharing and 401(k) Plans,* Plan Sponsor Council of America (2020).

[66] *How America Saves 2019,* Vanguard (June 2019), *https://pressroom.vanguard.com/nonindexed/Research-How-America-Saves-2019-Report.pdf.*

plans with at least 1,000 participants. Considering these three sources together, the Department uses the median figure of 9 percent for its estimate of the share of participant-directed individual account plans that have at least one ESG-themed designated investment alternative. This represents 53,000 participant-directed individual account plans.[67] To estimate ESG investing by other types of retirement plans, the Department looked at surveys that included many defined benefit plans as well as some defined contribution plans. According to a 2018 survey by the NEPC, approximately 12 percent of private pension plans have adopted ESG investing.[68] Another survey, conducted by the Callan Institute in 2019, found that about 19 percent of private sector pension plans consider ESG factors in investment decisions.[69] Since the Callan Institute survey included a greater share of defined benefit plans, the Department draws upon its finding and assumes that 19 percent of defined benefit plans and nonparticipant-directed defined contribution plans use ESG investing, which represents 25,300 plans.[70] The total number of affected plans is approximately 78,300, which is 11 percent of all pension plans.[71]

An estimate of 11 percent is our best approximation of the share of plans that were using ESG factors under the prior non-regulatory guidance. The Department anticipates that all plans using ESG factors would be affected in some way by the proposal. The estimate is a lower bound because it is likely that more plans will start to consider ESG factors, including climate-related financial risk, as a result of the new rule, as is already evidenced by the growing consideration of climate-related financial risk and ESG factors by investors through entities such as the Task Force on Climate-Related Financial Disclosure.[72] Furthermore, ESG factors are becoming more mainstream for the investment community. Morningstar data shows that between 2015 and 2020, assets under management in sustainable funds increased by more than four times.[73] This growth may well carry over to ERISA plans and participants.

These statistics do not reflect, however, the proportion of plan assets actually invested in ESG options. One recent survey indicates that the average DC plan has less than 0.1 percent of its assets invested in ESG funds.[74]

b. Subset of Plans Affected by Proposed Modifications of Paragraph (e) of § 2550.404a–1

The proposal, at paragraph (d), would codify longstanding principles of prudence and loyalty applicable to the exercise of shareholder rights, including proxy voting, the use of written proxy voting policies and guidelines, and the selection and monitoring of proxy advisory firms. In particular, paragraph (d) of the proposal would adopt the Department's longstanding position, which was first issued in guidance in the 1980s, that the fiduciary act of managing plan assets includes the management of voting rights (as well as other shareholder rights) appurtenant to shares of stock. Paragraph (d) of the proposal also would eliminate the two safe harbors in paragraphs (e)(3)(i)(A) and (B) of § 2550.404a–1.

Under paragraph (d) of the proposal, when deciding whether to exercise shareholder rights and when exercising such rights, including the voting of proxies, fiduciaries must carry out their duties prudently and solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefit to participants and beneficiaries and defraying the reasonable expenses of administering the plan. Nevertheless, because affected parties will or could be impacted by the proposal should it become a final rule (for example, at minimum they will have to review the proposed regulation for compliance), an assessment of affected parties follows, but the Department considers the number of affected parties to be an upper bound.

Paragraph (d) of the proposal would affect ERISA-covered pension, health, and other welfare plans that hold shares of corporate stock. It would affect plans with respect to stocks that they hold directly, as well as with respect to stocks they hold through ERISA-covered intermediaries, such as common trusts, master trusts, pooled separate accounts, and 103–12 investment entities. Paragraph (d) would not affect plans with respect to stock held through registered investment companies, because it would not apply to such funds' internal management of such underlying investments. Paragraph (d) of the proposal also would not apply to voting, tender, and similar rights with respect to securities that are passed through pursuant to the terms of an individual account plan to participants and beneficiaries with accounts holding such securities.

ERISA-covered plans annually report data on their asset holdings. However, only plans that file the Form 5500 schedule H report their stock holdings as a separate line item (see Table 1). Most of these plans filing schedule H have 100 or more participants (large plans).[75] Additionally, all plans with employer stock report their holdings on either schedule H or schedule I. However, schedule I lacks the specificity to determine if small plans hold employer stock or other employer securities. Approximately 27,000 defined contribution plans and 5,000 defined benefit plans, with approximately 84 million participants, file the schedule H and report holding common stocks or are an Employee Stock Ownership Plan (ESOP). Additionally, 573 health and other welfare plans file the schedule H and report holding common stocks either

[67] DOL calculations are based on statistics from *Private Pension Plan Bulletin: Abstract of 2018 Form 5500 Annual Reports,* Employee Benefits Security Administration (2020), Table A1, *https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2018.pdf.* This estimate is calculated as 9% × 588,499 401(k) type plans = 52,965 rounded to 53,000.

[68] Brad Smith & Kelly Regan, *NEPC ESG Survey: A Profile of Corporate & Healthcare Plan Decisionmakers' Perspectives,* NEPC (Jul. 11, 2018), *https://cdn2.hubspot.net/hubfs/2529352/files/2018%2007%20NEPC%20ESG%20Survey%20Results%20.pdf?t=1532123276859.*

[69] *2019 ESG Survey,* Callan Institute (2019), *www.callan.com/wp-content/uploads/2019/09/2019-ESG-Survey.pdf.*

[70] DOL calculations are based on statistics from *Private Pension Plan Bulletin: Abstract of 2018 Form 5500 Annual Reports,* Employee Benefits Security Administration (2020), Table A1, *https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2018.pdf.* This estimate is calculated as 19% × (721,876 pension plans − 588,499 401(k) type plans) = 25,342 rounded to 25,300.

[71] DOL calculations are based on statistics from *Private Pension Plan Bulletin: Abstract of 2018 Form 5500 Annual Reports,* Employee Benefits Security Administration (2020), Table A1, *https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2018.pdf.* This estimate is calculated as 52,965 participant-directed individual account plans + 25,342 defined benefit and nonparticipant-directed defined contribution plans = 78,307 plans rounded to 78,300. 78,307 affected pension plans / 721,876 total pension plans = 10.8% rounded to 11%.

[72] See additional studies on the growing body of evidence for value creation from ESG investing here: CFA Institute, ''Climate Change Analysis in the Investment Process,'' (2020) *https://www.cfainstitute.org/en/research/industry-research/climate-change-analysis.* A growing number of investors are also participating in the Task Force on Climate-Related Financial Disclosure and the Taskforce on Nature-related Financial Disclosures.

[73] Morningstar, ''Sustainable Funds U.S. Landscape Report: More Funds, More Flows, and Impressive Returns in 2020,'' (February 10, 2021), *https://www.morningstar.com/lp/sustainable-funds-landscape-report.*

[74] *63rd Annual Survey of Profit Sharing and 401(k) Plans,* Plan Sponsor Council of America (2020).

[75] 431 plans with less than 100 participants filed the Form 5500 schedule H and reported holding common stock.

directly or indirectly. In total, pension plans and welfare plans filing schedule H hold approximately $1.7 trillion in common stock value. Common stocks constitute about 25 percent of total assets of those pension plans that are not ESOPs and hold common stock. Out of the 25,400 pension plans that hold common stock and are not ESOPs, about 20,000 plans hold common stock through an ERISA-covered intermediary and approximately 3,500 plans hold common stock directly. A smaller number of plans hold stock both directly and indirectly.[76] In total, information is available on approximately 32,000 pension plans, welfare plans, and ESOPs that hold either common stock or employer stock.

TABLE 1—NUMBER OF PENSION AND WELFARE PLANS REPORTING HOLDING COMMON STOCKS OR ESOP BY TYPE OF PLAN, 2018 [a]

| Common stock (no employer securities) | Defined benefit | Defined contribution | Total pension plans | Welfare plans | Total all plans |
|---|---|---|---|---|---|
| Direct Holdings Only | 1,272 | 2,286 | 3,558 | 569 | 4,127 |
| Indirect Holdings Only | 2,792 | 17,591 | 20,383 | 3 | 20,386 |
| Both Direct and Indirect | 941 | 586 | 1,527 | 1 | 1,528 |
| Total | 5,005 | 20,463 | 25,468 | 573 | 26,041 |
| ESOP (No Common Stock) | ..... | 5,809 | 5,809 | ..... | 5,809 |
| Common Stock and ESOP | ..... | 591 | 591 | ..... | 591 |
| Total All Plans Holding Stocks | 5,005 | 26,863 | 31,868 | 573 | 32,441 |

[a] DOL calculations from the 2018 Form 5500 Pension Research Files.

There are approximately 629,000 small pension plans that hold assets, and some may invest in stock.[77] Given that fewer than 1 percent of small plans file a Schedule H, there is minimal data available about small plans' stock holdings. While the majority of participants and assets are in large plans, most plans are small plans. The Department lacks sufficient data to estimate the number of small plans that hold stock, but it assumes that small plans are significantly less likely to hold stock than larger plans. Many small plans may hold stock only through mutual funds, and consequently would not be significantly affected by paragraph (d) of this proposal. The Department asks for comments on the impacts on small plans holding stock only through mutual funds. For purposes of illustrating the number of small plans that could be affected, the Department preliminarily assumes that five percent of small plans, or 31,470 small pension plans, hold stock. The Department requests comments on this assumption.

The combined effect of these assumptions is an estimate of 63,911 plans, large and small, that would be affected by the proposed amendments pertaining to proxy voting.

While paragraph (d) of this proposed rule would directly affect ERISA-covered plans that possess the relevant shareholder rights, the activities covered under paragraph (d) would be carried out by responsible fiduciaries on plans' behalf. Many plans hire asset managers to carry out fiduciary asset management functions, including proxy voting. In 2018, large ERISA plans reportedly used approximately 17,800 different service providers, some of whom provide services related to the exercise of plans' shareholder rights.[78] Such service providers include trustees, trust companies, banks, investment advisers, investment managers, and proxy advisory firms.[79] Asset managers hired as fiduciaries to carry out proxy voting functions would be subject to the proposal to the same extent as a plan trustee or named fiduciary. The proposal could indirectly affect proxy advisory firms to the extent that plan fiduciaries opt for customized recommendations about which particular proxy proposals to vote or how they should cast their vote. Plans' preferences for proxy advice services moreover could shift to prioritize services offering more rigorous and impartial recommendations. These effects may be more muted, however, if recent rule amendments by the Securities and Exchange Commission (SEC) enhance the transparency, accuracy, and completeness of the information provided to clients of proxy voting firms in connection with proxy voting decisions.[80]

1.3. Benefits

The proposed amendments would clarify the legal standard imposed by sections 404(a)(1)(A) and 404(a)(1)(B) of ERISA with respect to the selection of a plan investment or investment course of action, and to the exercise of shareholder rights, including proxy voting. As indicated above, a significant benefit of the proposal is that it clearly permits plan fiduciaries to consider climate change and other ESG factors that are often material, and to exercise shareholder rights that may enhance the value of plan investments. As discussed above, the Department is concerned that

[76] DOL estimates from the 2018 Form 5500 Pension Research Files.

[77] The Form 5500 does not require these plans to categorize the assets as common stock, so the Department does not know if they hold stock.

[78] One commenter pointed out that in a proprietary survey of the largest pension funds and defined contribution plans, approximately 92 percent of the respondents indicated that they have formally delegated proxy voting responsibilities to another named fiduciary (*e.g.,* an Investment Manager), and approximately 42 percent of respondents engage a proxy advisory firm (directly or indirectly) to help with voting some or all proxies.

[79] DOL estimates are derived from the 2018 Form 5500 Schedule C.

[80] In September 2019, the SEC issued an interpretation and guidance addressing the application of the proxy rules to proxy voting advice businesses. *Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice,* 84 FR 47416 (Sept. 10, 2019) (''2019 Interpretation and Guidance''). In July of 2020, The SEC adopted amendments to 17 CFR 240.14a–1(l), 240.14a–2(b), and 240. 14a–9 (Rules 14a–1(l), 14a–2(b), and 14a–9) concerning proxy voting advice. *See Exemptions from the Proxy Rules for Proxy Voting Advice,* 85 FR 55082 (Sept. 3, 2020) (''2020 Rule Amendments''). On June 1, 2021, SEC Chair Gary Gensler directed SEC staff to consider whether to recommend further regulatory action regarding proxy voting advice. In particular, SEC staff are to consider whether to recommend that the SEC revisit its 2020 codification of the definition of solicitation as encompassing proxy voting advice, the 2019 Interpretation and Guidance regarding that definition, and the conditions on exemptions from the information and filing requirements in the 2020 Rule Amendments, among other matters.

the current rule discouraged plan fiduciaries from such considerations and activities, even when financially material to the plan. Stakeholders told the Department that the current regulation has already had a chilling effect on appropriate integration of material climate change and other ESG factors in investment decisions. Acting on material climate change and other ESG factors in these contexts, and in a manner consistent with the proposal, will redound, in the first instance, to employee benefit plans covered by ERISA and their participants and beneficiaries, and secondarily, to society more broadly but without any detriment to the participants and beneficiaries in ERISA plans. The Department anticipates that the resulting benefits will be appreciable.

Paragraph (b) of the proposal addresses ERISA section 404(a)(1)(B)'s duty of prudence and clarifies how that duty applies to a fiduciary's consideration of an investment or investment course of action. Paragraphs (b)(1)–(3) of the proposal carry forward much of the same regulatory language that has been in place since 1979. The preservation of settled law should avoid the imposition of new costs. Paragraph (b)(2)(ii)(C) adds that a prudent fiduciary's consideration of the projected return of a portfolio relative to the funding objectives of a plan may often require an evaluation of the economic effects of climate change on the particular investment or investment course of action. Similar to paragraph (b)(4) of the proposal, this new provision is intended to counteract the negative perception regarding the use of climate change and other ESG factors, including climate-related financial risk, in investment decisions caused by the 2020 Rules, and to clarify that a fiduciary's duty of prudence may require an evaluation of the effect of climate change and/or government policy changes to address climate change on investments' risks and returns.

Paragraph (b)(4), which complements paragraph (b)(2)(ii)(C), is a new provision that addresses uncertainty under the current regulation as to whether a fiduciary may consider climate change and other ESG factors in making plan-related decisions under ERISA. This paragraph clarifies and confirms that a fiduciary may consider *any* factor that is material to the risk-return analysis, including climate change and other ESG factors. The intent of this new paragraph is to establish through examples that material climate change and other ESG factors are no different than other ''traditional'' material risk-return factors and to remove prejudice to the contrary. Thus, under ERISA, if a fiduciary prudently concludes climate change and other ESG factors are material to an investment or investment course of action under consideration, the fiduciary can and should consider them and act accordingly, as would be the case with respect to any material risk-return factor. For the sake of clarity and to eliminate any doubt caused by the current regulation, paragraph (b)(4) of the proposal provides examples of factors, including climate change and other ESG factors, that a fiduciary may consider in the evaluation of an investment or investment course of action if material, including: (i) Climate change-related factors, such as a corporation's exposure to the real and potential economic effects of climate change, including exposure to the physical and transitional risks of climate change and the positive or negative effect of Government regulations and policies to mitigate climate change; (ii) governance factors, such as those involving board composition, executive compensation, transparency and accountability in corporate decision-making, as well as a corporation's avoidance of criminal liability and compliance with labor, employment, environmental, tax, and other applicable laws and regulations; and (iii) workforce practices, including the corporation's progress on workforce diversity, inclusion, and other drivers of employee hiring, promotion, and retention; its investment in training to develop its workforce's skill; equal employment opportunity; and labor relations.

Much of the anticipated economic benefits under this proposal derive from the examples in paragraph (b)(4) and the clarity they provide to plan fiduciaries. In the Department's view, and consistent with the comments of the concerned stakeholders mentioned above, the examples in paragraph (b)(4) of the proposal should go a long way to overcoming unwarranted concerns about investing in climate-change-focused or ESG-sensitive funds that are economically advantageous to plans.

Paragraph (c)(1) of the proposal addresses the application of the duty of loyalty under ERISA as applied to a fiduciary's consideration of an investment or investment course of action. The primary benefit of this provision to plan participants and beneficiaries is that it clarifies in no uncertain terms that a plan fiduciary may not subordinate the interests of participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives, and may not sacrifice investment return or take on additional investment risk to promote benefits or goals unrelated to the interests of participants and beneficiaries in their retirement income or financial benefits under the plan. By ensuring that plan fiduciaries may not sacrifice investment returns or take on additional investment risk to promote unrelated goals, this provision (paragraph (c)(1)) is expected to lead to increased investment returns over the long run, which would accrue to participants and sponsors of ERISA-covered plans. Over the years, the Department has stated this bedrock principle of loyalty many times in non-regulatory guidance and this proposal, like the current regulation, would incorporate the principle directly into title 29 of the Code of Federal Regulations. This incorporation would result in a higher degree of permanency and certainty for plan fiduciaries, relative to periodic restatements in non-regulatory guidance, and as such is considered a benefit.

Paragraph (c)(2) of the proposal directly supports paragraph (c)(1) of the proposal by giving fiduciaries concrete direction by restating the longstanding principle that a fiduciary's evaluation of an investment or investment course of action must be based on risk and return factors that the fiduciary prudently determines are material to investment value, based on an appropriate investment horizon consistent with the plan's investment objectives and taking into account the funding policy of the plan. When plan fiduciaries follow this directive, they can be certain that they have not subordinated the interests of participants and beneficiaries of the plan to goals unrelated to the provision of retirement income or financial benefits under the plan. Plan fiduciaries and plan participants will benefit from this simple and clear directive.

Paragraph (c)(2), importantly, cross references paragraph (b)(4) of the proposal to clarify that a fiduciary is not disloyal under ERISA if, after a prudent analytical process, the fiduciary determines climate change or other ESG factors are relevant to the risk-return analysis of a particular investment or investment course of action. Paragraphs (c)(2) and (b)(4) of the proposal, combined, thus would lay to rest any remaining ambiguity or uncertainty, resulting from the Department's prior guidance or the current regulation, regarding whether these factors are impermissible tools for a plan fiduciary to use when selecting an investment or investment course of action. Removing this uncertainty is considered a primary

benefit of this proposal, as is the requirement that the plan fiduciary only use these tools when prudently determining they are relevant to the risk-return analysis, or as tie-breakers when competing investment alternatives would equally serve the plans' interests. The Department has recognized that fiduciaries can appropriately consider material ESG factors multiple times over the years in various preambles and non-regulatory guidance documents.[81] Despite that repeated recognition, many stakeholders continue to have confusion or doubt on the matter. Paragraph (c)(2) of the proposal would clearly redress any lingering uncertainty by explicitly acknowledging that a fiduciary may consider any factors in the evaluation of an investment or investment course of action that are material to the risk-return analysis, including climate change and other ESG factors.

As described above, paragraph (c)(3) of the proposal would replace the tie-breaker provision in the current regulation with a formulation that is intended to be broader. In relevant part paragraph (c)(3) provides that, if, after the analysis in paragraph (c)(2) of the proposal, a fiduciary prudently concludes that competing investments or investment courses of action equally serve the financial interests of the plan over the appropriate time horizon, the fiduciary is not prohibited from selecting the investment, or investment course of action, based on collateral benefits other than investment returns. Paragraph (c)(3) also would not carry forward the documentation requirements contained in paragraphs (c)(2)(i) through (iii) of the current regulation, which stakeholders identified as potentially burdensome and effectively singles out climate change and other ESG investments for special scrutiny. Regardless of the frequency of ties, stakeholders point to these particularized documentation provisions as casting an unnecessarily negative shadow on investments or investment courses of action that are otherwise prudent. Paragraph (c)(3) of the proposal thus permits fiduciaries to take into account an investment's potential collateral effects, including potential increases in plan contributions, to break a tie. This, too, is considered a benefit of the proposal.

The clarifications provided by paragraphs (b) and (c) of this proposal relate to the appropriate use of climate change and other ESG factors by plan fiduciaries in selecting investments or investment courses of action. Reflective of the significant economic impacts of climate change to date across various sectors of the economy, the Department believes it is often appropriate to treat climate change as a material risk-return factor in the assessment of investments. As noted in a U.S. Commodity Futures Trading Commission (CFTC) report in 2020: ''Climate change is already impacting or is anticipated to impact nearly every facet of the economy, including infrastructure, agriculture, residential and commercial property, as well as human health and labor productivity . . . Risks include disorderly price adjustments in various asset classes, with possible spillovers into different parts of the financial system, as well as potential disruption of the proper functioning of financial markets.'' [82] The CFTC report states: ''[c]limate change could pose systemic risks to the U.S. financial system . . . [and that] the United States and financial regulators should . . . confirm the appropriateness of making investment decisions using climate-related factors in retirement and pension plans covered by [ERISA] as well as non-ERISA managed situations where there is fiduciary duty.'' [83] A Government Accountability Office Report to Congress in 2021 noted the exposure risk of retirement investment plans specifically to climate change,[84] and it is estimated that there is approximately $970 billion in value at risk due to climate change for the world's 500 largest companies.[85] According to a Federal Reserve Board report in 2020, ''[c]limate change, which increases the likelihood of dislocations and disruptions in the economy, is likely to increase financial shocks and financial system vulnerabilities that could further amplify these shocks.'' [86] The report further states: ''Opacity of exposures and heterogeneous beliefs of market participants about exposures to climate risks can lead to mispricing of assets and the risk of downward price shocks.'' [87] BlackRock describes the repercussions of these broad market events on investors, stating: ''[i]nvestors are increasingly . . . recognizing that climate risk is investment risk . . . [and that] these questions are driving a profound reassessment of risk and asset values.'' [88] It further states: ''And because capital markets pull future risk forward, we will see changes in capital allocation more quickly than we see changes to the climate itself. In the near future—and sooner than most anticipate—there will be a significant reallocation of capital.'' [89] Several pension funds have already divested from certain investments in part in response to climate-related risk. Both the New York City Employees' Retirement System and the New York City Teachers' Retirement System, for example, have committed to divesting away from fossil fuel-related investments.[90]

There is a breadth of literature that provides evidence for the materiality of climate change as a driver of risk-adjusted returns. These risks are often referred to in two broad categories: physical risk and transition risk. Physical risk captures the financial impacts associated with a rise in extreme weather events and a changing climate—both chronic and acute. The literature maintains that these risks can be especially material for long duration assets and grow in severity the more that climate mitigation and adaptation are neglected.[91] We are already seeing significant economic costs as a result of warming, and a certain amount of additional warming is guaranteed based on the greenhouse gas pollution already in the atmosphere.[92] This implies that

[81] *See, e.g.,* 85 FR 72857, 80 FR 65136.

[82] Climate-Related Market Risk Subcommittee, ''Managing Climate Risk in the U.S. Financial System'' Washington, DC: U.S. Commodity Futures Trading Commission, Market Risk Advisory Committee (2020) *https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf.*

[83] *Id.*

[84] U.S. Government Accountability Office, ''Retirement Savings: Federal Workers' Portfolios Should Be Evaluated For Possible Financial Risks Related to Climate Change'' (2021) *https://www.gao.gov/assets/gao-21-327.pdf.*

[85] ''Global Climate Change Analysis 2018,'' CDP (June 2019).

[86] Board of Governors of the Federal Reserve System, ''Financial Stability Report,'' (November 2020) *https://www.federalreserve.gov/publications/files/financial-stability-report-20201109.pdf.*

[87] *Id.*

[88] BlackRock, ''A Fundamental Reshaping of Finance,'' Larry Fink's 2020 Letter to CEOs. *https://www.blackrock.com/us/individual/larry-fink-ceo-letter.*

[89] *Id.*

[90] Ross Kerber and Kanishka Singh, ''NYC pension funds vote to divest $4 billion from fossil fuels,'' (January 25, 2021) *https://www.reuters.com/article/us-usa-new-york-fossil-fuels-pensions/nyc-pension-funds-vote-to-divest-4-billion-from-fossil-fuels-idUSKBN29U23Q.*

[91] Climate-Related Market Risk Subcommittee, ''Managing Climate Risk in the U.S. Financial System,'' U.S. Commodity Futures Trading Commission, Market Risk Advisory Committee (2020).

[92] Renee Cho, ''How Climate Change Impacts the Economy,'' (June 20, 2019) *https://news.climate.columbia.edu/2019/06/20/climate-change-economy-impacts/* Celso Brunetti, Benjamin Dennis, Dylan Gates, Diana Hancock, David Ignell, Elizabeth K. Kiser, Gurubala Kotta, Anna Kovner, Richard J. Rosen, and Nicholas K. Tabor, ''Climate Change and Financial Stability,'' FEDS Notes. Washington: Board of Governors of the Federal

Continued

the physical risks of climate change to our economy and to investments will persist. A 2019 report from BlackRock notes that the physical risk of extreme weather poses growing risks that are underpriced in certain sectors and asset classes.[93] Additionally, S&P Trucost found that almost 60 percent of the companies in the S&P500 index hold assets that were at high risk to the physical effects of climate change.[94]

Additionally, existing government policies and increasingly ambitious national and international greenhouse reduction goals will continue to create significant transition risk for investments. Transition risk reflects the risks that carbon-dependent businesses lose profitability and market share as government policies and new technology drive the transition to a carbon-neutral economy. Studies assess the value of global financial assets at risk from climate change to be in the range of $2.5 trillion to $4.2 trillion, including transition risks and other impacts from climate change.[95] A 2016 report found that the total value of assets in an average U.S. public pension portfolio could be 6 percent lower by 2050 than under a business-as-usual scenario due largely to transition risks associated with climate change.[96]

It is worth noting that climate change also represents a substantial investment opportunity, with research suggesting that investment in climate change mitigation will produce increasingly attractive yields.[97] Addressing transition risks can present opportunities to identify companies and investments that are strategically positioning themselves to succeed in the transition. Gradual, yet meaningful, shifts in investor preferences toward sustainability and the growing recognition that climate risk is investment risk may lead to a long-term reallocation of capital that will have a self-fulfilling impact on risk and return.

Given this substantial body of evidence, the Department welcomes comments on whether fiduciaries should consider climate change as presumptively material in their assessment of investment risks and returns, if adopted. If yes, comments also are welcome on the proper evidentiary bases to rebut such a presumption. The Department also welcomes comments on the extent to which climate-related financial risk is not already incorporated into market pricing.

Other ESG issues can often be material in the assessment of investment risks and returns. This is not to say that ESG factors are material in every instance, or that funds that use ESG screens can be expected to outperform other funds on a systematic basis. While there is a growing body of literature on a wide range of ESG investing generally outside of ERISA, its findings vary. Outside the ERISA context, investors may choose to invest in funds that promote collateral objectives, and even choose to sacrifice return or increase risk to achieve those objectives. Such conduct, however, would be impermissible for ERISA plan fiduciaries, who cannot sacrifice return or increase risk for the purpose of promoting collateral goals unrelated to the economic interests of plan participants in their benefits. The Department requests comments specifically addressing any evidence on the financial materiality of ESG factors in various investment contexts.

The body of research evaluating ESG investing as a whole shows ESG investing has financial benefits, although the literature overall has varied findings. In a large meta-study of peer-reviewed articles published between 2015 and 2020, Whelan et al. (2021) find that most studies show that ESG investing has positive effects on financial performance.[98] Some specific studies have shown that ESG investing outperforms conventional investing. Verheyden, Eccles, and Feiner's research analyzes stock portfolios that used negative screening[99] to exclude operating companies with poor ESG records from the portfolios.[100] The study finds that negative screening tends to increase a stock portfolio's annual performance by 0.16 percent. Similarly, Kempf and Osthoff's research, which examines stocks in the S&P 500 and the Domini 400 Social Index (renamed as the MSCI KLD 400 Social Index in 2010), finds that it is financially beneficial for investors to positively screen their portfolios.[101] Additionally, Ito, Managi, and Matsuda's research finds that socially responsible funds outperformed conventional funds in the European Union and United States.[102] Additional studies found a positive relationship between ESG investing and firms' market valuation.[103]

In contrast, however, other studies have found that ESG investing has resulted in lower returns than conventional investing. For example, Winegarden shows that over ten years, a portfolio of ESG funds has a return that is 43.9 percent lower than if it had

Reserve System, March 19, 2021, *https://doi.org/10.17016/2380-7172.2893.*

[93] BlackRock Investment Institute, ''Getting Physical: Assessing Climate Risks,'' (2019) *https://www.blackrock.com/us/individual/insights/blackrock-investment-institute/physical-climate-risks.*

[94] S&P Trucost Limited, Understanding Climate Risk at the Asset Level: The Interplay of Transition and Physical Risks (2019) *https://www.spglobal.com/_division_assets/images/special-editorial/understanding-climate-risk-at-the-asset-level/sp-trucost-interplay-of-transition-and-physical-risk-report-05a.pdf.*

[95] EY, ''Climate Change: The Investment Perspective,'' (2016) *https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/banking-and-capital-markets/ey-climate-change-and-investment.pdf.*

[96] Mercer and Center for International Environmental Law, ''Trillion-Dollar Transformation: A Guide to Climate Change Investment Risk Management for US Public Defined Benefit Trustees'' (October 2016).

[97] Channell, Curmi, Nguyen, Prior, Syme, Jansen, Rahbari, Morse, Kleinman, Kruger, ''Energy Darwinism II'', Citi, August 2015, © 2015. Citigroup5''World Energy Investment Outlook'', International Energy Agency, June 2014, © 2014 OECD/IEA.

[98] Tensie Whelan, Ulrich Atz, Tracy Van Holt, and Casey Clark, ''ESG and Financial Performance: Uncovering the Relationship by Aggregating Evidence from 1,000 Plus Studies Published Between 2015–2020,'' NYU Stern Center for Sustainable Business and Rockefeller Asset Management (2021). *https://www.stern.nyu.edu/sites/default/files/assets/documents/NYU-RAM_ESG-Paper_2021%20Rev_0.pdf.*

[99] Negative screening refers to the exclusion of certain sectors, companies, or practices from a fund or portfolio based on ESG criteria.

[100] Tim Verheyden, Robert G. Eccles, and Andreas Feiner, *ESG for all? The Impact of ESG Screening on Return, Risk, and Diversification.* 28 *Journal of Applied Corporate Finance* 2 (2016).

[101] Alexander Kempf and Peer Osthoff, *The Effect of Socially Responsible Investing on Portfolio Performance,* 13 *European Financial Management* 5 (2007).

[102] Yutaka Ito, Shunsuke Managi, and Akimi Matsuda, *Performances of Socially Responsible Investment and Environmentally Friendly Funds,* 64 *Journal of the Operational Research Society* 11 (2013).

[103] De Villiers and Ana Marques, *Corporate Social Responsibility, Country-Level Predispositions, and the Consequences of Choosing a Level of Disclosure, Accounting and Business Research, Taylor & Francis Journals,* Vol. 46(2) (2016). Dhaliwal, Dan, Suresh Radhakrishnan, Albert Tsang, and Yong George Yang, *Nonfinancial Disclosure and Analyst Forecast Accuracy: International Evidence on Corporate Social Responsibility Disclosure, The Accounting Review* Vol. 87(3) (2012). Godfrey, Paul C., Craig B. Merrill, and Jared M. Hansen, *The Relationship between Corporate Social Responsibility and Shareholder Value: An Empirical Test of the Risk Management Hypothesis, Strategic Management Journal,* Vol. 30(4) (2009). Guidry, Ronald. and Patten, Dennis, *Market Reactions to the First-Time Issuance of Corporate Sustainability Reports: Evidence that Quality Matters, Sustainability Accounting, Management and Policy Journal,* Vol. 1(1) (2010). Marsat,Sylvain and Benjamin Williams, *CSR and Market Valuation: International Evidence, Bankers Markets & Investors: an Academic & Professional Review,* Groupe Banque, Vol. 123 (2013). Marvelskemper, Laura and Daniel Streit, *Enhancing Market Valuation of ESG Performance: Is Integrated Reporting Keeping its Promise? Business Strategy and the Environment,* Wiley Blackwell, Vol. 26(4) (2017). Sharfman, Mark and Chitru Fernando, *Environmental Risk Management and the Cost of Capital. Strategic Management Journal,* Vol. 29(6) (2008).

been invested in an S&P 500 index fund.[104] Trinks and Scholten's research, which examines socially responsible investment funds, finds that a screened market portfolio significantly underperforms an unscreened market portfolio.[105] Ferruz, Muñoz, and Vicente's research, which examines U.S. mutual funds, finds that a portfolio of mutual funds that implements negative screening underperforms a portfolio of conventionally matched pairs.[106] Likewise, Ciciretti, Dalò, and Dam's research, which analyzes a global sample of operating companies, finds that companies that score poorly in terms of ESG indicators have higher expected returns.[107] Marsat and Williams' research has very similar findings.[108] Operating companies with better ESG scores according to MSCI had lower market valuation. The reviewed studies in this paragraph may not be completely representative of ERISA investment outcomes. The studies generally do not limit their focus to investments by ERISA plan fiduciaries. ERISA fiduciaries must focus on financial materiality with undivided loyalty. Thus, to the extent a study analyzes investments that fail to meet these fiduciary standards, it will likely observe investment outcomes that have a weaker performance.

Furthermore, there are many studies with mixed or inconclusive results. Goldreyer and Diltz's research, which examines 49 socially responsible mutual funds, finds that employing positive social screens does not affect the investment performance of mutual funds.[109] Similarly, Renneboog, Ter Horst, and Zhang's research, which analyzes global socially responsible mutual funds, finds that the risk-adjusted returns of socially responsible mutual funds are not statistically different from conventional funds.[110] Bello's research, which examines 126 mutual funds, finds that the long-run investment performance is not statistically different between conventional and socially responsible funds.[111] Likewise, Ferruz, Muñoz, and Vicente's research finds that a portfolio of mutual funds that implement positive screening[112] performs equally well as a portfolio of conventionally matched pairs.[113] Finally, Humphrey and Tan's research, which examines socially responsible investment funds, finds no evidence of negative screening affecting the risks or returns of portfolios.[114]

Many compelling studies show the material financial benefits of diverse and inclusive workplaces. There are three main vectors across which a company's diversity and inclusion practices can have a financially material impact on their business: Employee recruitment and retention, performance and productivity, and litigation. Examples of this material impact are outlined below:

Employee Recruitment and Retention

- In a survey of 2,745 respondents, the job site Glassdoor found that 76% of employees and job seekers overall look at workforce diversity when evaluating an offer.[115]
- It costs firms an estimated $64 billion per year from losing and replacing over 2 million American professionals and managers who leave their jobs each year due to unfairness and discrimination.[116]
- To replace a departing employee costs somewhere between $5,000 and $10,000 for an hourly worker, and between $75,000 and $211,000 for an executive making $100,000 per year.[117]

Performance and Productivity

- Empirical evidence finds that an increase of 10 percentage points in the representation of female directors on a company board is associated with 6% more patents and 7% more citations for a given amount of R&D spending.[118]
- A study of 171 German, Swiss, and Austrian companies shows a clear relationship between the diversity of companies' management teams and the revenues they get from innovative products and services.[119]
- Research finds that socially different group members do more than simply introduce new viewpoints or approaches. In the study, diverse groups outperformed more homogeneous groups not because of an influx of new ideas, but because diversity triggered more careful information processing that is absent in homogeneous groups.[120]
- When employees think their organization is committed to, and supportive of diversity and they feel included, employees report better business performance in terms of ability to innovate, (83% uplift) responsiveness to changing customer needs (31% uplift) and team collaboration (42% uplift).[121]
- Publicly traded companies with 2D diversity (exhibiting both inherent and acquired diversity) were 70% more likely to capture a new market, 75% more likely to see ideas actually become productized, and 158% more likely to understand their target end-users and innovate effectively if one or more members on the team represent the user's demographic.[122]
- Companies in the top-quartile for gender diversity on executive teams were 21% more likely to outperform on profitability. Companies in the top-quartile for ethnic/cultural diversity on executive teams were 33% more likely to have industry-leading profitability.[123]
- A study on 366 public companies found that those in the top quartile for ethnic and racial diversity in

[104] Wayne Winegarden, Environmental, Social, and Governance (ESG) Investing: An Evaluation of the Evidence. Pacific Research Institute (2019).

[105] Pieter Jan Trinks and Bert Scholtens, The Opportunity Cost of Negative Screening in Socially Responsible Investing, 140 Journal of Business Ethics 2 (2017).

[106] Luis Ferruz, Fernando Muñoz, and Ruth Vicente, Effect of Positive Screens on Financial Performance: Evidence from Ethical Mutual Fund Industry (2012).

[107] Rocco Ciciretti, Ambrogio Dalò, and Lammertjan Dam, The Contributions of Betas versus Characteristics to the ESG Premium (2019).

[108] Sylvain Marsat and Benjamin Williams, CSR and Market Valuation: International Evidence. Bankers, Markets & Investors: An Academic & Professional Review, Groupe Banque (2013).

[109] Elizabeth Goldreyer and David Diltz, The Performance of Socially Responsible Mutual Funds: Incorporating Sociopolitical Information in Portfolio Selection, 25 Managerial Finance 1 (1999).

[110] Luc Renneboog, Jenke Ter Horst, and Chendi Zhang, The Price of Ethics and Stakeholder Governance: The Performance of Socially Responsible Mutual Funds, 14 Journal of Corporate Finance 3 (2008).

[111] Zakri Bello, Socially responsible investing and portfolio diversification, 28 Journal of Financial Research 1 (2005).

[112] Positive screening refers to including certain sectors and companies that meets the criteria of non-financial objectives.

[113] Ferruz, Muñoz, and Vicente, Effect of Positive Screens on Financial Performance (2012).

[114] Jacquelyn Humphrey and David Tan, Does It Really Hurt to be Responsible?, 122 Journal of Business Ethics 3 (2014).

[115] ''What Job Seekers Really Think About Your Diversity and Inclusion Stats,'' *Glassdoor* (July 12, 2021) *https://www.glassdoor.com/employers/blog/diversity/*. ''Glassdoor's Diversity and Inclusion Workplace Survey,'' (updated September 30, 2020), *https://www.glassdoor.com/blog/glassdoors-diversity-and-inclusion-workplace-survey/*.

[116] Level Playing Field Institute, ''The Cost of Employee Turnover Due Solely to Unfairness in the Workplace'' (2007).

[117] Gail Robinson and Kathleen Dechant, ''Building a business case for diversity,'' Academy of Management Executive 11 (3) (1997): 21–31.

[118] ''Female board representation, corporate innovation and firm performance.'' Jie Chen, Woon Sau Leung and Kevin P. Evans (2018).

[119] Rocio Lorenzo, Nicole Voigt, Karin Schetelig, Annika Zawadzki, Isabelle Welpe, and Prisca Brosi, ''The Mix that Matters: Innovation through Diversity,'' BCG (2017).

[120] ''Better Decisions through Diversity,'' *Kellogg School of Management* (2010).

[121] ''Waiter, is that inclusion in my soup? A new recipe to improve business performance,'' *Deloitte* (2013).

[122] Sylvia Ann Hewlett, Melinda Marshall, Laura Sherbin, and Tara Gonsalves, ''Innovation, Diversity, and Market Growth,'' *Center for Talent Innovation* (2013).

[123] Vivian Hunt, Sara Prince, Sundiatu Dixon-Fyle, Lareina Ye, ''Delivering through Diversity,'' McKinsey & Company (January 2018).

management were 35% more likely to have financial returns above the median for their industry in their country, and those in the top quartile for gender diversity were 15% more likely to have returns above the median for their industry in their country.[124]

Litigation

- The U.S. Equal Employment Opportunity Commission (EEOC) received 67,448 charges of workplace discrimination in Fiscal Year (FY) 2020. The agency secured $439.2 million for victims of discrimination in the private sector and state and local government workplaces through voluntary resolutions and litigation.[125]

Other Cross-Cutting Studies

- A meta-analysis on 7,939 business units in 36 companies further confirms that higher employee satisfaction levels are associated with higher profitability, higher customer satisfaction, and lower employee turnover.[126]
- One study found that companies reporting high levels of racial diversity brought in nearly 15 times more sales revenue on average than those with low levels of racial diversity. Companies with high rates reported an average of 35,000 customers compared to 22,700 average customers among those companies with low rates of racial diversity.[127]
- Diversity management is strongly linked to both work group performance and job satisfaction, and people of color see benefits from diversity management above and beyond those experienced by white employees.[128]
- In a 6-month research study, found evidence that a growing number of companies known for their hard-nosed approach to business—such as Gap Inc., PayPal, and Cigna—have found new sources of growth and profit by driving equitable outcomes for employees, customers, and communities of color.[129]

Paragraph (d) of the proposal contains the provisions addressing the application of the prudence and exclusive benefit purpose duties to the exercise of shareholder rights, including proxy voting, the use of written proxy voting guidelines, and the selection and monitoring of proxy advisory firms. Proposed paragraph (d) would benefit plans by providing improved guidance regarding these activities. As discussed above, non-regulatory guidance that the Department has previously issued over the years may have led to a misunderstanding among some that fiduciaries are required to vote on all proxies presented to them or, conversely, that they may not vote proxies unless they first perform a cost-benefit analysis and quantify net benefits. Although the current regulation sought to address the first misunderstanding (*i.e.,* that fiduciaries are required to vote on all proxies) with express language, the Department is concerned that the language used may effectively reinstate the second misunderstanding by suggesting that fiduciaries need special justification to vote proxies at all.

We believe that the principles-based approach retained in paragraph (d) of the proposal would address these misunderstandings and clarify that neither extreme is always required. Instead, plan fiduciaries, after an evaluation of material facts that form the basis for any particular proxy vote or other exercise of shareholder rights, must make a reasoned judgment both in deciding whether to exercise shareholder rights and when actually exercising such rights. In making this judgment, plan fiduciaries must act solely in accordance with the economic interest of the plan, must consider any costs involved, and must never subordinate the interests of participants in their retirement benefits to unrelated goals. This proposal's clarifications may lead to more proxy voting in comparison to the current regulation, which is beneficial because it ensures that shareholders' interests as the company's owners are protected and, by extension, that the interests of participants and beneficiaries in plans that are shareholders are also protected. While the Department is confident that the proposal would promote, rather than deter, responsible proxy voting, particularly as compared to the current regulation, it is less certain that it will result in any increase in proxy voting as compared to the pre-regulatory guidance, which took a similar approach. The Department invites comments on the question.

Preserving flexibility, paragraph (d) of the proposal carries forward core elements of the provision from the current regulation that allows a plan to have written proxy voting policies that govern decisions on when to vote or not vote categories or types of proposals, subject to the aforementioned principles. With the ability for plans to adopt policies to govern the decision whether to vote on a matter or class of matters, plan fiduciaries will be better positioned to conserve plan assets by establishing specific parameters designed to serve the plan's interests.

Cost Savings Relative to the Current Regulation

Paragraph (d) of the proposal would eliminate the recordkeeping requirement in paragraph (e)(2)(ii)(E) of the current regulation which provides that, when deciding whether to exercise shareholder rights and when exercising shareholder rights, plan fiduciaries must maintain records on proxy voting activities and other exercises of shareholder rights. The change is expected to produce a cost savings of $6.05 million per year relative to the current regulation. The proposal also would revise the provision of the current regulation that addresses proxy voting policies, paragraph (e)(3)(i) of the current regulation, by removing the two ''safe harbor'' examples for proxy voting policies that would be permissible under the provisions of the current regulation. This revision reduces the burden related to proxy voting policies and procedures and voting by $13.3 million in the first year relative to the current regulation.[130] The proposal also would eliminate the current regulation's requirement for a fiduciary to specially document consideration of benefits in addition to investment return under the tie-breaker rule. This proposed elimination would save an estimated $122,000 annually.[131] Finally, the

[124] Vivian Hunt, Dennis Layton, and Sara Prince, ''Why diversity matters,'' McKinsey & Company (2015).

[125] ''EEOC Releases Fiscal Year 2020 Enforcement and Litigation Data,'' (2021).

[126] James K. Harter, Frank L. Schmidt, and Theodore L. Hayes, ''Business-Unit-Level Relationship Between Employee Satisfaction, Employee Engagement, and Business Outcomes: A Meta-Analysis.'' *Journal of Applied Psychology* 87(2) (2002) 268–279.

[127] Cedric Herring, ''Does Diversity Pay? Race, Gender, and the Business Case for Diversity,'' *American Sociological Review* (2009).

[128] David Pitts, ''Diversity Management, Job Satisfaction, and Performance: Evidence from U.S. Federal Agencies,'' *Public Administration Review* (2009).

[129] Angela Glover Blackwell, Mark Kramer, Lalitha Vaidyanathan, Lakshmi Iyer, and Josh Kirschenbaum, ''The Competitive Advantage of Racial Equity,'' FSG and PolicyLink, (2018).

[130] In the 2020 final rule published on December 16, it was estimated that a legal professional would expend, on average, two hours to update policies and procedures for each of the estimated 63,911 plans affected by the rule, resulting in an annual burden estimate of 127,822 hours in the first year, with an equivalent cost of $17,691,809. In the proposal, the Department estimates that it will take a legal professional just thirty minutes to update policies and procedures for each of the estimated 63,911 plans affected by the rule, resulting in a cost of $4,422,961. This results in a cost savings of $13,268,857. 85 FR 81658.

[131] In the 2020 final rule published on November 13, it was estimated that that plan fiduciaries and clerical staff would each expend, on average, two hours of labor to maintain the needed documentation, resulting in an annual burden estimate of 1,290 hours annually, with an equivalent cost of $122,115 for DB plans and DC plans with ESG investments. This requirement has been eliminated in the proposal. 85 FR 72846.

proposal also would eliminate the requirement and the related disruption caused by the requirement that under no circumstances may any investment fund, product, or model portfolio be added as, or as a component of, a QDIA if its investment objectives or goals or its principal investment strategies include, consider, or indicate the use of one or more non-pecuniary factors.

1.4. Costs

By reversing aspects of the current regulation, this proposal would facilitate certain changes by plan fiduciaries in their investment behavior, including changes in asset management strategies such as proxy voting, that these plan fiduciaries otherwise likely would not take under the current regulation. The precise impact of this proposal on such behavior is uncertain. Therefore, a precise quantification of all costs similarly is not possible. Despite this, some impact is predictable and these costs are quantified below. Regardless of these limitations, to the extent that the proposal changes behavior, its benefits are expected to outweigh the costs. Overall, the costs of the proposal are expected to be relatively small, in part because the Department assumes most plan fiduciaries are complying with the pre-2020 interpretive bulletins (specifically Interpretive Bulletin 2016–1 and 2015–1), which the proposal tracks to a very large extent. Known incremental costs of the proposal would be minimal on a per-plan basis.

(a) Cost of Reviewing NPRM and Reviewing Plan Practices

Plans, plan fiduciaries, and their service providers would incur costs to read the proposal and evaluate how it would impact current documents and practices. With respect to the investment duties of a plan fiduciary when selecting an investment or investment course of action, as set forth in paragraphs (a)–(c) of the proposal, the Department estimates that 78,307 plans have exposure to investments selected using ESG factors, consisting of 25,342 defined benefit pension plans and 52,965 participant-directed individual account plans.[132] Fiduciaries of each of these types of plans will need to spend time reviewing the proposal, evaluating how it might affect their investment practices, and what would be needed to implement any necessary changes. The Department estimates that this review process will require a lawyer to spend approximately four hours to complete, resulting in a cost burden of approximately $43.4 million.[133] The Department believes that these processes will likely be performed by a service provider for most plans that likely oversee multiple plans. Therefore, the Department's estimate likely is an upper bound, because it is based on the number of affected plans, without regard to the likely shared expense incurred by service providers that service multiple plans. The Department does not have data that would allow it to estimate the number of service providers acting in such a capacity for these plans.

Similarly, plans will need to spend time reviewing paragraph (d) of the proposal, evaluating how it affects their proxy voting practices, and implementing any necessary changes. The Department estimates that this review process will require a lawyer on average to spend approximately four hours to complete, resulting in a cost burden of approximately $35.4 million.[134] The Department believes that these processes will likely be performed for most plans by a service provider that likely oversees multiple plans. Therefore, the Department's estimate likely represents an upper bound, because it is based on the number of affected plans. The Department does not have sufficient data that would allow it to estimate the number of service providers acting in such a capacity for these plans.

(b) Possible Changeover Costs

If existing plan investments are replaced due to the proposal, the replacement may involve some short-term costs. Some plans may change investments or investment courses of action to begin acquiring or to acquire more ESG integrated assets in light of the clarification in paragraph (c)(2) of the proposal. In the Department's view, this would be net beneficial because compliant acquisitions of this type would be done with the aim of improving (by reducing) the plan's ESG-related financial risk. Thus, even if there are short-term costs associated with changed investment practices, the benefits to the plan of reduced ESG-related financial risk are expected to exceed these costs over time. The Department lacks data to estimate the likely size of this impact at this time and, therefore, solicits comments on the topic.

(c) Costs of Paragraphs (c)(1) and (2)

Paragraphs (c)(1) and (2) of the proposal address the application of the duty of loyalty under ERISA as applied to a fiduciary's consideration of an investment or investment course of action. Paragraph (c)(1) provides that a fiduciary may not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives, and may not sacrifice investment return or take on additional investment risk to promote benefits or goals unrelated to interests of the participants and beneficiaries in their retirement income or financial benefits under the plan. Paragraph (c)(2) provides that a fiduciary's evaluation of an investment or investment course of action must be based on risk and return factors that the fiduciary prudently determines are material to investment value, using appropriate investment horizons consistent with the plan's investment objectives and taking into account the funding policy of the plan established pursuant to section 402(b)(1) of ERISA. These proposed provisions would require a fiduciary to perform an evaluation, including a rigorous analysis of risk-return factors, and they provide direction on what to include in that evaluation. Regardless of these proposed provisions, it is the Department's view that many plan fiduciaries already undertake such evaluations as part of their investment selection decision-making process, including documentation of their decisions, process, and reasoning. The Department does not intend to increase fiduciaries' burden of care attendant to such consideration; therefore, no additional costs are estimated for these requirements.

[132] DOL calculations are based on statistics from Private Pension Plan Bulletin: Abstract of 2018 Form 5500 Annual Reports, Employee Benefits Security Administration (2020), *https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2018.pdf.* (52,965 + 25,342) = 78,307

[133] The Department estimated that there are 78,307 plans that will need to ensure compliance with the proposed rule's ESG components. The burden is estimated as follows: 78,307 plans * 4 hours = 313,228 hours. A labor rate of $138.41 is used for a lawyer. The cost burden is estimated as follows: 78,307 plans * 4 hours * $138.41S = $43,353,887. Labor rates are based on DOL estimates from *Labor Cost Inputs Used in the Employee Benefits Security Administration, Office of Policy and Research's Regulatory Impact Analyses and Paperwork Reduction Act Burden Calculation,* Employee Benefits Security Administration (June 2019), *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*

[134] The burden is estimated as follows: 63,911 plans * 4 hours = 255,644 hours. A labor rate of $138.41 is used for a lawyer. The cost burden is estimated as follows: 63,911 plans * 4 hours * $138.41 = $35,383,617.

(d) Cost of Tie-Breaker

The proposal, at paragraph (c)(3), carries forward a more flexible version of the tie-breaker concept than is in the current regulation; the carried-forward version is comparable to and commensurate with the formulation previously expressed in Interpretive Bulletin 2015–1 (and first explained in Interpretive Bulletin 94–1). The proposal's tie-breaker provision is relevant and operable only once a prudent fiduciary determines that competing alternative investments equally serve the financial interests of the plan. In these circumstances, the plan fiduciary may focus on the collateral benefits of an investment or investment course of action to decide the outcome.

The tie-breaker test in paragraph (c)(3) of the proposal would impose minimal costs on plans. The provision implies analysis and documentation requirements, but the proposal attributes no costs to these requirements primarily because plans already carry out these activities as part of their process for selecting investments. Put differently, the Department's regulatory impact analysis assumes that the analytics and documentation requirements of the tie-breaker provision, and associated costs, are subsumed in the analytics and documentation requirements of the risk-return analysis required by paragraphs (c)(1) and (2) of the proposal. The analysis of risk-return factors under paragraphs (c)(1) and (2) of the proposal in the first instance would necessarily reveal any collateral benefits of an investment or investment course of action, which may then be used later on to break a tie pursuant to paragraph (c)(3) of the proposal. In this sense, paragraph (c)(3) of the proposal thus imposes no distinct process, and therefore no material additional costs, apart from a plan's ordinary investment selection process.

Some potential costs, however, are expected with respect to the requirement in paragraph (c)(3) to inform plan participants of the collateral benefits that influenced the selection of the investment or investment course of action, when such investment or investment course of action constitutes a designated investment alternative under a participant-directed individual account plan. These costs are expected to be minimal because disclosure regulations adopted in 2012 already entitle participants in participant-directed individual account plans to receive sufficient information regarding designated investment alternatives to make informed decisions with regard to the management of their individual accounts. The information required by the 2012 rule includes information regarding the alternative's objectives or goals and the alternative's principal strategies (including a general description of the types of assets held by the investment) and principal risks. *See* 29 CFR 2550.404a–5. This proposal, therefore, assumes these existing disclosures are, or perhaps with minor modifications or clarifications could be, sufficient to satisfy the disclosure element of the tie-breaker provision in paragraph (c)(3) of the proposal. The Department estimates that it will take a legal professional twenty minutes on average per year to update existing disclosures to meet this requirement. If each of the approximately 53,000 participated-directed individual account plans estimated to have at least one ESG-themed designated investment alternative used the tie-breaker provision in paragraph (c)(3) of the proposal, the result would be a cost of approximately $2.4 million.[135] This estimate likely is overstated because each such plan is unlikely to use the tie-breaker provision and because the ongoing costs of the disclosure requirement in paragraph (c)(3) of the proposal would be approximately zero absent changes to an affected designated investment alternative. At the same time, this estimate likely is understated to the extent that more plans use ESG criteria in the future and to the extent such plans have multiple designated investment options subject to paragraph (c)(3) of the proposed rule. Comments are solicited on this topic.

(e) Cost To Update Plan's Written Proxy Voting Policies

Paragraph (d)(3)(i) of the proposal provides that, for purposes of deciding whether to vote a proxy, plan fiduciaries may adopt proxy voting policies as long as the policies are prudently designed to serve the plan's interests in providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. Paragraph (d)(3)(ii), in turn provides that plan fiduciaries shall periodically review these proxy voting policies.

The Department estimates that these provisions of the proposal could impose additional costs because such policies will need to be reviewed on an initial basis. However, the Department believes that the proposal largely comports with industry practice for ERISA fiduciaries. Therefore, the Department estimates that on average, it will take a legal professional just thirty minutes to update policies and procedures for each of the estimated 63,911 plans affected by the rule. This results in a cost of $4.4 million in the first year relative to the current rule.[136] The requirement in paragraph (d)(3)(ii) to periodically review proxy voting policies already is required for fiduciaries to meet their obligations under ERISA; therefore, the Department does not expect that plans will incur additional cost associated with the periodic review.

1.5. Transfers

The proposal could result in some transfers. If some portion of proposed rule-induced increases in returns would be associated with transactions in which other parties experience decreased returns of equal magnitude, then this portion of the proposal's impact would, from a societal perspective, be appropriately categorized as a transfer. For example, the outcome of a proxy vote capping executive compensation at a certain level could limit the income of executives while redounding to the benefit of the company's shareholders (and thus participants and beneficiaries of a plan invested in that company).

Transfers could also arise as a result of substantially greater confidence on the part of fiduciaries that they may consider *any* material factor in their risk-return analysis going forward, including climate change and other ESG factors. As discussed previously, the Department has heard from stakeholders that the current regulation has already had a chilling effect on appropriate integration of material climate change and other ESG factors into investment decisions. Although the current regulation acknowledges that climate change and other ESG factors can in some instances be taken into account by a fiduciary, it also includes multiple statements that have been interpreted as putting a thumb on the scale against their consideration. This conflicting guidance may have disincentivized fiduciaries from considering material climate change and other ESG factors in order to minimize potential legal liability. Such a disincentive could have a distortionary effect on the investment of ERISA plan assets well into the future by changing fiduciaries' investment decisions, if it were to prevent them from considering climate change and

[135] The burden is estimated as follows: 52,965 individual account plans * 20 minutes = 17,655 hours. A labor rate of $138.41 is used for a legal professional: (17,655 hours * $138.41 = $2,443,629).

[136] The burden is estimated as follows: 63,911 plans * 0.5 hour = 31,955.5. A labor rate of $138.41 is used for a legal professional: (33,955.5 * $138.41 = $4,422,961).

other ESG factors that they would otherwise find economically advantageous. We expect the clear guidance in this proposed rule to eliminate this potential market distortion. Although the Department is unable to quantify the transfers that might result, we expect that they are likely to exceed $100 million annually, given the very large size of the roughly $12.2 trillion invested in ERISA plan assets that could be potentially affected, and also given the rapidly growing use of ESG factors in mainstream financial analysis.[137]

Similarly, transfers also could arise as a result of the proposed changes to the proxy voting provisions in paragraph (e) of the current regulation (relocated to paragraph (d) of the proposal). For instance, if the provisions in paragraph (e) of the current regulation were permitted to go into effect fully, it is possible that fewer proxies in the future would be voted by plans as a result of the no-vote statement in paragraph (e)(2)(ii) of the current regulation and the two safe harbors in paragraphs (e)(3)(i)(A) and (B) of the current regulation. In these circumstances, the proposed rescission of these provisions, however, would effectively transfer some voting power from other shareholders back to ERISA plans (mainly by reversing the dilutive effect of these provisions). Similarly, as the number of ERISA plans voting on any particular proxy vote tends to increase, voting power will tend to shift to represent a broader set of concerns. The Department is unable to quantify the extent of this transfer because the safe harbors in the current regulation have been effectively stayed pursuant to the Department's establishment of the non-enforcement policy in March of 2021. For the same reason, the Department is unable to quantify the cost of paragraph (d) of the proposal, but estimates the cost would be relatively minimal and limited to the cost of reviewing and understanding the new rule. In addition, for plans that, but for the non-enforcement policy, might have adopted and implemented the safe harbors, some costs might be incurred in connection with revising the proxy voting policies to remove the safe harbors, as well as some additional costs related to increased voting. These costs, however, would be offset by the benefits of voting. The Department seeks comments on these impacts.

1.6. Uncertainty

The Department's economic assessment of this proposal's effects is subject to uncertainty. Special areas of uncertainty are discussed below:

Regarding paragraphs (c)(2) and (b)(4) of the proposal, it is unclear how many plan fiduciaries would use climate change or other ESG factors when selecting investments and the total asset value of investments that would be selected in this manner. This is particularly true for defined benefit (DB) plans. While there is some survey evidence on how many DB plans factor in ESG considerations, the surveys were based on small samples and yielded varying results. It is also difficult to estimate the degree to which the use of climate change and other ESG factors by ERISA fiduciaries would expand in the future absent this proposed rulemaking. The clarification provided by this proposal may encourage more plan fiduciaries to use climate change and other ESG factors. Trends in other countries suggest that pressure for such expansion may continue to increase.[138] Based on current trends, the Department believes that the use of climate change and other ESG factors by ERISA plan fiduciaries would likely increase in the future, although it is uncertain when or by how much.

Regarding paragraph (d) of the proposal, it is uncertain whether the proposal would create a demand for new or different services associated with proxy voting and if so, what alternate services or relationships with service providers might result and how overall plan expenses could be impacted. Similarly, uncertain is whether and the extent to which paragraph (d) of the proposal would cause plans to modify their securities holdings, for example, in favor of greater mutual fund holdings (to avoid management responsibilities with respect to holdings of individual companies) or in how they manage their mutual fund shares (in terms of exercising shareholder rights, including proxy voting, appurtenant to the mutual fund shares). Accordingly, the Department requests comments on these issues.

The Department has heard from stakeholders that the current regulation, and investor confusion about it, has already had a chilling effect on appropriate integration of climate change and other ESG factors in investment decisions. To increase clarity the Department solicits comments on the impacts the current regulation has on appropriate integration of climate change and other ESG factors in investment decisions.

1.7. Alternatives

In order to ensure a comprehensive review, the Department examined as an alternative leaving the current regulation in place without change. However, as explained in more detail earlier in this document, following informal outreach activities with a wide variety of stakeholders, including asset managers, labor organizations and other plan sponsors, consumer groups, service providers and investment advisers, the Department believes that uncertainty with respect to the current regulation may deter fiduciaries from taking steps that other marketplace investors might take in enhancing investment value and performance, or improving investment portfolio resilience against the financial risks and impacts associated with climate change. This could hamper fiduciaries as they attempt to discharge their responsibilities prudently and solely in the interests of plan participants and beneficiaries. The Department therefore chose not to take this alternative.

The Department also considered rescinding the *Financial Factors in Selecting Plan Investments* and *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights* final rules. This alternative would remove the entire current regulation from the Code of Federal Regulations, including provisions that reflect the original 1979 Investment Duties regulation. The original Investment Duties regulation has been relied on by fiduciaries for many years in making decisions about plan investments and investment courses of actions, and complete removal of the provisions could lead to disruptions in plan investment activity. Accordingly, the Department rejected this alternative. As discussed in the Cost Savings section above, quantified costs for the current rule related to proxy voting totaled $19.35 million in the first year and $13.3 million in subsequent years for the current rule. Rescission of the current rule would save this quantified amount.

[137] EBSA projected ERISA covered pension, welfare, and total assets based on the 2018 Form 5500 filings with the U.S. Department of Labor (DOL), reported SIMPLE assets from the Investment Company Institute (ICI) Report: The U.S. Retirement Market, First Quarter 2021, and the Federal Reserve Board's Financial Accounts of the United States Z1 June 10, 2021.

[138] *See generally* Government Accountability Office Report No. 18–398, *Retirement Plan Investing: Clearer Information on Consideration of Environmental, Social, and Governance Factors Would Be Helpful* (May 2018) *https://www.gao.gov/products/gao-18-398*; Principles for Responsible Investment, *Fiduciary Duty in the 21st Century,* United Nations Environment Programme Finance Initiative (2019), *https://www.unepfi.org/wordpress/wp-content/uploads/2019/10/Fiduciary-duty-21st-century-final-report.pdf.*

As another alternative, the Department considered revising the current regulation by, in effect, reverting it to the original 1979 Investment Duties regulation. This would reduce the potential of disrupting plan investment activity that would be caused by complete rescission, as described above. However, because the Department's prior non-regulatory guidance on ESG investing and proxy voting was removed from the Code of Federal Regulations by the *Financial Factors in Selecting Plan Investments* and *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights* final rules, this alternative would leave plan fiduciaries without any guidance on the consideration of ESG issues when material to plan financial interests. Similar to the first alternative described above, this could inhibit fiduciaries from taking steps that other marketplace investors might take in enhancing investment value and performance, or from improving investment portfolio resilience against the potential financial risks and impacts associated with climate change. The Department therefore rejected this alternative. As discussed in the Cost Savings section above, quantified costs for the current rule related to the tie-breaker totaled $122,000 annually. Rescission of the current rule would save this quantified amount.

As a final alternative, the Department considered revising the current regulation by adopting similar changes to fiduciary responsibilities as proposed by the European Commission.[139] The European Commission (EC) is amending existing rules on fiduciary duties in delegated acts for asset management, insurance, reinsurance and investment sectors to encompass sustainability risks such as the impact of climate change and environmental degradation on the value of investments. Specifically, the EC has added the requirement that fiduciaries must proactively solicit client's sustainability preferences, in addition to existing requirements that a fiduciary obtain information about the client's investment knowledge and experience, ability to bear losses, and risk tolerance as part of the suitability assessment. Further, the European Union's guidelines for the supervision of institutions for occupational retirement provisions (IORPs) require member states to ensure that IORPs consider ESG factors related to investment assets in their investment decisions, as part of their prudential standards. Where ESG factors are considered, an assessment must be made of new or emerging risks, including risks related to climate change, use of resources and the environment, social risks and risks related to the depreciation of assets due to regulatory changes.[140] One estimate finds that 89% of European pension funds take ESG risks into account as of 2019.[141] Further, Japan's Government Pension Investment Fund, which has over $1.5 trillion in assets under management and is the world's largest single pension fund, requires its fund managers to integrate ESG decisions into security selection. Aligning a U.S. approach to European or other approaches would have benefits such as harmonizing taxonomy for asset and investment managers across jurisdictions.

Although this proposed rule clarifies that consideration of the projected return of the portfolio relative to the funding objectives of the plan may require an evaluation of the economic effects of climate change and other ESG factors on the particular investment or investment course of action, this proposed rule does not require ERISA fiduciaries to solicit preferences regarding climate change and other ESG factors. In the ERISA context, the analogy could be that a plan fiduciary (such as the plan sponsor) would solicit participants' preferences regarding ESG, including climate change. Alternatively, the analogy could be that that institutional ERISA fiduciaries, such as ERISA section 3(38) investment managers, would solicit plan sponsors' or plan participants' preferences regarding the same. Although the Department considers any requirement that fiduciaries proactively solicit sustainability preferences in these situations to be beyond the scope of this rulemaking project, the Department, nevertheless, welcomes comments that assess the likely impact, legality and appropriateness under ERISA of requiring that fiduciaries proactively solicit climate change and other ESG preferences as described herein.

1.8. Conclusion

In summary, a significant benefit of this proposal would be to ensure that plans do not overcautiously and improvidently avoid considering material climate change and other ESG factors when selecting investments or exercising shareholder rights, as they might otherwise be inclined to do under the current regulation. Acting on material climate change and other ESG factors in these contexts, and in a manner consistent with the proposal, will redound, in the first instance, to employee benefit plans covered by ERISA and their participants and beneficiaries, and secondarily, to society more broadly but without any detriment to the participants and beneficiaries in ERISA plans. Further, by ensuring that plan fiduciaries would not give-up investment returns or take on additional investment risk to promote unrelated goals, this proposal would lead to increased investment returns over the long run. The proposal would also make certain that proxy voting by plans would be governed by the economic interests of the plan and its participants. This would promote management accountability to shareholders, including the affected shareholder plans. These benefits, while difficult to quantify, are anticipated to outweigh the costs. The total cost of the proposed rule is approximately $85.6 million in the first year and a cost of $2.4 million in subsequent years. All of the burden in the first year is for plans to review their practices and ensure their compliance with the new rules.

*2. Paperwork Reduction Act*

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to allow the general public and federal agencies to comment on proposed and continuing collections of information in

[139] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Taxonomy, Corporate Sustainability Reporting, Sustainability Preferences and Fiduciary Duties: Directing finance towards the European Green Deal Brussels, 21.4.2021 COM(2021) 188 final.

[140] ''It is essential that IORPs improve their risk management while taking into account the aim of having an equitable spread of risks and benefits between generations in occupational retirement provision, so that potential vulnerabilities in relation to the sustainability of pension schemes can be properly understood and discussed with the relevant competent authorities. IORPs should, as part of their risk management system, produce a risk assessment for their activities relating to pensions. That risk assessment should also be made available to the competent authorities and should, where relevant, include, inter alia, risks related to climate change, use of resources, the environment, social risks, and risks related to the depreciation of assets due to regulatory change ('stranded assets'). . . . Environmental, social and governance factors, as referred to in the United Nations-supported Principles for Responsible Investment, are important for the investment policy and risk management systems of IORPs. Member States should require IORPs to explicitly disclose where such factors are considered in investment decisions and how they form part of their risk management system. The relevance and materiality of environmental, social and governance factors to a scheme's investments and how such factors are taken into account should be part of the information provided by an IORP under this Directive.''

[141] ''ESG Becoming the New Normal for European Pensions,'' (August 31, 2020) *https://www.ai-cio.com/news/esg-becoming-new-normal-european-pensions/.*

accordance with the Paperwork Reduction Act of 1995 (PRA).[142] This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the proposed information collection request (ICR) included in the ''Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights'' ICR. This ICR reflects elements of OMB Control Number 1210–0162 and OMB Control Number 1210–0165. The Department has decided to discontinue OMB Control Number 1210–0165 and revise OMB Control Number 1210–0162 to reflect this ICR. To obtain a copy of the ICR, contact the PRA addressee shown below or go to *www.RegInfo.gov*.

The Department has submitted a copy of the proposed rule to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that address the following:

- Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- The accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and
- 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).

Comments should be sent by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503 and marked ''Attention: Desk Officer for the Employee Benefits Security Administration.'' Comments can also be submitted by fax at 202–395–5806 (this is not a toll-free number), or by email at *OIRA_submission@omb.eop.gov*. OMB requests that comments be received within 30 days of publication of the proposed rule to ensure their consideration.

*PRA Addresses:* Address requests for copies of the ICR to James Butikofer, Office of Regulations and Interpretations, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210. Email: *ebsa.opr@dol.gov*. ICRs submitted to OMB also are available at *https://www.RegInfo.gov* (*www.reginfo.gov/public/do/PRAMain*).

The Department anticipates that all plans using ESG would be affected in some way by the proposal. With respect to participant-directed individual account plans, a small fraction offer at least one ESG-themed option among their designated investment alternatives. According to the Plan Sponsor Council of America, about three percent of 401(k) and/or profit sharing plans offered at least one ESG-themed investment option in 2019.[143] Vanguard's 2018 administrative data show that approximately nine percent of DC plans offered one or more ''socially responsible'' domestic equity fund options.[144] In a comment letter, Fidelity Investments reported that 14.5 percent of corporate DC plans with fewer than 50 participants offered an ESG option, and that the figure is higher for large plans with at least 1,000 participants. Considering these sources together, the Department estimates that nine percent of participant-directed individual account plans have at least one ESG-themed designated investment alternative. This represents 53,000 participant-directed individual account plans.[145]

According to a 2018 survey by the NEPC, approximately 12 percent of private pension plans have adopted ESG investing.[146] Another survey, conducted by the Callan Institute in 2019, found that about 19 percent of private sector pension plans consider ESG factors in investment decisions.[147] Both of these estimates are calculated from samples that include both defined benefit and defined contribution plans. For purposes of this analysis, the Department assumes that 19 percent of defined benefit plans and nonparticipant-directed defined contribution plans use ESG investing, which represents 25,300 defined benefit and nonparticipant-directed defined contribution plans.[148]

As a result, the Department estimates as a lower bound that approximately 11 percent of retirement plans, or 78,300 plans, would be affected by paragraph (c) of the proposal.[149] This is the weighted average of nine percent for participant-directed defined contribution plans and 19 percent for other plans and is the Department's best approximation of the number of plans that were using ESG under the prior non-regulatory guidance. The estimate is a lower bound because it is likely that more plans will start to use ESG. The proposal and its clarification of how to appropriately employ climate change and other ESG considerations in investing may make some ERISA plan fiduciaries feel more at ease to begin incorporating climate change and other ESG factors. Furthermore, ESG investing is generally increasing in popularity, and that may well carry over to ERISA plans and participants.[150]

2.1. Cost of Disclosure of Collateral Benefits Used in Tie-Breaker

The proposed rule requires that if a fiduciary prudently concludes that competing investments or investment courses of action equally serve the financial interests of the plan over the

[142] 44 U.S.C. 3506(c)(2)(A) (1995).

[143] *63rd Annual Survey of Profit Sharing and 401(k) Plans,* Plan Sponsor Council of America (2020).

[144] *How America Saves 2019,* Vanguard (June 2019), *https://pressroom.vanguard.com/nonindexed/Research-How-America-Saves-2019-Report.pdf.*

[145] DOL calculations are based on statistics from *Private Pension Plan Bulletin: Abstract of 2018 Form 5500 Annual Reports,* Employee Benefits Security Administration (2020), *https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2018.pdf.* This estimate is calculated as 9% × 588,499 401(k) type plans = 52,965 rounded to 53,000.

[146] Brad Smith & Kelly Regan, *NEPC ESG Survey: A Profile of Corporate & Healthcare Plan Decisionmakers' Perspectives,* NEPC (Jul. 11, 2018), *https://cdn2.hubspot.net/hubfs/2529352/files/2018%2007%20NEPC%20ESG%20Survey%20Results%20.pdf?t=1532123276859.*

[147] *2019 ESG Survey,* Callan Institute (2019), *www.callan.com/wp-content/uploads/2019/09/2019-ESG-Survey.pdf.*

[148] DOL calculations are based on statistics from *Private Pension Plan Bulletin: Abstract of 2018 Form 5500 Annual Reports,* Employee Benefits Security Administration (2020), *https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2018.pdf.*

[149] DOL calculations are based on statistics from *Private Pension Plan Bulletin: Abstract of 2018 Form 5500 Annual Reports,* Employee Benefits Security Administration (2020), *https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2018.pdf.* This estimate is calculated as: (52,965 participant-directed individual account plans + 25,342 defined benefit and nonparticipant-directed defined contribution plans) = 78,307 plans rounded to 78,300. (78,307 affected pension plans/721,876 total pension plans) = 10.8% rounded to 11%.

[150] Morningstar, ''Sustainable Funds U.S. Landscape Report: More Funds, More Flows, and Impressive Returns in 2020,'' (February 10, 2021), *https://www.morningstar.com/lp/sustainable-funds-landscape-report.*

appropriate time horizon, the fiduciary is not prohibited from selecting the investment, or investment course of action, based on collateral benefits other than investment returns. Further, in the case of a designated investment alternative for an individual account plan, the plan fiduciary must ensure that the collateral-benefit characteristic of the fund, product, or model portfolio is prominently displayed in disclosure materials provided to participants and beneficiaries. The proposed rule provides flexibility in how plans may fulfill this requirement. One likely way is using the required disclosure under 29 CFR 2550.404a–4, covered under OMB Control Number 1210–0090.[151] The Department estimates that it will take a legal professional twenty minutes on average per year to update existing disclosures to meet this requirement. If each of the approximately 53,000 participated-directed individual account plans estimated to have at least one ESG-themed designated investment alternative used the tie-breaker provision in paragraph (c)(3) of the proposal, the result would be a cost of $2.4 million annually.[152] This estimate likely is overstated because each such plan is unlikely to use the tie-breaker provision and because the ongoing costs of the disclosure requirement in paragraph (c)(3) of the proposal would be approximately zero absent changes to an affected designated investment alternative. At the same time, this estimate likely is understated to the extent that more plans use climate change and other ESG criteria in the future and to the extent such plans have multiple designated investment options subject to paragraph (c)(3) of the proposed rule.

2.2. Summary

In summary, the total annual hour burden associated with this information collection is 17,655 hours with an equivalent cost of $2,443,629.

The paperwork burden estimates are summarized as follows:

*Type of Review:* Revision of an existing collection.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights.

*OMB Control Number:* 1210–0162.

*Affected Public:* Businesses or other for-profits.

*Estimated Number of Respondents:* 52,965.

*Estimated Number of Annual Responses:* 52,965.

*Frequency of Response:* Occasionally.

*Estimated Total Annual Burden Hours:* 17,655.

*Estimated Total Annual Burden Cost:* $0.

*3. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA)[153] imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act[154] and that are likely to have a significant economic impact on a substantial number of small entities. Unless the head of an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis of the proposed rule.

For purposes of analysis under the RFA, the Employee Benefits Security Administration (EBSA) continues to consider a small entity to be an employee benefit plan with fewer than 100 participants.[155] The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued—at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10—certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans. Such plans include unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements. Further, while some large employers may have small plans, in general small employers maintain small plans. Thus, EBSA believes that assessing the impact of these proposed amendments on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA)[156] pursuant to the Small Business Act.[157] The Department requests comments on the appropriateness of the alternative size standard used in evaluating the impact of the proposed rule on small entities.

The Department has determined that this proposal could have a significant impact on a substantial number of small entities. Therefore, the Department has prepared an Initial Regulatory Flexibility Analysis that is presented below.

3.1. Need for and Objectives of the Rule

In late 2020, the Department published two final rules including obligations for the selection of plan investments and the exercise of shareholder rights to address concerns that some investment products may be marketed to ERISA fiduciaries on the basis of purported benefits and goals unrelated to financial performance. Responses to the 2020 rules, however, suggest that the final rules created further uncertainty and may have the undesirable effect of discouraging fiduciaries' consideration of financially material climate change and other ESG factors in investment decisions. Therefore, as stakeholders noted, the final rules may lead plans to act contrary to the interest of participants and beneficiaries.

The Department is concerned that uncertainty may deter fiduciaries from taking steps that other marketplace investors take in enhancing investment value and performance, or improving investment portfolio resilience against the potential financial risks and impacts associated with climate change. In some cases, this may hamper fiduciaries as they attempt to discharge their responsibilities prudently and solely in

[151] 29 CFR 2550.404a–5 *Fiduciary Requirements for Disclosure in Participant-directed Individual Account Plans* (When the documents and instruments governing an individual account plan provide for the allocation of investment responsibilities to participants or beneficiaries, the plan administrator, as defined in section 3(16) of ERISA, must take steps to ensure, consistent with section 404(a)(1)(A) and (B) of ERISA, that such participants and beneficiaries, on a regular and periodic basis, are made aware of their rights and responsibilities with respect to the investment of assets held in, or contributed to, their accounts and are provided sufficient information regarding the plan, including fees and expenses, and regarding designated investment alternatives, including fees and expenses attendant thereto, to make informed decisions with regard to the management of their individual accounts.).

[152] The burden is estimated as follows: 52,965 individual account plans * 20 minutes = 17,655 hours. A labor rate of $138.41 is used for a legal professional: (17,655 hours * $138.41 = $2,443,629).

[153] 5 U.S.C. 601 *et seq.* (1980).

[154] 5 U.S.C. 551 *et seq.* (1946).

[155] The Department consulted with the Small Business Administration's Office of Advocacy before making this determination, as required by 5 U.S.C. 603(c) and 13 CFR 121.903(c). Memorandum received from the U.S. Small Business Administration, Office of Advocacy on July 10, 2020.

[156] 13 CFR 121.201.

[157] 15 U.S.C. 631 *et seq.*

the interests of plan participants and beneficiaries. The Department is particularly concerned that the regulations issued in 2020 created a perception that fiduciaries are at risk if they include any climate change or other ESG factors in the financial evaluation of plan investments, and that they may need to have special justifications for even ordinary exercises of shareholder rights.

The amendments proposed in this document are intended to address uncertainties regarding certain aspects of the 2020 regulations and related preamble discussions regarding the consideration of climate change and other ESG issues by fiduciaries in making investment and proxy voting decisions, and to increase fiduciaries' clarity about their obligations, which will safeguard the interests of participants and beneficiaries in plan benefits. The Department believes that the changes being proposed will improve the current regulations and further promote retirement income security and retirement savings.

3.2. Affected Small Entities

The clarifications in the proposed amendment would affect two subsets of small ERISA-covered plans and their participants and beneficiaries. Due to the nature of the proposed amendments, these subsets likely overlap. Some plans would be in both subsets, some in only one subset, and some in neither. However, the Department does not have the information or data necessary to estimate the extent of the overlap. The two subsets are described below.

(a) Small Plans Affected by Proposed Modifications of Paragraph (c) of § 2550.404a–1

The subset of plans affected by the proposed modifications of paragraph (c) of § 2550.404a–1 would include those ERISA-covered plans whose fiduciaries consider or will begin considering climate change or other ESG factors when selecting investments and the participants in those plans.

As discussed in the affected entities section in the regulatory impact analysis above, the Department estimates that 25,342 defined benefit plans and nonparticipant-directed defined contribution plans and 52,965 individual account plans would be affected by the proposed amendments in this manner. As discussed in the regulatory impact analysis, these estimates are based on surveys of ESG investment practices. To estimate the number of small affected entities, the Department assumes that the proportions of plans participating in ESG investment practices applies uniformly across plan size. Applying these proportions uniformly to plans with fewer than 100 participants, the Department estimates that 21,311 small defined benefit plans and nonparticipant-directed defined contribution plans and 46,551 small individual account plans will be affected by the rule. This results in an estimate of 67,862 total small plans affected by the proposed amendments regarding investment practices.

The Department believes this is likely an overestimate. For instance, less than 0.1 percent of total DC plan assets are invested in ESG funds.[158] In addition, one survey found that among 401(k) plans with fewer than 50 participants, approximately 4.4 percent offered an ESG investment option.[159] Accordingly, the Department offers this estimate as an upper bound.

(b) Subset of Plans Affected by Proposed Modifications of Paragraph (e) of § 2550.404a–1

Paragraph (d) of the proposal would affect small ERISA-covered pension, health, and other welfare plans that hold shares of corporate stock, directly or through ERISA-covered intermediaries, such as common trusts, master trusts, pooled separate accounts, and 103–12 investment entities.

In 2018, there were 629,397 small pension plans.[160] There is minimal data available about small plans' stock holdings. The primary source of information on assets held by pension plans is the Form 5500. Using the various asset schedules filed, only 3,862 small plans can be identified as holding stock, of which 3,431 report holding only employer securities and the other 431 plans report holding common stock.[161] While the majority of participants and assets are in large plans, most plans are small plans. The Department lacks sufficient data to estimate the number of small plans that hold common stock, but it assumes that small plans are significantly less likely to hold common stock than larger plans. Many small plans may hold stock only through mutual funds, and consequently would not be significantly affected by the proposed amendments in paragraph (d).

For purposes of illustrating the number of small plans that could be affected, the Department assumes that five percent of small plans, or 31,470 small pension plans hold stock. The Department requests comment on this assumption.

While paragraph (d) of this proposal rule would directly affect ERISA-covered plans that possess the relevant shareholder rights, the activities covered under paragraph (d) would be carried out by responsible fiduciaries on plans' behalf. Many plans hire asset managers to carry out fiduciary asset management functions, including proxy voting. The Department recognizes that service providers, including small service providers who act as asset managers, could also be impacted indirectly by this rule. However, service providers likely would pass any compliance costs incurred onto plans.

3.3. Impact of the Rule

Paragraphs (a)–(c) of the proposed rule would provide guidance on the investment duties of a plan fiduciary when selecting an investment or investment course of action. It is the Department's belief that many plan fiduciaries for small plans already conduct themselves in a manner that would comport, in whole or in part, with the requirements in these provisions. The Department, therefore, estimates that the incremental costs of the proposal would be minimal on a per-plan basis.

(a) Cost of Reviewing NPRM and Reviewing Plan Practices

Plans, plan fiduciaries, and their service providers would incur costs associated with the time needed to read the proposal and to evaluate how it would impact current documents and practices. With respect to the investment duties of a plan fiduciary when selecting an investment or investment course of action, as set forth in paragraphs (a)–(c) of the proposal, the Department estimates that 67,862 plans have exposure to investments selected using ESG factors.

Fiduciaries of each of these types of plans would need to spend time reviewing the proposal, evaluating how it might affect their investment practices, and what would be needed to implement any necessary changes. The Department estimates that this review process would require a lawyer to spend approximately four hours to complete,

[158] *63rd Annual Survey of Profit Sharing and 401(k) Plans,* Plan Sponsor Council of America (2020).

[159] *Id.*

[160] DOL calculations of plans with fewer than 100 participants based on statistics from U.S. Department of Labor, Employee Benefits Security Administration: *Private Pension Plan Bulletin: Abstract of 2018 Form 5500 Annual Reports* (2020).

[161] 2018 Form 5500. All plans that hold employer stock are identified. Only the 3,832 small plans that filed schedule H would report a separate line item for stock holdings. The small plans filing the Form 5500–SF (566,718) or file schedule I (58,401) do not report stock as a separate line item, therefore these plans cannot be identified as to whether they hold common stock.

resulting in a cost burden per plan of approximately $553.64.[162]

Similarly, plans would need to spend time reviewing paragraph (d) of the proposal, evaluating how it affects their proxy voting practices, and implementing any necessary changes. The Department estimates that this review process would require a lawyer to spend approximately four hours to complete, resulting in a cost burden per plan of approximately $553.64.[163] The Department believes that these processes would likely be performed for most plans by a service provider that likely oversees multiple plans.

The Department believes that these costs likely reflect an overestimate of the costs faced by small plans, as small plans are likely to rely on service providers. The Department believes these service providers offer economies of scale in meeting the requirements of the proposed amendments; however, the Department does not have data that would allow it to estimate the number of service providers acting in such a capacity for these plans.

(b) Cost To Update Written Proxy Voting Policies

Paragraph (d)(3)(i) of the proposal provides that, for purposes of deciding whether to vote a proxy, plan fiduciaries may adopt proxy voting policies providing that the authority to vote a proxy shall be exercised pursuant to specific parameters prudently designed to serve the plan's interests in providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. Paragraph (d)(3)(ii), in turn provides that plan fiduciaries shall periodically review these proxy voting policies.

The Department estimates that these provisions of the proposal would impose additional costs because such policies will need to be reviewed initially. The Department believes that the proposal largely comports with industry practice for ERISA fiduciaries; therefore, the Department estimates that on average, it will take a legal professional 30 minutes to update policies and procedures for each of the estimated 31,470 plans affected by the rule. This results in a cost per plan of $69.21 in the first year.[164] The requirement in paragraph (d)(3)(ii) to periodically review proxy voting policies already is required for fiduciaries to meet their obligations under ERISA; therefore, the Department does not expect that plans will incur additional cost associated with the periodic review.

(c) Cost of Disclosure of Collateral Benefits Used in Tie-Breaker

The proposal, at paragraph (c)(3), carries forward a more flexible version of the tie-breaker concept than is in the current regulation; the carried-forward version is comparable to and commensurate with the formulation previously expressed in Interpretive Bulletin 2015–1 (and first explained in Interpretive Bulletin 94–1). The proposal's tie-breaker provision is relevant and operable only once a prudent fiduciary determines that competing alternative investments equally serve the financial interests of the plan. In these circumstances, the plan fiduciary may focus on the collateral benefits of an investment or investment course of action to decide the outcome.

Some individual account plans may incur costs with respect to the requirement in paragraph (c)(3) to inform plan participants of the collateral benefit characteristics of the investment or investment course of action, when such investment or investment course of action constitutes a designated investment alternative under a participant-directed individual account plan. These costs are expected to be minimal because disclosure regulations adopted in 2012 already entitle participants in participant-directed individual account plans to receive sufficient information regarding designated investment alternatives to make informed decisions with regard to the management of their individual accounts. The information required by the 2012 rule includes information regarding the alternative's objectives or goals and the alternative's principal strategies (including a general description of the types of assets held by the investment) and principal risks. *See* 29 CFR 2550.404a–5.

This proposal, therefore, assumes these existing disclosures are, or with minor modifications or clarifications could be, sufficient to satisfy the disclosure element of the tie-breaker provision in paragraph (c)(3) of the proposal. The Department estimates that it will take a legal professional twenty minutes on average per year to update existing disclosures for each of the 46,551 small individual account plans with participant direction that are anticipated to utilize this provision. This results in a per-plan cost of $46.14 annually relative to the pre-2020 final rule baseline.[165]

(d) Summary of Costs

As illustrated in Table 2 below, the Department estimates a cost of $1,222.62 per affected plan in year 1 and $46.14 per affected plan in the following years if a plan both holds stock and invests in ESG investments and utilizes the tie breaker.

TABLE 2—COSTS FOR PLANS TO COMPLY WITH THE REQUIREMENTS

| Requirement | Labor rate | Hours | Year 1 cost | Year 2 cost |
|---|---|---|---|---|
| *Plans considering ESG factors when selecting investments:* | | | | |
| Review of Plan Investment Practices: *Lawyer* | $138.41 | 4 | $553.64 | $0.00 |
| Update Disclosures to Include Character of Collateral Benefits Used in Tie-Breaker: *Lawyer* | 138.41 | 0.333 | 46.14 | 46.14 |
| Total | | | 599.78 | 46.14 |
| *Plans holding corporate stock, directly or through ERISA-covered intermediaries:* | | | | |
| Review of Proxy Voting Practices: *Lawyer* | 138.41 | 4 | 553.64 | 0.00 |

[162] The Department estimated that there are 67,862 plans that will need to ensure compliance with the proposal. A labor rate of $138.41 is used for a lawyer. The cost burden is estimated as follows: 4 hours * $138.41 = $553.64. Labor rates are based on DOL estimates from *Labor Cost Inputs Used in the Employee Benefits Security Administration, Office of Policy and Research's Regulatory Impact Analyses and Paperwork Reduction Act Burden Calculation,* Employee Benefits Security Administration (June 2019), *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*

[163] A labor rate of $138.41 is used for a lawyer. The cost burden is estimated as follows: 4 hours * $138.41 = $553.64.

[164] A labor rate of $138.41 is used for a plan fiduciary: (0.5 hours * $138.41 = $69.21).

[165] The burden is estimated as follows: 20 minutes per year * $138.41 per hour = $46.14. A labor rate of $138.41 is used for a legal professional.

TABLE 2—COSTS FOR PLANS TO COMPLY WITH THE REQUIREMENTS—Continued

| Requirement | Labor rate | Hours | Year 1 cost | Year 2 cost |
|---|---|---|---|---|
| Update Proxy Voting Policies: *Lawyer* | 138.41 | 0.5 | 69.21 | 0.00 |
| Total | | | 662.85 | 0.00 |
| *Plans that both consider ESG factors when selecting investments and hold corporate stock, directly or through ERISA-covered intermediaries:* | | | | |
| Total | | 8.833 | 1,222.62 | 46.14 |

Source: DOL calculations based on statistics from *Labor Cost Inputs Used in the Employee Benefits Security Administration, Office of Policy and Research's Regulatory Impact Analyses and Paperwork Reduction Act Burden Calculation,* Employee Benefits Security Administration (June 2019), *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-oprria-and-pra-burden-calculations-june-2019.pdf.*

The Department believes that this is likely an overestimate of the costs faced by small plans, as small plans are likely to rely on service providers. The Department believes these service providers offer economies of scale in meeting the requirements of paragraph (d) of the proposal; however, the Department does not have data that would allow it to estimate the number of service providers acting in such a capacity for these plans. The Department believes the requirements in this proposal closely resemble existing prior guidance and industry best practices. Accordingly, the Department believes that, on average, the marginal cost to meet the additional requirements, would be small.

3.4. Regulatory Alternatives

The proposed rule seeks to provide clarity and certainty regarding the scope of fiduciary duties surrounding in investment and proxy voting policies. These standards apply to all affected entities, both large and small; therefore, the Department's ability to craft specific alternatives for small plans is limited.

In order to ensure a comprehensive review, the Department examined as an alternative leaving the current regulation in place without change, and rescind its non-enforcement statement issued on March 3, 2021. However, as explained in more detail earlier in this notice, following informal outreach activities with a wide variety of stakeholders, including asset managers, labor organizations and other plan sponsors, consumer groups, service providers and investment advisers, the Department believes that uncertainty with respect to the current regulation may deter fiduciaries of small and large plans alike from taking steps that other marketplace investors might take in enhancing investment value and performance, or improving investment portfolio resilience against the potential financial risks and impacts associated with climate change. This could hamper fiduciaries as they attempt to discharge their responsibilities prudently and solely in the interests of plan participants and beneficiaries. The Department therefore chose not to take this alternative.

The Department also considered rescinding the *Financial Factors in Selecting Plan Investments* and *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights* final rules. This alternative would remove the entire current regulation from the Code of Federal Regulations, including provisions that reflect the original 1979 Investment Duties regulation. The original Investment Duties regulation has been relied on by fiduciaries for many years in making decisions about plan investments and investment courses of actions, and complete removal of the provisions could lead to potential disruptions in plan investment activity. The Department rejected this alternative.

Another alternative considered was revising the current regulation by, in effect, reverting it to the original 1979 Investment Duties regulation. As explained in more detail earlier in this notice, this alternative would reduce the potential of disrupting plan investment activity that would be caused by complete rescission, but would leave plan fiduciaries without any guidance published in the Code of Federal Regulations on the consideration of ESG issues when material to plan financial interests. Similar to the first alternative described above, this could inhibit fiduciaries from taking steps that other marketplace investors might take in enhancing investment value and performance, or from improving investment portfolio resilience against the potential financial risks and impacts associated with climate change. The Department therefore rejected this alternative.

3.5. Duplicate, Overlapping, or Relevant Federal Rules

For the requirements relating to investment practices, the Department is issuing this proposal under sections 404(a)(1)(A) and 404(a)(1)(B) of Title I under ERISA. The Department has sole jurisdiction to interpret these provisions as they apply to plan fiduciaries' consideration in selecting plan investment funds. Therefore, there are no duplicate, overlapping, or relevant Federal rules.

For the requirements relating to proxy voting policies, the Department is monitoring other federal agencies whose statutory and regulatory requirements overlap with ERISA. In particular, the Department is monitoring SEC rules and guidance to avoid creating duplicate or overlapping requirements with respect to proxy voting.

*4. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 [166] requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector. For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this proposal does not include any federal mandate that the Department expects would result in such expenditures by state, local, or tribal governments, or the private sector.

*5. Federalism Statement*

Executive Order 13132 outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the states, the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various

[166] 2 U.S.C. 1501 *et seq.* (1995).

levels of government.[167] Federal agencies promulgating regulations that have federalism implications must consult with state and local officials, and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the proposed amendment.

In the Department's view, these proposed amendments would not have federalism implications because they would not have direct effects on the states, the relationship between the National Government and the states, or on the distribution of power and responsibilities among various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the states as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the proposed amendments do not alter the fundamental reporting and disclosure requirements of the statute with respect to employee benefit plans, and as such have no implications for the states or the relationship or distribution of power between the national government and the states.

The Department welcomes input from states regarding this assessment.

**Statutory Authority**

This regulation is proposed pursuant to the authority in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR, 1978 Comp., p 332, and under Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012).

**List of Subjects in 29 CFR Part 2550**

Employee benefit plans, Employee Retirement Income Security Act, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Department is proposing to amend part 2550 of subchapter F of chapter XXV of title 29 of the Code of Federal Regulations as follows:

## PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 continues to read as follows:

**Authority:** 29 U.S.C. 1135 and Secretary of Labor's Order No. 1–2011, 77 FR 1088 (January 9, 2012). Sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 727 (2012). Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404a–1 also issued under sec. 657, Pub. L. 107–16, 115 Stat 38. Sec. 2550.404a–2 also issued under sec. 657 of Pub. L. 107–16, 115 Stat. 38. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

■ 2. Revise § 2550.404a–1 to read as follows:

### § 2550.404a–1 Investment duties.

(a) *In general.* Sections 404(a)(1)(A) and 404(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) provide, in part, that a fiduciary shall discharge that person's duties with respect to the plan solely in the interests of the participants and beneficiaries; for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan; and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(b) *Investment prudence duties.* (1) With regard to the consideration of an investment or investment course of action taken by a fiduciary of an employee benefit plan pursuant to the fiduciary's investment duties, the requirements of section 404(a)(1)(B) of the Act set forth in paragraph (a) of this section are satisfied if the fiduciary:

(i) Has given appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties; and

(ii) Has acted accordingly.

(2) For purposes of paragraph (b)(1) of this section, ''appropriate consideration'' shall include, but is not necessarily limited to:

(i) A determination by the fiduciary that the particular investment or investment course of action is reasonably designed, as part of the portfolio (or, where applicable, that portion of the plan portfolio with respect to which the fiduciary has investment duties), to further the purposes of the plan, taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action compared to the opportunity for gain (or other return) associated with reasonably available alternatives with similar risks; and

(ii) Consideration of the following factors as they relate to such portion of the portfolio:

(A) The composition of the portfolio with regard to diversification;

(B) The liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan; and

(C) The projected return of the portfolio relative to the funding objectives of the plan, which may often require an evaluation of the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action.

(3) An investment manager appointed, pursuant to the provisions of section 402(c)(3) of the Act, to manage all or part of the assets of a plan, may, for purposes of compliance with the provisions of paragraphs (b)(1) and (2) of this section, rely on, and act upon the basis of, information pertaining to the plan provided by or at the direction of the appointing fiduciary, if:

(i) Such information is provided for the stated purpose of assisting the manager in the performance of the manager's investment duties; and

(ii) The manager does not know and has no reason to know that the information is incorrect.

(4) A prudent fiduciary may consider any factor in the evaluation of an investment or investment course of action that, depending on the facts and circumstances, is material to the risk-return analysis, which might include, for example:

(i) Climate change-related factors, such as a corporation's exposure to the real and potential economic effects of climate change including exposure to the physical and transitional risks of climate change and the positive or negative effect of Government regulations and policies to mitigate climate change;

(ii) Governance factors, such as those involving board composition, executive compensation, and transparency and accountability in corporate decision-making, as well as a corporation's avoidance of criminal liability and compliance with labor, employment, environmental, tax, and other applicable laws and regulations; and

[167] Federalism, 64 FR 43255 (Aug. 10, 1999).

(iii) Workforce practices, including the corporation's progress on workforce diversity, inclusion, and other drivers of employee hiring, promotion, and retention; its investment in training to develop its workforce's skill; equal employment opportunity; and labor relations.

(c) *Investment loyalty duties.* (1) A fiduciary may not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives, and may not sacrifice investment return or take on additional investment risk to promote benefits or goals unrelated to interests of the participants and beneficiaries in their retirement income or financial benefits under the plan.

(2) A fiduciary's evaluation of an investment or investment course of action must be based on risk and return factors that the fiduciary prudently determines are material to investment value, using appropriate investment horizons consistent with the plan's investment objectives and taking into account the funding policy of the plan established pursuant to section 402(b)(1) of ERISA. Whether any particular consideration is such a factor depends on the individual facts and circumstances and may include the factors in paragraph (b)(4) of this section. The weight given to any factor by a fiduciary should appropriately reflect a prudent assessment of its impact on risk-return.

(3) If, after the analysis in paragraph (c)(2) of this section, a fiduciary prudently concludes that competing investments, or competing investment courses of action, equally serve the financial interests of the plan over the appropriate time horizon, the fiduciary is not prohibited from selecting the investment, or investment course of action, based on collateral benefits other than investment returns. However, if the plan fiduciary makes such a selection in the case of a designated investment alternative for an individual account plan, the plan fiduciary must ensure that the collateral-benefit characteristic of the fund, product, or model portfolio is prominently displayed in disclosure materials provided to participants and beneficiaries. A fiduciary may not, however, accept expected reduced returns or greater risks to secure such additional benefits.

(d) *Proxy voting and exercise of shareholder rights.* (1) The fiduciary duty to manage plan assets that are shares of stock includes the management of shareholder rights appurtenant to those shares, such as the right to vote proxies.

(2)(i) When deciding whether to exercise shareholder rights and when exercising such rights, including the voting of proxies, fiduciaries must carry out their duties prudently and solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan.

(ii) When deciding whether to exercise shareholder rights and when exercising shareholder rights, plan fiduciaries must:

(A) Act solely in accordance with the economic interest of the plan and its participants and beneficiaries, in a manner consistent with paragraph (c)(2) of this section;

(B) Consider any costs involved;

(C) Not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to any other objective, or promote benefits or goals unrelated to those financial interests of the plan's participants and beneficiaries;

(D) Evaluate material facts that form the basis for any particular proxy vote or other exercise of shareholder rights; and

(E) Exercise prudence and diligence in the selection and monitoring of persons, if any, selected to exercise shareholder rights or otherwise advise on or assist with exercises of shareholder rights, such as providing research and analysis, recommendations regarding proxy votes, administrative services with voting proxies, and recordkeeping and reporting services.

(iii) A fiduciary may not adopt a practice of following the recommendations of a proxy advisory firm or other service provider without a determination that such firm or service provider's proxy voting guidelines are consistent with the fiduciary's obligations described in paragraphs (d)(2)(ii)(A) through (E) of this section.

(3)(i) In deciding whether to vote a proxy pursuant to paragraphs (d)(2)(i) and (ii) of this section, fiduciaries may adopt proxy voting policies providing that the authority to vote a proxy shall be exercised pursuant to specific parameters prudently designed to serve the plan's interest in providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan.

(ii) Plan fiduciaries shall periodically review proxy voting policies adopted pursuant to paragraph (d)(3)(i) of this section.

(iii) No proxy voting policies adopted pursuant to paragraph (d)(3)(i) of this section shall preclude submitting a proxy vote when the fiduciary prudently determines that the matter being voted upon is expected to have a material effect on the value of the investment or the investment performance of the plan's portfolio (or investment performance of assets under management in the case of an investment manager) after taking into account the costs involved, or refraining from voting when the fiduciary prudently determines that the matter being voted upon is not expected to have such a material effect after taking into account the costs involved.

(4)(i)(A) The responsibility for exercising shareholder rights lies exclusively with the plan trustee except to the extent that either:

(*1*) The trustee is subject to the directions of a named fiduciary pursuant to ERISA section 403(a)(1); or

(*2*) The power to manage, acquire, or dispose of the relevant assets has been delegated by a named fiduciary to one or more investment managers pursuant to ERISA section 403(a)(2).

(B) Where the authority to manage plan assets has been delegated to an investment manager pursuant to ERISA section 403(a)(2), the investment manager has exclusive authority to vote proxies or exercise other shareholder rights appurtenant to such plan assets in accordance with this section, except to the extent the plan, trust document, or investment management agreement expressly provides that the responsible named fiduciary has reserved to itself (or to another named fiduciary so authorized by the plan document) the right to direct a plan trustee regarding the exercise or management of some or all of such shareholder rights.

(ii) An investment manager of a pooled investment vehicle that holds assets of more than one employee benefit plan may be subject to an investment policy statement that conflicts with the policy of another plan. Compliance with ERISA section 404(a)(1)(D) requires the investment manager to reconcile, insofar as possible, the conflicting policies (assuming compliance with each policy would be consistent with ERISA section 404(a)(1)(D)). In the case of proxy voting, to the extent permitted by applicable law, the investment manager must vote (or abstain from voting) the relevant proxies to reflect such policies in proportion to each plan's economic interest in the pooled investment vehicle. Such an investment manager may, however, develop an investment policy statement consistent with Title I of ERISA and this section, and require participating plans to accept the investment manager's investment policy

statement, including any proxy voting policy, before they are allowed to invest. In such cases, a fiduciary must assess whether the investment manager's investment policy statement and proxy voting policy are consistent with Title I of ERISA and this section before deciding to retain the investment manager.

(5) This section does not apply to voting, tender, and similar rights with respect to shares of stock that are passed through pursuant to the terms of an individual account plan to participants and beneficiaries with accounts holding such shares.

(e) *Definitions.* For purposes of this section:

(1) The term *investment duties* means any duties imposed upon, or assumed or undertaken by, a person in connection with the investment of plan assets which make or will make such person a fiduciary of an employee benefit plan or which are performed by such person as a fiduciary of an employee benefit plan as defined in section 3(21)(A)(i) or (ii) of the Act.

(2) The term *investment course of action* means any series or program of investments or actions related to a fiduciary's performance of the fiduciary's investment duties, and includes the selection of an investment fund as a plan investment, or in the case of an individual account plan, a designated investment alternative under the plan.

(3) The term *plan* means an employee benefit plan to which Title I of the Act applies.

(4) The term *designated investment alternative* means any investment alternative designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term ''designated investment alternative'' shall not include ''brokerage windows,'' ''self-directed brokerage accounts,'' or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

(f) *Severability.* If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof.

Signed at Washington, DC, this 7th day of October, 2021.

**Ali Khawar,**

*Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2021–22263 Filed 10–13–21; 11:15 am]

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# FEDERAL REGISTER

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 10283 of October 8, 2021**

## Indigenous Peoples' Day, 2021

**By the President of the United States of America**

**A Proclamation**

Since time immemorial, American Indians, Alaska Natives, and Native Hawaiians have built vibrant and diverse cultures—safeguarding land, language, spirit, knowledge, and tradition across the generations. On Indigenous Peoples' Day, our Nation celebrates the invaluable contributions and resilience of Indigenous peoples, recognizes their inherent sovereignty, and commits to honoring the Federal Government's trust and treaty obligations to Tribal Nations.

Our country was conceived on a promise of equality and opportunity for all people—a promise that, despite the extraordinary progress we have made through the years, we have never fully lived up to. That is especially true when it comes to upholding the rights and dignity of the Indigenous people who were here long before colonization of the Americas began. For generations, Federal policies systematically sought to assimilate and displace Native people and eradicate Native cultures. Today, we recognize Indigenous peoples' resilience and strength as well as the immeasurable positive impact that they have made on every aspect of American society. We also recommit to supporting a new, brighter future of promise and equity for Tribal Nations—a future grounded in Tribal sovereignty and respect for the human rights of Indigenous people in the Americas and around the world.

In the first week of my Administration, I issued a memorandum reaffirming our Nation's solemn trust and treaty obligations to American Indian and Alaska Native Tribal Nations and directed the heads of executive departments and agencies to engage in regular, meaningful, and robust consultation with Tribal officials. It is a priority of my Administration to make respect for Tribal sovereignty and self-governance the cornerstone of Federal Indian policy. History demonstrates that Native American people—and our Nation as a whole—are best served when Tribal governments are empowered to lead their communities and when Federal officials listen to and work together with Tribal leaders when formulating Federal policy that affects Tribal Nations.

The contributions that Indigenous peoples have made throughout history—in public service, entrepreneurship, scholarship, the arts, and countless other fields—are integral to our Nation, our culture, and our society. Indigenous peoples have served, and continue to serve, in the United States Armed Forces with distinction and honor—at one of the highest rates of any group—defending our security every day. And Native Americans have been on the front lines of the COVID–19 pandemic, working essential jobs and carrying us through our gravest moments. Further, in recognition that the pandemic has harmed Indigenous peoples at an alarming and disproportionate rate, Native communities have led the way in connecting people with vaccination, boasting some of the highest rates of any racial or ethnic group.

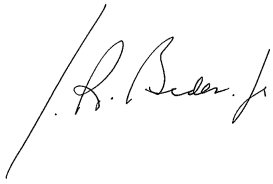
The Federal Government has a solemn obligation to lift up and invest in the future of Indigenous people and empower Tribal Nations to govern their own communities and make their own decisions. We must never

forget the centuries-long campaign of violence, displacement, assimilation, and terror wrought upon Native communities and Tribal Nations throughout our country. Today, we acknowledge the significant sacrifices made by Native peoples to this country—and recognize their many ongoing contributions to our Nation.

On Indigenous Peoples' Day, we honor America's first inhabitants and the Tribal Nations that continue to thrive today. I encourage everyone to celebrate and recognize the many Indigenous communities and cultures that make up our great country.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim October 11, 2021, as Indigenous Peoples' Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of our diverse history and the Indigenous peoples who contribute to shaping this Nation.

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



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# Presidential Documents

**Proclamation 10284 of October 8, 2021**

## International Day of the Girl, 2021

**By the President of the United States of America**

**A Proclamation**

The growth and development of the world's economies, institutions, and nations rest on all girls having equal rights and opportunities. Ensuring that girls can reach their full potential is not just a moral imperative, it is a strategic one as well. The status of women and the peace and prosperity of nations are inextricably linked. When girls do well, we all do well. When we invest in the education of girls, our communities are healthier and our economies are stronger. When we empower girls to lead, our peace processes, global health and humanitarian efforts, and climate negotiations are more sustainable and resilient. When we invest in women- and girl-led movements, our democracies grow more stable and more prosperous. On this International Day of the Girl, we commit ourselves to ensuring opportunity and equality for all girls.

Girls across our Nation and the world face gender bias and discrimination, subjecting them to harmful circumstances that impede their safety, stability, education, and opportunity. This has been especially true during the COVID–19 pandemic, which has upended the lives of too many girls around the globe, exacerbating disparities and underscoring what we have long known: that during times of crisis, girls—especially girls of color and those from underserved and low-income communities—face disproportionate challenges.

In the United States, girls contend with entrenched barriers to achieving gender equity. Despite Title IX protections, girls continue to lack equal opportunity and resources in education and leadership, and gender stereotypes continue to inhibit their participation in science, technology, engineering, and mathematics (STEM) education, undermining their access to the stable and good-paying jobs. Girls' education is further undermined by the threat of sexual assault, harassment, and other forms of gender-based violence, with 1-in-4 young women on college campuses today facing sexual assault. Girls of color and girls from underserved communities contend with additional longstanding disparities. Black girls experience disproportionate rates of school discipline and are overrepresented in our juvenile justice system. LGBTQI+ girls face elevated rates of gender-based violence and are subject to bullying, harassment, and online abuse. Transgender girls are increasingly excluded from sports and equal access to school facilities. Girls with disabilities face inequitable access to education.

Globally, girls confront persistent and structural barriers that impede their full participation. Even before the COVID–19 pandemic, 130 million girls across the world were not in school, and today, there are an additional 11 million girls who have been forced to stop their education, undermining future economic growth, health, and development. An estimated 33,000 girls are made to enter into child, early, or forced marriages every day, fueling an intergenerational cycle of poverty that is difficult to break. Girls face a range of other challenges, from harmful practices like female genital cutting to unintended pregnancy and from discriminatory laws and exclusion from civic and political processes to concerns about safety, harassment, and sexual assault. Too often, social norms that ascribe low value to girls'

lives functionally limit their rights and opportunities across public and private life.

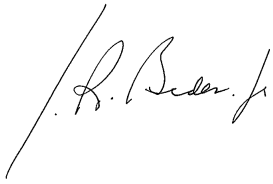
The COVID–19 pandemic has worsened preexisting public health, economic, political, and caregiving crises, which disproportionately impact girls worldwide. As health systems become more strained, girls face increased barriers to accessing basic health care. In many parts of the world, those who are part of vulnerable and marginalized communities continue to face challenges in accessing routine childhood immunizations, preventative screenings, and sexual and reproductive health services. As schools closed, caregiving burdens fell on girls across the globe, and girls were often significantly less likely to have access to the devices required for virtual schooling due to a global digital gender divide. Many countries have also reported a rise in rates of gender-based violence, both offline and online, including against female journalists, activists, and leaders who are being further excluded from critical rebuilding efforts. The mental health of girls—who already disproportionately face high incidence of reported anxiety and other mental health issues—is also suffering. We have also seen an increase in visits to emergency rooms of teenage girls across our Nation for reasons related to self-harm, including suicide attempts. An essential part of building back better must be elevating the status of girls as we address these shared crises.

On this International Day of the Girl, our Nation stands firmly and proudly in our commitment to protecting and advancing the rights of girls, in all their diversity, both at home and abroad. That is why, earlier this year, I signed an Executive Order to establish the White House Gender Policy Council and ensure a whole-of-government approach to advancing gender equity and equality. This month my Administration will release the first-ever United States Government National Gender Strategy, outlining our vision and our priorities to advance equal opportunity for people of all genders. From combating gender discrimination in education and preventing gender-based violence offline and online, to increasing pathways to STEM and promoting gender parity and diversity in leadership and democratic processes, my Administration will work to empower girls in every facet of life. And by recognizing the constraints that gender-based violence places on the lives of millions of girls around the world, we will also develop the first-ever United States National Action Plan on Gender-Based Violence and update the United States' Strategy to Prevent and Respond to Gender-Based Violence Globally.

Our vision for the future is one where every girl can live free from violence, discrimination, and bias. We are committed to a future where girls can dream boldly and lead ambitiously as heads of families, communities, corporations, and governments; where their voices are not only heard, but amplified; and where they can lead the charge against 21st century challenges, drive innovation, and compete and succeed in the workforce of the future.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 11, 2021, as International Day of the Girl. I call upon the people of the United States to observe this day with programs, ceremonies, and activities that advance equality and opportunity for girls everywhere.

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



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# Presidential Documents

**Executive Order 14049 of October 11, 2021**

## White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities

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.* The United States has a unique political and legal relationship with federally recognized Tribal Nations, as set forth in the Constitution of the United States, statutes, treaties, Executive Orders, and court decisions. The Federal Government is committed to protecting the rights and ensuring the well-being of Tribal Nations while respecting Tribal sovereignty and inherent rights of self-determination. In recognition of that commitment and to fulfill the solemn obligations it entails, executive departments and agencies (agencies) must help advance educational equity, excellence, and economic opportunity for Native American students, whether they attend public schools in urban, suburban, or rural communities; are homeschooled; attend primary and secondary schools operated or funded by the Bureau of Indian Education (BIE) of the Department of the Interior; or attend postsecondary educational institutions, including Tribal Colleges and Universities (TCUs).

For more than a century, the United States imposed educational policies designed to assimilate Native peoples into predominant United States culture that devastated Native American students and their families. Beginning with the Indian Civilization Act of 1819, the United States enacted laws and implemented policies establishing and supporting Indian boarding schools across the Nation. From 1871 onward, federally run Indian boarding schools were used to culturally assimilate Native American children who were forcibly removed from their families and communities and relocated to distant residential facilities where their Native identities, languages, traditions, and beliefs were forcibly suppressed. The conditions in these schools were usually harsh, and sometimes abusive and deadly. Although these policies have ended, their effects and resulting trauma reverberate in Native American communities even today, creating specific challenges that merit Federal attention and response.

During the global COVID–19 pandemic, Tribal Nations raced to protect Tribal members and their way of life. Tribal elders are often the keepers of Tribal culture and are critical for the preservation of Native languages, as the vitality of Native culture is inseparably tied to Native languages. Accordingly, my Administration is committed to supporting preservation and revitalization of Native languages. This includes honoring the vibrancy, importance, and strength of Native languages and the traditions, values, and cultural practices that accompany them.

In addition, the COVID–19 pandemic has amplified long-standing educational inequities that disproportionally affect Native American communities and burden Native American students. In particular, Native American children face significant learning disruption as the digital divide and lack of educational resources put remote learning out of reach for too many. Native American students experienced the greatest decline in undergraduate enrollment in higher education from 2020 to 2021 compared to other student groups. These inequities compound the effects of other disparities faced by Native American women and girls in particular. The spike in gender-

based violence during the COVID–19 pandemic has intensified safety concerns for Native American women and girls, who were already victimized at higher rates than other women in the United States.

The Federal Government must put strong focus on early childhood and K–12 educational opportunities. These are important to developing and strengthening Native American communities, and they set the stage for educational advancement and career development, including opportunities to attend TCUs.

TCUs also merit focused attention, as these institutions are integral and essential to Tribal communities. Their foundation, tradition, and mission are unique, and their cultural grounding is invaluable to providing high-quality education and successful outcomes for Native American students. TCUs fulfill a vital role in maintaining and preserving irreplaceable Native languages and cultural traditions; in promoting excellence in Native American education from early childhood through primary and secondary education, into postsecondary education, and throughout graduates' careers; in offering an entry point for a career in academia, strong technical and trade school opportunities, job training, and other career-building programs to Native Americans; and in supporting Tribal economic development efforts by building and strengthening a highly skilled Native American workforce. Often, they are the only postsecondary institutions within some of our Nation's most economically disadvantaged and rural areas. As a result, TCUs provide crucial employment opportunities and services in communities that continue to suffer high rates of unemployment and resulting social and economic distress. The Federal Government therefore reaffirms and strengthens our commitment to Native American communities by investing in TCUs to support their continued growth and success.

It is the policy of my Administration to advance equity, excellence, and justice in our Nation's education system and to further Tribal self-governance, including by supporting activities that expand educational opportunities and improve educational outcomes for all Native American students. My Administration will help expand opportunities for Native American students to learn their Native languages, histories, and cultural practices; promote indigenous learning through the use of traditional ecological knowledge; and enhance access to complete and competitive educations that prepare Native American students for college, careers, and productive and satisfying lives. This includes supporting educational opportunities for students attending TCUs, given the unique advantages those institutions provide. My Administration is further committed to ensuring all Native American students have the ability to pursue careers that provide economic security for themselves and their families, including Native American women, who currently, on average, earn just 60 cents to every dollar earned by White men. To these ends, my Administration will collaborate with Tribal Nations to collect better data on educational attainment gaps faced by Native American students to help deepen understanding of these gaps, including barriers to workforce participation, and inform solutions.

**Sec. 2**. *White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities.* (a) To advance equity in our Nation's schools, to promote the economic opportunity that follows it, and to fulfill our commitment to furthering Tribal sovereignty, there is established in the Department of Education the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities (Initiative), of which the Secretary of Education, the Secretary of the Interior, and the Secretary of Labor shall serve as Co-Chairs. The Secretary of Education shall, in consultation with the other Co-Chairs of the Initiative, designate an Executive Director for the Initiative (Executive Director). The Executive Director shall co-chair the Education Committee of the White House Council on Native

American Affairs (WHCNAA), established by Executive Order 13647 of June 26, 2013 (Establishing the White House Council on Native American Affairs).

(b) The Initiative shall consult and collaborate with Tribal Nations; Alaska Native Entities; TCUs; and State, Tribal, and local educational departments and agencies to advance educational equity, excellence, and economic opportunity for Native Americans by focusing on the following policy goals:

(i) increasing the understanding of systemic causes of educational challenges faced by Native American students and working across agencies to address those challenges;

(ii) supporting and improving data collection related to Native American students and the implementation of evidence-based strategies to increase the participation and success of Native American students in all levels of education and prepare them for careers and civic engagement;

(iii) increasing the percentage of Native American children and families who participate in high-quality early childhood programs and services that promote healthy development and learning, prepare Native American children for success in school, and affirm the cultural and linguistic identity of Native American children;

(iv) ensuring that all Native American students have access to excellent teachers, school leaders, and other professionals, including by supporting efforts to improve the recruitment, preparation, development, and retention of qualified, diverse teachers, school leaders, and other professionals who understand Native American students' lived experiences and can effectively meet their students' academic, social, and emotional needs, particularly in partnership with TCUs;

(v) breaking down barriers that impede the access of higher education institutions that serve Native American students, such as TCUs, to Federal funding, and strengthening the capacity of those institutions to participate in Federal programs and partnerships;

(vi) ensuring that the unique indigenous, cultural, educational, traditional ecological knowledge, and Native language needs of Native American students are met;

(vii) exploring policies to expand and support career and technical education, job training, and other career-building programs for Native American students and workers; and

(viii) furthering Tribal sovereignty by supporting efforts to build the capacity of Tribal educational agencies and TCUs to provide high-quality education services to Native American students.

(c) In working to fulfill its mission and objectives, the Initiative shall, consistent with applicable law:

(i) engage in regular, meaningful, and robust consultation with Tribal Nations regarding Native American education and related issues, in accordance with the Presidential Memorandum of January 26, 2021 (Tribal Consultation and Strengthening Nation-to-Nation Relationships);

(ii) identify and promote evidence-based best practices that can provide Native American students with a rigorous and well-rounded education in safe and healthy environments, as well as access to support services, that will improve their educational, professional, economic, and civic opportunities;

(iii) advance and coordinate efforts to ensure equitable opportunities for Native American students in the wake of the COVID–19 pandemic, including recovering learning losses and addressing other challenges—academic, financial, social, emotional, mental health, or career development—brought on or exacerbated by the COVID–19 pandemic;

(iv) encourage and develop Federal partnerships with public, private, philanthropic, and nonprofit entities to improve access to educational equity, excellence, and economic opportunity for Native Americans;

(v) monitor and support the development, implementation, and coordination of Federal Government educational, workforce, research, and business development policies, programs, and technical assistance designed to improve outcomes for Native Americans;

(vi) create opportunities for strategic partnerships among agencies and work closely with the Executive Office of the President on key Administration priorities related to Native Americans;

(vii) serve as a liaison with other agencies on Native American issues, advise those agencies on how they might help to promote Native American educational opportunities, and track their success in doing so; and

(viii) advise the Co-Chairs of the Initiative on issues of importance and policies relating to educational equity, excellence, and economic opportunity for Native American students.

(d) To facilitate partnership among agencies to advance educational equity, excellence, and economic opportunity for Native American students, the Executive Director shall work with the Director of the BIE, the Commissioner of the Administration for Native Americans (ANA) of the Department of Health and Human Services, and the Director of the Indian Health Service (IHS) of the Department of Health and Human Services to develop a separate Memorandum of Agreement (MOA) between the Initiative and each of these entities that will take advantage of each agency's expertise, resources, and facilities. Each MOA shall be completed within 180 days of the date of this order, and each shall address how the BIE, ANA, and IHS, respectively, will collaborate with the Initiative in carrying out the policy set forth in section 1 of this order, as appropriate and consistent with applicable law.

(e) Each agency with representation on the WHCNAA Education Committee shall prepare a plan (Agency Plan) outlining measurable actions the agency will take to advance educational equity, excellence, and economic opportunity for Native American communities, including the agency's plans to implement the policy goals and directives outlined in subsection (b) of this section, and other relevant work, in consultation with the Executive Director. These Agency Plans shall be submitted to the Co-Chairs of the Initiative on a date the Co-Chairs shall establish.

(i) Each agency with representation on the WHCNAA Education Committee shall assess and report to the Co-Chairs of the Initiative on a regular basis, as established by the Co-Chairs of the Initiative, regarding its progress in implementing its Agency Plan.

(ii) The Initiative shall monitor and evaluate each agency's progress towards the goals established in its Agency Plan and shall coordinate with the agency to ensure that its Agency Plan includes measurable and action-oriented goals.

(f) The Department of Education shall provide funding and administrative support for the Initiative, to the extent permitted by law and subject to the availability of appropriations.

(g) To further shared priorities and policies that advance educational equity, excellence, and economic opportunity for underserved communities, the Initiative shall collaborate and coordinate with other White House initiatives related to educational equity, excellence, and economic opportunity.

(h) The Initiative shall collaborate, as appropriate and consistent with applicable law, with other organizations and entities, including: Urban Indian Organizations; governing bodies of Tribal Nations on Federal and State reservations; State-recognized Tribes; Native Hawaiian and Native American Pacific Islander organizations; and other Native American groups that seek to advance educational equity, excellence, and economic opportunity for Native American students, families, and communities in the United States.

(i) No later than 1 year after the date of this order and annually thereafter, the Co-Chairs of the Initiative shall report to the President on the Initiative's progress in carrying out its mission and objectives under this order.

**Sec. 3**. *National Advisory Council.* The Department of Education's National Advisory Council on Indian Education (NACIE), comprised of members appointed by the President under section 6141 of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. 7471, shall serve as the advisory council for the Initiative and shall report to the Initiative, through and as requested by the Executive Director. To the extent appropriate and consistent with applicable law, the NACIE shall include members from across the education spectrum, including members who can provide specific expertise on issues concerning TCUs and other Native American-serving institutions, K–12 and early childhood education, special education, and vocational education.

(a) In addition to and consistent with the duties set forth in section 6141(b)(1) of the ESEA, the NACIE shall, in consultation with the Initiative, advise the Co-Chairs of the Initiative on:

(i) what is needed for the development, implementation, and coordination of educational programs and initiatives to improve educational opportunities and outcomes for Native Americans;

(ii) how to promote career pathways for in-demand jobs for Native American students, including registered apprenticeships as well as internships, fellowships, mentorships, and work-based learning initiatives;

(iii) ways to strengthen TCUs and increase their participation in agency programs;

(iv) how to increase public awareness of and generate solutions for the educational and training challenges and equity disparities that Native American students face and the causes of these challenges and disparities;

(v) approaches to establish local and national partnerships with public, private, philanthropic, and nonprofit stakeholders to advance the policy set forth in section 1 of this order, consistent with applicable law; and

(vi) actions for promoting, improving, and expanding educational opportunities for Native languages, traditions, and practices to be sustained through culturally responsive education.

(b) The NACIE and the Executive Director shall, as appropriate and consistent with applicable law, facilitate frequent collaborations between the Initiative and Tribal Nations, Alaska Native Entities, and other Tribal organizations.

(c) The Executive Director shall, in consultation with the NACIE, address the NACIE's efforts pursuant to subsection (a) of this section in the annual report of the Initiative submitted to the President.

(d) The Department of Education shall provide staff support for the NACIE.

**Sec. 4**. *Administrative Provisions.* (a) In carrying out this order, the Secretary of the Interior, the Secretary of Labor, and the Secretary of Education shall study, collect information, and publish reports on the education of Native American students.

(b) This order supersedes Executive Order 13592 of December 2, 2011 (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities), which is revoked. To the extent that there are other Executive Orders that may conflict with or overlap with the provisions in this order, the provisions in this order shall supersede those other Executive Orders on these subjects.

(c) The heads of agencies shall assist and provide information to the Initiative, consistent with applicable law, as may be necessary to carry out the functions of the Initiative.

(d) Each agency shall bear its own expenses of participating in the Initiative.

**Sec. 5**. *Definitions.* For the purposes of this order:

(a) ''Tribal Nation'' means an American Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges as a federally recognized tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130, 5131.

(b) ''Alaska Native Entities'' includes ''Alaska Native Corporations,'' which refer to village and regional Alaska Native corporations organized in accordance with the Alaska Native Claims Settlement Act (ANCSA), as amended, 43 U.S.C. 1601, *et seq.,* and the 12 regional nonprofit associations identified under section 7 of ANCSA, 43 U.S.C. 1606, that provide many social services for Alaska Natives, including those related to education.

(c) ''Native American'' and ''Native'' mean members of one or more Tribal Nations.

(d) ''Public school'' means a Head Start center or a prekindergarten, elementary, or secondary school that is predominantly funded through the Federal Government, a State, a local educational agency, a Tribal Nation government, or an Alaska Native Entity, including a school operated directly by, through a contract with, or a grant from the BIE, a Tribal Nation, or a State, county, or local government.

(e) ''Tribal Colleges and Universities'' means those institutions that are chartered under the sovereign authority of their respective Tribal Nation or by the Federal Government and that: qualify for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978, 25 U.S.C. 1801, *et seq.,* or the Navajo Community College Assistance Act of 1978, 25 U.S.C. 640a note; or are listed in section 532 of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note.

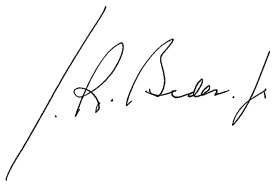
**Sec. 6**. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
*October 11, 2021.*

[FR Doc. 2021–22588
Filed 10–13–21; 11:15 am]
Billing code 3395–F2–P

# Presidential Documents

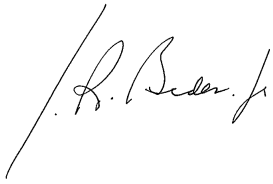
**Notice of October 12, 2021**

## Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

On October 21, 1995, by Executive Order 12978, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad.

The actions of significant narcotics traffickers centered in Colombia continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and cause an extreme level of violence, corruption, and harm in the United States and abroad. For this reason, the national emergency declared in Executive Order 12978 of October 21, 1995, must continue in effect beyond October 21, 2021. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant narcotics traffickers centered in Colombia declared in Executive Order 12978.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
*October 12, 2021.*

[FR Doc. 2021–22597
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**H.R. 2278/P.L. 117–48**
To designate the September 11th National Memorial Trail Route, and for other purposes. (Oct. 13, 2021; 135 Stat. 400)

**S. 848/P.L. 117–49**
Consider Teachers Act of 2021 (Oct. 13, 2021; 135 Stat. 402)

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